

THE COMMISSION FOR ARKANSAS PUBLIC SCHOOL
ACADEMIC FACILITIES AND TRANSPORTATION
RULES GOVERNING APPEALS FROM DETERMINATIONS
OF THE ARKANSAS DIVISION OF PUBLIC SCHOOL ACADEMIC FACILITIES
AND TRANSPORTATION

June 2012 Effective _____

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LEGISLATIVE RESEARCH

1.00 REGULATORY AUTHORITY

1.01 These Rules shall be known as the Commission for Arkansas Public School Academic Facilities and Transportation Rules Governing Appeals from Determinations of the Arkansas Division of Public School Academic Facilities and Transportation.

1.02 These Rules are promulgated pursuant to Ark. Code Ann. §§ ~~6-21-801 through 6-21-814~~ 6-21-816, 6-20-2512, 6-20-2513, 6-20-2516, 6-21-801 et seq., and 25-15-201 *et seq.*, and Act 1006 of 2011.

2.00 PURPOSES OF RULES, BURDEN OF PROOF AND DEFINITION OF TERMS

2.01 The first purpose of these Rules is to implement the requirements of Ark. Code Ann. §§ 6-21-801 through ~~6-21-814~~ 6-21-815 to provide a method by which a school districts may appeal a decisions made by the Arkansas Division of Public School Academic Facilities and Transportation (Division) to the Commission for Public School Academic Facilities and Transportation (Commission). ~~Sections 3.00 through 5.00 of these Rules specifically address appeals arising under Ark. Code Ann. §§ 6-21-801 through 6-21-814.~~

2.02 The second purpose of these Rules is to implement the requirements of Ark. Code Ann. § 6-21-816 to provide a method by which a school district or public charter school may appeal a decision made by the Division to the Commission related to a waiver request.

2.023 The second ~~third~~ purpose of these Rules is to implement the requirements of Ark. Code Ann. §§ 6-20-2512, 6-20-2513 and 6-20-2516 to provide a method by which a school districts may appeal a decisions made by the Division to the Academic Facilities Review Board (Review Board), as well as and from a decisions made by the Review Board to the Commission. Sections 6.00 through 9.00 of these rules specifically address appeals arising under Ark. Code Ann. §§ 6-20-2501 through 6-20-2516.

2.034 For the purposes of all appeals brought by a school district pursuant to these Rules, the school district appealing party shall have the burden of

proving that the Division's written determination is not supported by substantial evidence or is outside the legal authority vested in the Division.

2.045 For the purposes of these Rules, the term "substantial evidence" means relevant evidence that a reasonable mind might accept to support a conclusion. Substantial evidence is not based upon speculation and conjecture. A review of substantial evidence is not based upon whether the facts would have supported a contrary finding by the Division, but whether the facts supported the finding made by the Division.

2.06 As used in these Rules, the term "public charter school" has the same meaning as in Ark. Code Ann. § 6-21-815.

2.07 As used in these Rules, the term "school district":

2.07.1 Does not include a "public charter school" as defined in Ark. Code Ann. § 6-21-815.

2.07.2 Includes a "conversion public charter school" as defined in Ark. Code Ann. § 6-23-103(5).

DIRECT APPEALS TO THE COMMISSION
(ARK. CODE ANN. §§ 6-21-801 ~~et seq.~~ ~~6-21-814~~ ~~6-21-816~~)

3.00 APPEAL PROCESS: DIRECT APPEALS TO THE COMMISSION

3.01 Pursuant to Ark. Code Ann. § 6-21-814, a school district may appeal any final written determination of the Division made under the provisions of the Arkansas Public School Academic Facilities Program Act, Ark. Code Ann. § 6-21-801 *et seq.*, by following this process:

3.01.1 A school district may request in writing, and the Division shall provide within twenty (20) calendar days, a written determination concerning a matter directly affecting the school district that is covered under Ark. Code Ann. §§ 6-21-801 through 6-21-814 ~~6-21-815~~.

3.01.1.1 A school district may not utilize the procedures outlined in this Section 3.00 to request a written determination that is in effect a request for reconsideration of an earlier written determination.

