

Exhibit D1

**ARKANSAS COMMISSION FOR PUBLIC SCHOOL FACILITIES
AND TRANSPORTATION RULES GOVERNING THE ACADEMIC
FACILITIES PARTNERSHIP PROGRAM**

June 29, 2006 Proposed July 2007

1.00 AUTHORITY

- 1.01 The Arkansas Commission for Public School Academic Facilities and Transportation's authority for promulgating these Rules is pursuant to Ark. Code Ann. §§ 6-21-114 (Act 1327 of 2005), 6-20-2507 (Act 2206 of 2005), 6-20-2512 (Act 2206 of 2005), 25-15-201 (Act 989 of 2007) 6-20-2507 et seq.
- 1.02 These Rules shall be known as the Arkansas Division of Public School Academic Facilities and Transportation Rules Governing the Academic Facilities Partnership Program.

2.00 PURPOSE

- 2.01 The purpose of these Rules is to establish a process whereby the Arkansas Division of Public School Academic Facilities and Transportation shall provide state financial participation based upon a school district's academic facilities wealth index in the form of cash payments to a school district for eligible new construction projects.

3.00 DEFINITIONS - For the purpose of these Rules, the following terms mean:

- 3.01 Academic facility – a building or space, including related areas such as the physical plant and grounds, where public school students receive instruction that is an integral part of an adequate education as described in Ark. Code Ann. § 6-20-2302.
- 3.01.1 A public school building or space, including related areas such as the physical plant and grounds, used for an extracurricular activity or an organized physical activity course as defined in Ark Code Ann. §6-16-137 shall not be considered an academic facility for the purposes of this rule to the extent that the building, space, or related area is used for extracurricular activities or organized physical activities courses, except for physical educational training and instruction under Ark. Code Ann. § 6-16-132;
- 3.01.2 The Division of Public School Academic Facilities and Transportation shall determine the extent to which a building, space, or related area is used for extracurricular activities or

organized physical activities courses based on information supplied by the school district and, if necessary, on-site inspection.

3.01.3 Buildings or spaces, including related areas such as the physical plant and grounds, used for pre-kindergarten education shall not be considered academic facilities for purposes of this rule; and

3.01.4 District administration buildings and spaces, including related areas such as the physical plant and grounds, shall not be considered academic facilities for the purpose of this rule.

3.02 "Academic Facilities Partnership Program" - the process under which the Arkansas Division of Public School Academic Facilities and Transportation shall provide state financial participation based upon a school district's academic facilities wealth index in the form of cash payments to a school district for eligible new construction projects.

3.03 "Academic facilities wealth index" - a percentage derived from the following computations:

- (1) Determine the value of one (1) mill per student in each school district as follows:
 - (a) Multiply the value of one (1) mill by the total assessed valuation of taxable real, personal, and utility property in the school district as shown by the applicable county assessment for the most recent year; and
 - (b) Divide the product from (1)(a) above by the greater of the prior year average daily membership of the school district or the prior three-year average of the school district's average daily membership;
- (2) Determine student millage rankings by listing the computation under (1) above of this section for each school district from students with the lowest value per mill to students with the highest value per mill;
- (3) Allocate the student millage rankings into percentiles with the first percentile containing the one percent (1%) of students with the lowest value per mill and the one-hundredth percentile containing the one percent (1%) of students with the highest value per mill; and
- (4) Divide the value of one (1) mill per student in each school district as computed under (1) above by the amount corresponding to the

ninety-fifth percentile of the student millage rankings under (3) above.

- (5) The percentage derived from the computation under (4) above is the academic facilities wealth index for a school district, which shall be computed annually and used to determine the amount of the school district's share of financial participation in a local academic facilities project eligible for state financial participation under priorities established by the Division of Public School Academic Facilities and Transportation.

- 3.04 "Commission" - the Arkansas Commission for Public School Academic Facilities and Transportation
- 3.05 "Division" - the Arkansas Division of Public School Academic Facilities and Transportation.
- 3.06 "Facilities master plan" - a ten-year plan developed by a school district that contains current enrollment projections, the school district's strategy for maintaining, repairing, renovating, and improving through new construction or otherwise the school district's academic facilities and equipment and other information as required by law.
- 3.07 Facilities improvement plan – a remedial plan an improvement plan developed by a school district for a public school or school district identified as being in academic facilities distress or a school district which has been notified after February 1, 2008, by the Division of non-participation in the Academic Facilities Partnership Program by failing to apply for state funding for necessary facilities to meet adequacy requirements, that supplements the school district's facilities master plan by:
 - 3.07.1 Identifying specific interventions and actions the public school or school district will undertake in order to correct deficient areas of practice with regard to custodial, maintenance, repair and renovation activities with regard to academic facilities in the school district; and
 - 3.07.2 Describing how the school district will remedy those areas in which the school district is experiencing facilities distress, including the designation of the time period by which the school district will correct all deficiencies that placed the school district in facilities distress status.
- 3.08 "Local Resources" - any moneys lawfully generated by a school district

for the purpose of funding the school district's share of financial participation in any academic facilities project for which a school district is eligible to receive state financial participation under priorities established by the Division.

- 3.09 "New Construction" - any improvement to an academic facility and, if necessary, related areas such as the physical plant and grounds, that brings the state of condition or efficiency of the academic facility to a state of condition or efficiency better than the academic facility's original condition of completeness or efficiency. "New construction" includes a new addition to an existing facility and construction of a new academic facility.
- 3.10 "Project" - an undertaking in which a school district engages in:
- (a) Maintenance, repair, and renovation activities with regard to an academic facility;
 - (b) New construction of an academic facility; or
 - (c) Any combination of maintenance, repair, and renovation activities with regard to an academic facility and new construction activities with regard to an academic facility.
- 3.11 Public School Facility – Any public school building or space, including related areas such as the physical plant and grounds, this is used for any purpose, including, without limitation:
- 3.11.1 An extracurricular activity;
 - 3.11.2 An organized physical activity course defined in Ark. Code Ann. § 6-16-137;
 - 3.11.3 Pre-kindergarten education;
 - 3.11.4 District administration;
 - 3.11.5 Delivery of instruction to public school students that is an integral part of an adequate education as described in Ark. Code Ann. § 6-20-2302.
- 3.12 Public School Academic Facilities Manual contains uniform standards to guide the planning, design and construction of new academic facilities and additions to existing academic facilities.
- 3.12.1 Variances to the Arkansas Public School Academic Facilities Manual standards may be granted by the Division upon the presentation of evidence of existing conditions that makes compliance with applicable standards impractical or unreasonably burdensome and;
 - 3.12.2 Other conditions determined by the Division as warranting a variance from applicable public school academic facility standards.

- 3.13 "Resolution" - a written document voted upon and approved by at least a majority of a quorum of a school district's Board of Directors at a lawfully called meeting, which certifies the school district's dedication of local resources to meet the school district's share of financial participation in the new construction project.
- 3.14 "School district" - a geographic area with an elected board of directors that qualifies as a taxing unit for purposes of ad valorem property taxes under Title 26 of the Arkansas Code and which board conducts the daily affairs of public schools under the supervisory authority vested in it by the General Assembly and Title 6 of the Arkansas Code.
- 3.15 Self – Funded Project means a project that is one hundred percent (100%) raised and funded by the school district, that shall be submitted to and approved by the division upon compliance with state codes and standards
- 3.16 "State financial participation" - the state's share of financial participation in a local academic facilities project eligible for state financial participation under priorities established by the Division is the percentage derived from subtracting the school district's percentage share of financial participation determined under computation number five (5) of Section 3.02 of these Rules from one hundred percent (100%).

4.00 ELIGIBILITY FOR PARTICIPATION

- 4.01 School districts will apply for State Financial Participation for projects that support their Facilities Master Plan by filing applications in accordance with the published “Academic Facilities Partnership Program Guidelines” for the specified biennium.
- 4.02 In order to apply for state financial participation in a new construction project, a school district shall provide the Division with a ~~copy of the design plans~~ detailed narrative, description and justification for the project and evidence of:
- 4.02.1 Preparation for the new construction project as demonstrated by inclusion of the new construction project in the school district's facilities master plan;
- 4.02.2 (i) The adoption of a resolution certifying to the Division the school district's dedication of local resources to meet the school district's share of financial participation in the new construction project.

(ii) The resolution shall specify the approximate date that the board of directors of the school district intends to seek elector approval of any bond or tax measures or to apply other local resources to pay the school district's share of financial participation in the new construction project;

4.02.3 The total estimated cost of the new construction project that shall be a minimum of three hundred dollars (\$300) per student or one hundred and fifty thousand dollars (\$150,000) whichever is less.

4.02.4 The new construction project's conformance with sound educational practices;

4.02.5 The new construction project's compliance with current academic facilities standards, including, without limitation, appropriate space utilization of ~~existing academic facilities~~ the applicable school in the district as determined by the Division;

4.02.6 The allocation of project costs between new construction activities and maintenance, repair, and renovation activities if the new construction project includes improvements that could be classified as maintenance, repair, and renovation; and

4.02.7 How the new construction project supports the prudent and resourceful expenditure of state funds and improves the school district's ability to deliver an adequate and equitable education to public school students in the district.