3.01.2 If the school district wishes to appeal the written determination of the Division, the school district must shall, within sixty (60)

calendar days of receipt of the Division's written determination, submit to the Arkansas Department of Education (ADE) Office of General Counsel, Arkansas Department of Education, with a copy to the Division, a written request for an appeal or an appeal and hearing with the Commission. With its written request, the school district ~~must~~ shall submit a brief written statement of no longer than fifteen (15) pages explaining, in clear and express terms, the facts of the case and how the Division's determination is not supported by substantial evidence or is outside the legal authority vested in the Division. At the time of submitting its initial brief, the school district shall indicate whether it requests a formal hearing before the Commission. If the appeal or appeal and request for hearing are not received within sixty (60) calendar days from the date of the receipt of the Division's written determination, the Commission shall deny the appeal on the grounds that it is untimely.

3.01.3 Upon timely receipt of the school district's written request for an appeal or appeal and hearing, the Division may prepare a written statement in response. The Division's written response ~~will be~~ is limited to fifteen (15) pages. The Division ~~will~~ shall provide its written response to the ~~the~~ ADE Office of General Counsel, Arkansas Department of Education, with a copy to the school district, within thirty (30) calendar days of receipt of the school district's written request for an appeal.

3.01.4 Once the written statements from the school district and the Division are received by the Commission, the Commission ~~will~~ shall consider the appeal at the call of the chair of the Commission. Except for good cause shown, the chair of the Commission ~~will~~ shall schedule the meeting for consideration of the appeal within thirty (30) calendar days of receipt of the Division's written response. Notice of the date, time, and location of the meeting ~~will~~ shall be sent to the appealing school district and to the Division. If requested by the appealing school district, or if the Commission determines that a hearing is necessary, a hearing concerning the appeal ~~will~~ shall be held during the meeting and in accordance with Section 4.00 of these Rules.

3.02 A school district or public charter school may appeal a final written determination of the Division made under Ark. Code Ann. § 6-21-816 related to a school district petition for a waiver by following this process:

3.02.1 A school district or public charter school may not utilize the procedures outlined in this Section 3.02 to request a written

determination that is in effect a request for reconsideration of an earlier written determination.

3.02.2 If the school district or public charter school wishes to appeal the written determination of the Division, it shall, within sixty (60) calendar days of receipt of the Division's written determination, submit to the ADE Office of General Counsel, with a copy to the Division and to the non-appealing party, a written request for an appeal or an appeal and hearing with the Commission. With its written request, the appealing party shall submit a brief written statement of no longer than fifteen (15) pages explaining, in clear and express terms, the facts of the case and how the Division's determination is not supported by substantial evidence or is outside the legal authority vested in the Division. At the time of submitting its initial brief, the appealing party shall indicate whether it requests a formal hearing before the Commission. If the appeal or appeal and request for hearing is not received by the Division within sixty (60) calendar days from the date of the receipt of the Division's written determination, the Commission shall deny the appeal on the grounds that it is untimely.

3.02.3 Upon timely receipt of the appealing party's written request for an appeal or appeal and hearing, the Division and non-appealing party each may prepare a brief written statement in response, each of which is limited to fifteen (15) pages. The Division and non-appealing party shall provide any written response to the ADE Office of General Counsel, with a copy to the appealing party, within thirty (30) calendar days of receipt of the appealing party's written request for an appeal.

3.02.4 Once written responses are received by the Commission or the time to provide a written response passes, whichever is earlier, the Commission shall consider the appeal at the call of the chair of the Commission. Except for good cause shown, the chair of the Commission shall schedule the meeting for consideration of the appeal within thirty (30) calendar days of receipt of the written response(s). Notice of the date, time, and location of the meeting shall be sent to the appealing party, the non-appealing party (regardless of whether it filed a written response), and the Division. If requested by the appealing party or if the Commission determines that a hearing is necessary, a hearing concerning the appeal shall be held during the meeting and in accordance with Section 4.00 of these Rules.

4.00 APPEAL HEARING PROCEDURES: DIRECT APPEALS TO THE COMMISSION

- 4.01 For each hearings under Ark. Code Ann. §§ 6-21-801 through 6-21-815, the appealing school district and ~~the~~ Division shall each shall have up to ten (10) minutes to present an opening statement, beginning with the appealing school district. The chair of the Commission may, ~~only for good cause shown and upon request of either party,~~ allow either party additional time to present an opening statement. For hearings under Ark. Code Ann. § 6-21-816, the same procedure applies except that the non-appealing party (whether the school district or public charter school) shall have like time to present an opening statement following the appealing party and Division.
- 4.02 For hearings under Ark. Code Ann. §§ 6-21-801 through 6-21-815, ~~the~~ the appealing school district and the Division shall each shall have up to fifteen (15) minutes to present their cases-in-chief to the Commission, beginning with the appealing school district. The chair of the Commission may, ~~only for good cause shown and upon request of either party,~~ allow either party additional time to present their cases-in-chief. For hearings under Ark. Code Ann. § 6-21-816, the same procedure applies except that the non-appealing party (whether the school district or public charter school) shall have like time to present its case-in-chief following the appealing party and Division.
- 4.03 For hearings under Ark. Code Ann. §§ 6-21-801 through 6-21-815, ~~After~~ after both parties have presented their cases-in-chief, the appealing school district and the Division shall each shall have up to five (5) minutes to present a closing statement, beginning with the appealing school district. The chair of the Commission may, ~~only for good cause shown and upon request of either party,~~ allow either party additional time to present a closing statement. For hearings under Ark. Code Ann. § 6-21-816, the same procedure applies except that the non-appealing party (whether the school district or public charter school) shall have like time to present a closing statement following the appealing party and Division.
- 4.04 Members of the Commission may ask questions of ~~either~~ any party at any time throughout the proceedings.
- 4.05 For the purposes of the record, documents offered during the hearing ~~by the appealing school district~~ shall be clearly marked in sequential, numeric order, and in a manner identifying the party offering the document (1, 2, 3).

~~4.06~~ For the purposes of the record, documents offered during the hearing by the Division shall be clearly marked in sequential, alphabetic letters (A, B, C).

4.076 After hearing all testimony and evidence presented, the Commission shall deliberate and may announce its decision at the close of the hearing or may take the matter under advisement.

4.087 The Commission shall render a written decision to approve, deny or place in abeyance each appeal within thirty (30) calendar days of the hearing of the appeal by the Commission.

4.08 If the appeal is brought under Ark. Code Ann. § 6-21-815 or 6-21-816, all time frames under those sections shall be tolled during the pendency of the appeal.

5.00 FINALITY OF COMMISSION DECISIONS

All decisions of the Commission resulting from a school district's the appeal of a Division determination shall be final and shall not be subject to further appeal or request for rehearing to the Commission or petition for judicial review under the Arkansas Administrative Procedure Act, Ark. Code Ann. § 25-15-201 *et. seq.*

APPEALS TO THE ACADEMIC FACILITIES REVIEW BOARD (ARK. CODE ANN. §§ 6-20-2501 – 6-20-2516)

6.00 REVIEW BOARD APPEAL PROCEDURES

6.01 Pursuant to Ark. Code Ann. § 6-20-2513, a school district may appeal any written determination of the Division made under the provisions of the Arkansas Public School Academic Facilities Funding Act, (Ark. Code Ann. § 6-20-2501 *et seq.*), to the Academic Facilities Review Board.

6.01.1 For the purpose of this Section 6.00, the phrase "Written Determination" includes the Division's notice of approval of construction projects eligible for state financial participation under Ark. Code Ann. § 6-20-2507.

6.02 A school district may request in writing, and the Division shall provide within twenty (20) calendar days, a written determination concerning a matter directly affecting the school district that is covered under Ark. Code Ann. §§ 6-20-2501 through 6-20-2516.

- 6.02.1 A school district may not utilize the procedures outlined in this Section 6.02 to request a written determination that is in effect a request for reconsideration of an earlier written determination.
- 6.03 If the school district wishes to appeal the written determination of the Division, the school district ~~must~~ shall, within sixty (60) calendar days of receipt of the Division's written determination, submit to the ~~the ADE Office of General Counsel, Arkansas Department of Education,~~ ADE Office of General Counsel, Arkansas Department of Education, with a copy to the Division, a written request for an appeal or an appeal and hearing with the Review Board. With its written request, the school district ~~must~~ shall submit a brief written statement of no longer than ten (10) pages explaining, in clear and express terms, the facts of the case and how the Division's determination is not supported by substantial evidence or is outside the legal authority vested in the Division. At the time of submitting its initial brief, the school district shall indicate whether it requests a formal hearing before the Review Board. If the appeal or appeal and request for hearing are not received within sixty (60) calendar days of the Division's written determination, the Review Board shall deny the appeal on the grounds that it is untimely.
- 6.04 Upon timely receipt of the school district's written request for an appeal or an appeal and hearing, the Division may prepare a **brief** written statement in response. The Division's written response ~~will be~~ is limited to ten (10) pages. The Division ~~will~~ shall provide its written response to the ~~ADE Office of General Counsel, Arkansas Department of Education,~~ ADE Office of General Counsel, Arkansas Department of Education, with a copy to the school district, within thirty (30) calendar days of receipt of the school district's written request for an appeal.
- 6.05 If the school district does not request a hearing, the Review Board shall meet upon the call of the chair to consider the appeal. Except for good cause shown, the chair of the Review Board shall schedule the meeting within thirty (30) calendar days of receipt of the Division's written response. Notice of the date, time and location of the meeting ~~will~~ shall be sent to the appealing school district and to the Division.
- 6.06 If the school district requests a hearing or if the Review Board determines that a hearing is necessary, the Review Board shall meet upon the call of the chair. Except for good cause shown, the chair of the Review Board shall schedule the hearing within thirty (30) calendar days of receipt of the Division's written response. Notice of the date, time, and location of the hearing ~~will~~ shall be sent to the appealing school district and to the Division. Hearings shall be conducted pursuant to Section 6.08 of these Rules.