4.03 The minimum requirement set forth in section 4.02.3 of these rules may be waived by the Division upon a recommendation being made by the Director of the Division to the Commissioners for the Division for the minimum to be waived for cause and a majority of the Commissioners support the waiver.

5.00 DIVISION'S EVALUTION OF SCHOOL DISTRICT'S APPLICATION

5.01 The Division shall use criteria to evaluate a school district's application for state financial participation in a new construction project, which shall include, without limitation, the following;

5.01.1 How the school district's facilities master plan and current academic facilities do not address the following:

- (i) Student health and safety, including, without limitation, but not limited to, critical health and safety needs;

- (ii) Compliance with current academic facilities standards, including, without limitation, appropriate space utilization of existing academic facilities in the district;
- (iii) Conformance with sound educational practices;
- (iv) Curriculum improvement and diversification, including, without limitation, the use of instructional technology, distance learning, and access to advanced courses in science, mathematics, language arts, and social studies;
- (v) Multischool, multidistrict, and regional planning to achieve the most effective and efficient instructional delivery system;
- (vi) Reasonable travel time and practical means of addressing other demographic considerations; and
- (vii) Regularly scheduled maintenance, repair, and renovation;

5.01.2 How the school district's facilities master plan and any new construction project under the facilities master plan address the following:

- (i) Student health and safety, including, without limitation, critical health and safety needs;
- (ii) Compliance with current academic facilities standards, including, without limitation, appropriate space utilization of existing academic facilities in the district;
- (iii) Conformance with sound educational practices;
- (iv) Curriculum improvement and diversification, including, without limitation, the use of instructional technology, distance learning, and access to advanced courses in science, mathematics, language arts, and social studies;
- (v) Multischool, multidistrict, and regional planning to achieve the most effective and efficient instructional delivery system;
- (vi) Reasonable travel time and practical means of addressing other demographic considerations; and
- (vii) Regularly scheduled maintenance, repair, and renovation;

- 5.01.3 How the new construction project supports the prudent and resourceful expenditure of state funds and improves the school district's ability to deliver an adequate and equitable education to public school students in the district;
- 5.01.4 How the new construction project has been prioritized by the school district; and
- 5.01.5 The allocation and expenditure of funds in accordance with this subchapter and the Arkansas Public School Academic Facility Program Act, Ark. Code Ann. § 6-21-801 *et seq.*

6.00 AVAILABILITY OF STATE FINANCIAL PARTICIPATION AND TIMELINES

- 6.01 State financial participation under the academic facilities partnership program is not available until July 1, 2006 of the odd numbered year. The Division shall give priority in state financial participation to school district proposals relating to academic facilities with the highest Arkansas facilities condition index (ARFCI).
- 6.02(i) ~~With regard to an academic facilities project for which a school district intends to apply for state financial participation during fiscal year 2006-2007, the Division shall notify the school district of the Division's tentative decision on the application and, if applicable, the estimated amount of state financial participation in the new construction project no later than May 1, 2006. The~~ the Division shall notify the school district of its final decision on the application and the ~~estimated tentative~~ estimated amount of state financial participation in the new construction project no later than ~~July 1, 2006.~~ May 1 of each odd-numbered year.
- (ii) ~~Beginning in 2007, the Division shall notify the school district of the Division's final decision on the application and, if applicable, the estimated amount of state financial participation in the new construction project no later than May 1 of each odd-numbered year.~~
- 6.03 The Division's notice of its decision on a school district's application for state financial participation in a new construction project shall include an explanation of the evaluation factors underlying the decision of the Division to provide or not provide state financial participation in support of the new construction project.

- 6.04 (i) Projects, which are newly constructed academic facilities or additions for which a square foot cost would be applicable to all facets of the construction, may qualify for funding in the lesser amount of either option A: which is ~~the greater amount~~ of the dollar amount set by the Division and incorporated herein or otherwise known as New Facilities Construction Cost "RS Means," or ~~\$90.00 multiplied by the approved square foot per project~~ multiplied by the difference of one hundred percent (100%) minus the school district's wealth index or option B: which is the actual contract dollar amount multiplied by the difference of one hundred percent (100%) minus the school district's wealth index.
- (ii) Projects which are building systems or components thereof, not covered in (i), above may qualify for funding in the lesser amount of either option A; the dollar amount set by the division and incorporated herein or otherwise known as ~~"RS Means"~~ the Renovation and Conversion Cost multiplied by the approved unit of measure per project multiplied by the difference of one hundred percent (100%) minus the school district's wealth index or option B; the actual contract dollar amount multiplied by the difference of one hundred percent (100%) minus the school district's wealth index.