- 6.07 A majority of the members of the Review Board shall constitute a quorum, and all actions taken by the Review Board shall be by a majority of the quorum present.
- 6.08 For each hearing, the appealing school district and the Division ~~will~~ each shall have five (5) minutes to present an opening statement, beginning with the appealing school district. The chair of the Board may, ~~only for good cause shown and upon request of either party,~~ allow either party additional time to present an opening statement.
- 6.08.1 The appealing school district and the Division ~~will~~ each shall have fifteen (15) minutes to present their cases-in-chief to the Review Board, beginning with the appealing district, which bears the burden of proof. The chair of the Board may, ~~only for good cause shown and upon request of either party,~~ allow either party additional time to present their cases-in-chief.
- 6.08.2 The appealing school district and the Division ~~will~~ each shall have five (5) minutes to present a closing statement, beginning with the appealing school district. The chair of the Board may, ~~only for good cause shown and upon request of either party,~~ allow either party additional time to present a closing statement.
- 6.08.3 Members of the Review Board may, at any time during the proceedings, ask questions to representatives of either party.
- 6.08.4 For the purposes of the record, documents offered during the hearing ~~by the appealing school district~~ shall be clearly marked in sequential, numeric order (1, 2, 3). and in a manner identifying the party offering the document.
- 6.08.5 For the purposes of the record, documents offered during the hearing ~~by the Division~~ shall be clearly marked in sequential, ~~alphabetic letters (A, B, C).~~
- 6.08.65 Following a hearing, the Review Board shall make a final determination accepting, rejecting, or modifying the determination of the Division. The Review Board may deliberate and announce its determination at the close of the hearing, or the Review Board may take the matter under advisement. The Review Board shall provide to the school district and the Division its written final determination within ten (10) business days of the hearing.

7.00 APPEAL PROCESS: COMMISSION REVIEW OF DECISIONS OF THE REVIEW BOARD

- 7.01 If the school district wishes to appeal the final determination of the Review Board, the school district ~~must~~ shall within thirty (30) calendar days of receipt of the Review Board's final determination, submit to the ADE Office of General Counsel, Arkansas Department of Education, with a copy to the Division, a written request for an appeal or an appeal and hearing from the Review Board's final determination to the Commission. With its written request, the school district ~~must~~ shall submit a brief written statement of no longer than fifteen (15) pages explaining, in clear and express terms, the facts of the case and how the Division's determination is not supported by substantial evidence or is outside the legal authority vested in the Division. At the time of submitting its initial brief, the school district shall indicate whether it requests a formal hearing before the Commission. If the appeal or appeal and request for hearing are not received within thirty (30) calendar days from the date of the receipt of the Review Board's written final determination, the Commission shall deny the appeal on the grounds that it is untimely.
- 7.02 Upon timely receipt of the school district's written request for an appeal or appeal and hearing, the Division may prepare a written statement in response. The Division's written response ~~will be~~ is limited to fifteen (15) pages. The Division ~~will~~ shall provide its written response to the ADE Office of General Counsel, Arkansas Department of Education, with a copy to the school district, within thirty (30) calendar days of receipt of the school district's written request for an appeal.
- 7.03 Once the written statements from the school district and the Division are received by the Commission, the Commission ~~will~~ shall consider the appeal at the call of the chair of the Commission. Except for good cause shown, the chair of the Commission ~~will~~ shall schedule the meeting for consideration of the appeal within thirty (30) calendar days of receipt of the Division's written response. Notice of the date, time, and location of the meeting ~~will~~ shall be sent to the appealing school district and to the Division. If requested by the appealing school district or if the Commission determines that a hearing is necessary, a hearing concerning the appeal ~~will~~ shall be held during the meeting and in accordance with Section 8.00 of these Rules.
- 7.04 If the Review Board's final determination will result in a greater level of state financial participation in a project than previously authorized by the Division, the Board's final determination shall be reviewed by the Commission at the call of the chair of the Commission.
- 7.04.1 When the chair of the Commission determines that a review is mandated by Section 7.04 of these Rules, the chair shall, within thirty (30) calendar days of the date of the Review Board's

decision, give written notice to the appealing school district and the Division that the final determination ~~will~~ shall be reviewed by the Commission.

7.04.2 Within thirty (30) calendar days of receipt of notice from the chair of the Commission, the appealing school district shall submit to the ~~the ADE Office of General Counsel, Arkansas Department of Education,~~ with a copy to the Division, a brief written statement of no longer than fifteen (15) pages explaining, in clear and express terms, the facts of the case and how the Division's determination is not supported by substantial evidence or is outside the legal authority vested in the Division. At the time of submitting its initial brief, the school district shall indicate whether it requests a formal hearing before the Commission.

7.04.3 Upon timely receipt of the school district's brief written statement, the Division may prepare a written statement in response. The Division's written response ~~will~~ shall be limited to fifteen (15) pages. The Division ~~will~~ shall provide its written response to the ~~ADE Office of General Counsel, Arkansas Department of Education,~~ with a copy to the school district, within thirty (30) calendar days of receipt of the school district's brief written statement.

7.04.4 Once the written statements from the school district and the Division are received by the Commission, the Commission ~~will~~ shall consider the review at the call of the chair of the Commission. Except for good cause shown, the chair of the Commission ~~will~~ shall schedule the meeting for consideration of the review within thirty (30) calendar days of receipt of the Division's written response. Notice of the date, time, and location of the meeting ~~will~~ shall be sent to the appealing school district and to the Division. If requested by the appealing school district or if the Commission determines that a hearing is necessary, a hearing concerning the review ~~will~~ shall be held during the meeting and in accordance with Section 8.00 of these Rules

8.00 COMMISSION HEARING PROCEDURES: APPEALS FROM THE REVIEW BOARD

8.01 For each hearing, the appealing school district and the Division ~~shall~~ each shall have up to ten (10) minutes to present an opening statement, beginning with the appealing school district. The chair of the Commission may grant additional time to either or both parties, ~~if necessary.~~

- 8.02 The appealing school district and the Division ~~shall~~ each shall have up to fifteen (15) minutes to present their cases-in-chief to the Commission, beginning with the appealing school district. The chair of the Commission may grant additional time to either or both parties, ~~if necessary~~.
- 8.03 After both parties have presented their cases-in-chief, the appealing school district and the Division ~~shall~~ each shall have up to five (5) minutes to present a closing statement, beginning with the appealing school district. The chair of the Commission may grant additional time to either or both parties, ~~if necessary~~.
- 8.04 Members of the Commission may ask questions of either party at any time throughout the proceedings.
- 8.05 After hearing all testimony and evidence presented, the Commission shall deliberate and may announce its decision at the close of the hearing or may take the matter under advisement.
- 8.06 The Commission shall provide to the school district and the division its final written determination within ten (10) business days of the hearing.

9.00 FINALITY OF COMMISSION DECISIONS

All decisions of the Commission ~~resulting from a school district's appeal of a determination of the Review Board, or resulting from the Commission's review of a determination of the Review Board,~~ under these rules shall be final and ~~shall~~ not be subject to further appeal or request for rehearing to the Commission, or petition for judicial review under the Arkansas Administrative Procedure Act, (Ark. Code Ann. § 25-15-201 *et. seq.*).

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

As Engrossed: S2/16/17
A Bill

SENATE BILL 308

5 By: Senators A. Clark, J. English, J. Hendren, Hester, J. Hutchinson, B. Johnson
6 By: Representatives Lowery, Ballinger, D. Douglas, Gates, K. Hendren, G. Hodges, Sullivan
7

8 **For An Act To Be Entitled**

9 AN ACT TO GRANT PUBLIC CHARTER SCHOOLS A RIGHT OF
10 ACCESS TO UNUSED OR UNDERUTILIZED PUBLIC SCHOOL
11 FACILITIES; TO CLARIFY RIGHTS OF FIRST REFUSAL TO
12 PURCHASE OR LEASE UNUSED OR UNDERUTILIZED PUBLIC
13 SCHOOL FACILITIES; AND FOR OTHER PURPOSES.
14