7.00 AGREEMENT BETWEEN THE DIVISION AND THE SCHOOL DISTRICT CONCERNING STATE FINANCIAL PARTICIPATION

- 7.01 If the Division determines that the new construction project is eligible for state financial participation, the Division and the school district shall enter into an agreement specifying the terms of the state's financial participation and the conditions that must be satisfied by the school district.
- 7.02 At a minimum, the agreement shall:
- (i) Identify the estimated amount of local financial participation and state financial participation in the new construction project. The tentative specified amount of the states financial participation, as stated in the agreement, will be arrived at after the schematic drawings or preliminary designs and any variances to the Arkansas School Facility Manual are considered for new facilities, new additions to facilities or renovations or conversions. The final states financial participation will be specified upon receipt of the final contract amount and determined as specified in paragraph 6.04 above;

- (ii) Define the method of and schedule for transferring state financial participation funds to the school district;
- (iii) Identify whether the new construction project includes any improvements that are classified as maintenance, repair, and renovation, and how the project costs will be allocated between new construction activities and maintenance, repair, and renovation activities;
- (iv) Define the detailed scope of work for which the agreement applies;
- (v) Provide that changes to the plans for the new construction project shall be made in consultation with the Division;
- (vi) Provide the areas of project responsibility of both parties during the course of the project;
- (vii) Provide that the bids and construction schedules will awarded in consultation with the Division;
- (viii) Provide that the Division or any person acting on behalf of the Division may conduct on-site inspections of the new construction project as frequently as the Division deems necessary to assure the prudent and resourceful expenditure of state funds with regard to public school academic facilities;
- (ix) Determine how risk will be allocated between the school district and the state if the new construction project is not completed;
- (x) Describe how changes in the school district's wealth index over the course of the new construction project will be treated; and
- (xi) Specify that the agreement is void and the state will have no further obligation to provide state funds to the school district for the new construction project that is the subject of the agreement if the school district does not raise local resources and apply local resources toward the new construction project as provided under the agreement.

8.00 APPEAL PROCESS

8.01 A school district may appeal any determination of the division to the Commission as follows:

- (i) A school district may request and the Division shall provide upon

request a written determination of any appealable issue by the division.

- (ii) After receipt of a written determination from the Division, the school district shall file its written appeal within ten (10) calendar days via first class mail, return receipt requested, in the Office of the Director of the Division of Public School Academic Facilities and Transportation, 501 Woodlane St., Suite 600, Little Rock, Arkansas 72201, no later than 4:30 pm on the tenth calendar day from receipt of the Division's written determination. The Division shall within thirty (30) calendar days receipt of the appeal schedule the appeal for the Commission's consideration and determination.
- (iii) The school district shall provide in clear express terms a detailed explanation and evidence showing that the Division's decision was clearly erroneous or outside the legal authority vested in the division.
- (iv) The school district shall have the burden to establish a *prima facie* case, unless the Commission shall decide to hear the appeal *sua sponte*.
- (v) The school district shall not be entitled to a hearing before the Commission unless the Commission should indicate in writing that it desires to hear the appeal and provides notice of the time and location of the hearing.
- (vi) Any appeal hearing shall be conducted pursuant to the hearing policy established by the Commission.
- (vii) Provided the Commission determines the school district has established a *prima facie* case or the Commission *sua sponte* decides to hear an appeal, the Commission shall render a decision to approve or deny the appeal within sixty (60) calendar days of receipt of the appeal by the Commission from the division.

8.02 All decisions of the Commission regarding a school district's appeal of a division determination shall be final and shall not be subject to any right of further appeal or request for rehearing to the Commission or subject to right to petition for judicial review under the Arkansas Administrative Procedures Act, §25-15-201 *et seq.*

8.03 Section 8.00 of these rules shall remain effective until new rules governing Commission appeals have been promulgated.

9.00 DISTRIBUTION AND TRACKING OF STATE FINANCIAL PARTICIPATION

9.01 If a school district qualifies for state financial participation under this section, the Division shall certify the amount of state financial participation to the Commission for oversight purposes. The Commission

shall certify the amount to the Arkansas Department of Education for payment.

9.02 The amount of the State Financial Participation under these rules is limited to the amount resulting from the application of the academic facilities wealth index to the project cost promulgated by the Commission to calculate the cost necessary to bring the academic facility into compliance with the Arkansas Public School Academic Facilities Manual under Ark. Code. Ann. § 6-20-2509.

9.02 For tracking purposes, the school district shall account for the funds received as state financial participation under this section as restricted funds and shall account for the funds in accordance with provisions of law, including, without limitation, the Arkansas Educational Financial Accounting and Reporting Act of 2005, Ark. Code Ann. § 6-20-2201 *et seq.* and Rules established by the Arkansas State Board of Education and the Commission.