15 **Subtitle**

16 TO GRANT PUBLIC CHARTER SCHOOLS A RIGHT
17 OF ACCESS TO UNUSED OR UNDERUTILIZED
18 PUBLIC SCHOOL FACILITIES.
19

20
21
22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code § 6-21-803, concerning definitions in the
25 Arkansas Public School Academic Facilities Program Act, is amended to add an
26 additional subdivision to read as follows:

27 (17) "Unused or underutilized public school facility" means a
28 public school facility or other real property that:

29 (A) As a whole or in a significant portion, is not being
30 used for a public educational, academic, extracurricular, or administrative
31 purpose and the nonuse or underutilization threatens the integrity or purpose
32 of the public school facility or other real property as a public education
33 facility; and

34 (B) As of the effective date of this act, is not subject
35 to:

36 (i) A lease to a third party for fair market value;



1 or

2 (ii) An executed offer to purchase by a third party
3 for fair market value.

4
5 SECTION 2. Arkansas Code § 6-21-806(a), concerning requirements for
6 the Academic Facilities Master Plan Program, is amended to add an additional
7 subdivision to read as follows:

8 (7)(A) Submit a report to the division by February 1 of each
9 year that identifies:

10 (i) All unused or underutilized public school
11 facilities in the school district; and

12 (ii) The unused or underutilized public school
13 facilities, if any, that are designated in the district's facilities master
14 plan to be re-used, renovated, or demolished as part of a specific committed
15 project or planned new construction project.

16 (B)(i) The division shall identify a public school
17 facility or other real property as an unused or underutilized public school
18 facility if the school district fails to identify in the report the public
19 school facility or other real property.

20 (ii) A school district may appeal an identification
21 made by the division under subdivision (a)(7)(B)(i) of this section to the
22 commission.

23
24 SECTION 3. Arkansas Code Title 6, Chapter 21, Subchapter 8, is amended
25 to add additional sections to read as follows:

26 6-21-815. Right of access to unused or underutilized public school
27 facilities.

28 (a) As used in this section and in § 6-21-816, "public charter school"
29 means:

30 (1) An open-enrollment public charter school as defined in § 6-
31 23-103;

32 (2) An eligible entity as defined in § 6-23-103 that applies to
33 authorize, amend, or renew a charter for an open-enrollment public charter
34 school; and

35 (3) A legal entity that is affiliated with or acting on behalf
36 of an open-enrollment public charter school or eligible entity.

1 (b) Annually by March 1 the Division of Public School Academic
2 Facilities and Transportation shall publish a list on its website identifying
3 all unused or underutilized public school facilities.

4 (c)(1) Except as otherwise provided in this section, a school district
5 shall make unused or underutilized public school facilities available for
6 lease or purchase for no more than fair market value to any public charter
7 school located within the geographical boundaries of the school district.

8 (2) Once a public school facility or other real property is
9 identified by the division as an unused or underutilized public school
10 facility, a public charter school may give notice of its intent to purchase
11 or lease the public school facility or other real property from the school
12 district no earlier than the later of:

13 (A) The date the public school facility or other real
14 property is first identified by the division as an unused or underutilized
15 public school facility; or

16 (B) If the public school facility or other real property
17 has already been designated in the school district's facilities master plan
18 to be reused, renovated, or demolished as part of a specific committed
19 project or planned new construction project, two (2) years from the date the
20 public school facility or other real property is first identified by the
21 division as an unused or underutilized public school facility.

22 (3)(A) If the public charter school and school district are
23 unable to agree on terms and execute the sale or lease within sixty (60) days
24 of the notice of intent, the public charter school may petition the
25 Commission for Arkansas Public School Academic Facilities and Transportation
26 for an order directing the school district to lease the public school
27 facility to the public charter school for fair market value.

28 (B) The lease shall be for a term of between five (5) and
29 thirty (30) years, as determined by the public charter school.

30 (4) The commission may deny the petition if the school district
31 makes an affirmative showing by a preponderance of the evidence that:

32 (A) The public school facility, or the property to which
33 the public school facility is attached, will be needed by the school district
34 to accommodate future growth of the school district; or

35 (B) Use of the public school facility or other real
36 property by a public charter school would have a materially negative impact

1 on the overall educational environment of an educational campus located
2 within five hundred feet (500') of the public school facility or other real
3 property sought to be leased.

4 (d)(1) Upon the execution of a lease, the public charter school shall
5 be responsible for all direct expenses related to the public school facility,
6 including without limitation:

7 (A) Utilities;

8 (B) Insurance;

9 (C) Maintenance;

10 (D) Repairs; and

11 (E) Renovation.

12 (2) The school district shall remain responsible for any bonded
13 debt incurred or mortgage liens that attached to the public school facility
14 or other real property prior to a sale or lease.

15 (3) The public charter school shall take no actions that have a
16 materially negative impact on:

17 (A) Any bond rights attached to the public school facility
18 or other real property; or

19 (B) Any tax-exempt financing related to the public school
20 facility or other real property.

21 (4) The public charter school shall indemnify the school
22 district for any mortgages, liens, or debt that attach to the public school
23 facility or other real property by the public charter school's action or
24 inaction.

25 (e) The terms of a lease executed under this section shall provide
26 that the lease shall be cancelled and be of no effect if:

27 (1) The public charter school fails to use the public school
28 facility or other real property for direct student instruction or
29 administrative purposes within two (2) years of the effective date of the
30 lease;

31 (2) The public charter school closes, has its charter revoked,
32 or has its charter application denied by the authorizer; or

33 (3) The public charter school initially uses the public school
34 facility or other real property, but then leaves the public school facility
35 or other real property unused for more than one hundred eighty (180) days.

36 (f)(1) The division may classify a school district that fails to

1 comply with this section as being in academic facilities distress under § 6-
2 21-811.

3 (2) The charter school authorizer may take action under § 6-23-
4 105 on the charter of a public charter school that fails to comply with this
5 section.

6 (g) The commission shall promulgate rules to implement this section,
7 including without limitation a standard lease form.

8
9 6-21-816. Sale or lease of public school facilities.

10 (a)(1) Except as otherwise provided in this section, if a school
11 district determines that any public school facility or other real property is
12 no longer needed for school purposes or is unused or underutilized, the
13 school district may sell or lease the facility in accordance with §§ 6-13-103
14 and 6-13-620 and this subchapter.

15 (2)(A) Money derived from the sale or lease of property under
16 this section shall be placed in the appropriate school fund established under
17 applicable law, as determined by the school district.

18 (B) Money derived from the sale or lease may be used for
19 any purpose allowed by law, including without limitation redemption of bonds
20 related to the financing of the facility sold or leased.

21 (3) A school district may not make a covenant that prohibits the
22 sale or lease of a public school facility or other real property to an open-
23 enrollment public charter school that is located within the geographic
24 boundary of the school district.

25 (b)(1)(A) If a school district decides to sell, lease, or otherwise
26 transfer ownership of an academic facility, an open-enrollment public charter
27 school located within the school district's boundaries shall have a right of
28 first refusal to purchase or lease the facility for fair market value.

29 (B) If the school district ceases to use a public school
30 facility as an academic facility, the right of first refusal shall continue
31 for two (2) years after the date the public school facility or other real
32 property was last used as an academic facility.

33 (C) If there is more than one (1) open-enrollment public
34 charter school located within the boundaries of the school district, the
35 right of first refusal shall be available to the open-enrollment public
36 charter school according to a priority list determined by the charter

1 authorizer following a review of the comparative status and educational needs
2 of the open-enrollment public charter schools.

3 (2)(A) If an open-enrollment public charter school decides to
4 sell or lease a public school facility or other real property purchased by
5 the public charter school under this section or under § 6-21-815, and the
6 sale or lease is to a third party that is not a public charter school, the
7 school district in which the public school facility or other real property is
8 located shall have a right of first refusal to purchase or lease the public
9 school facility or other real property for fair market value, subject to any
10 mortgage or lien attached to the public school facility or other real
11 property.

12 (B) The school district may waive its right of first
13 refusal under subdivision (b)(2)(A) of this section if the public school
14 facility or other real property or its revenues are to be pledged by the
15 public charter school as security for debt to fund the purchase or renovation
16 of the public school facility or other real property.

17 (3) Subject to the priority list under subdivision (b)(1)(C) of
18 this section, nothing in this subchapter shall be construed to delay or limit
19 the authority of a school district to sell, lease, or otherwise transfer a
20 public school facility or other real property to a public charter school on
21 terms agreed to by the school district and public charter school.

22 (c) If a public school facility or other real property has been
23 identified by the Division of Public School Academic Facilities and
24 Transportation as an unused or underutilized public school facility, the
25 school district may sell or lease the unused or underutilized public school
26 facility to a third party, other than an open-enrollment public charter
27 school, no earlier than the later of:

28 (1) Two (2) years after the date the public school facility or
29 other real property is identified by the division as an unused or
30 underutilized public school facility, so long as no public charter school has
31 claimed a right of access under § 6-21-815 or a right of first refusal under
32 this section; or

33 (2) If the unused or underutilized public school facility has
34 been designated in the school district's facilities master plan to be reused,
35 renovated, or demolished as part of a specific committed project or planned
36 new construction project, three (3) years from the date the public school

1 facility or other real property is identified by the division as an unused or
2 underutilized public school facility.

3 (d)(1) A school district may petition the division for a waiver of
4 subsection (c) of this section as it applies to an unused or underutilized
5 public school facility within the school district.

6 (2) The petition shall include a statement that the school
7 district believes that a public charter school would not be interested in
8 leasing or purchasing the unused or underutilized public school facility.

9 (e)(1)(A) If the division receives a petition under subsection (d) of
10 this section, the division, within five (5) days after receiving the
11 petition, shall notify each eligible entity granted a charter under § 6-23-
12 101 et seq. and statewide organization representing charter schools in
13 Arkansas by certified mail of the petition.

14 (B) The notice under subdivision (e)(1)(A) of this section
15 shall include a copy of the petition.

16 (2) Not later than thirty (30) days after an eligible entity
17 granted a charter under § 6-23-101 et seq. or statewide organization
18 representing charter schools in Arkansas receives a notice described in
19 subdivision (e)(1)(A) of this section, the eligible entity or statewide
20 organization representing charter schools may submit to the division an
21 objection in writing to the petition.

22 (3) An objection shall include:

23 (A) The name of the open-enrollment public charter school
24 that is interested in leasing or purchasing the unused or underutilized
25 public school facility; and

26 (B) A time frame, which may not exceed one (1) year from
27 the date of the objection, in which the open-enrollment public charter school
28 intends to begin providing classroom instruction in the unused or
29 underutilized public school facility.

30 (f)(1) If the division receives an objection that meets the
31 requirements of subdivision (e)(3) of this section, the division shall deny
32 the petition.

33 (2)(A) If the division does not receive an objection that meets
34 the requirements of subdivision (e)(3) of this section, the division shall
35 grant the petition.

36 (B) A school district that receives a waiver under this

1 section may sell, lease, or otherwise dispose of the unused or underutilized
2 public school facility in accordance with §§ 6-13-103 and 6-13-620 and this
3 subchapter.

4 (g)(1) A decision by the division under this section may be appealed
5 to the Commission for Arkansas Public School Academic Facilities and
6 Transportation.

7 (2) All time frames under this section, including subsection (c)
8 and subdivision (e)(3)(B) of this section, shall be tolled during the
9 pendency of an appeal.

10 (h)(1) The division may classify a school district that fails to
11 comply with this section as being in academic facilities distress under § 6-
12 21-811.

13 (2) The authorizer may take action under § 6-23-105 on the
14 charter of a public charter school that fails to comply with this section.

15 (i) The commission may promulgate rules to implement this section.
16

17 SECTION 4. Arkansas Code § 6-23-501(d), concerning open-enrollment
18 public charter schools, is repealed.

19 ~~(d)(1) An open-enrollment public charter school shall have a right of~~
20 ~~first refusal to purchase or lease for fair market value a closed public~~
21 ~~school facility or unused portions of a public school facility located in a~~
22 ~~public school district from which it draws its students if the public school~~
23 ~~district decides to sell or lease the public school facility.~~

24 ~~(2) The public school district may not require lease payments~~
25 ~~that exceed the fair market value of the property.~~

26 ~~(3) The application of this subsection is subject to the rights~~
27 ~~of a repurchaser under § 6-13-103 regarding property taken by eminent domain.~~

28 ~~(4) A public school district is exempt from the provisions of~~
29 ~~this subsection if the public school district, through an open bid process,~~
30 ~~receives and accepts an offer to lease or purchase the property from a~~
31 ~~purchaser other than the open enrollment public charter school for an amount~~
32 ~~that exceeds the fair market value.~~

33 ~~(5) The purposes of this subsection are to:~~

34 ~~(A) Acknowledge that taxpayers intended a public school~~
35 ~~facility to be used as a public school; and~~

36 ~~(B) Preserve the option to continue that use.~~

