

**COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES AND
TRANSPORTATION RULES GOVERNING RIGHT OF ACCESS TO UNUSED OR
UNDERUTILIZED PUBLIC SCHOOL FACILITIES AND THE SALE OR LEASE OF
PUBLIC SCHOOL FACILITIES**

Effective _____

1.00 REGULATORY AUTHORITY

1.01 The Commission for Arkansas Public School Academic Facilities and Transportation (CAPSAFT) enacts these Rules pursuant to its authority set forth in Arkansas Code Ann. §§ 6-21-114, 6-21-804, 25-15-201 et seq., and Act 542 of 2017.

2.00 DEFINITIONS

2.01 “Academic Facilities Master Plan” has the same meaning as in the CAPSAFT Rules Governing the Facilities Master Plan.

2.02 “Academic facility” has the same meaning as in the CAPSAFT Rules Governing the Facilities Master Plan.

2.03 “Charter school authorizer” has the same meaning as in Ark. Code Ann. § 6-23-103.

2.04 “Division” means the Arkansas Division of Public School Academic Facilities and Transportation.

2.05 “Fair market value” means the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

2.06 “Public charter school” means:

2.06.1 An open-enrollment public charter school as defined in Ark. Code Ann. § 6-23-103;

2.06.2 An eligible entity as defined in Ark. Code Ann. § 6-23-103 that applies to authorize, amend, or renew a charter for an open-enrollment public charter school; and

2.06.3 A legal entity that is affiliated with or acting on behalf of an open-enrollment public charter school or eligible entity.

2.07 “Public school facility” has the same meaning as in the CAPSAFT Rules Governing the Facilities Master Plan.

2.08 “School district” has the same meaning as in the CAPSAFT Rules Governing the Facilities Master Plan.

2.09 “Unused or underutilized public school facility” means a public school facility or other real property owned by a public school that:

2.09.1 As a whole or in significant portion is not being used for a public educational, academic, extracurricular, or administrative purpose; and

2.09.2 The nonuse or underutilization threatens the integrity or purpose of the public school facility or other real property as a public education facility; and

2.09.3 As of August 1, 2017, is not subject to a lease to a third party for fair market value or an executed offer to purchase by a third party for fair market value.

2.09.4 A public school facility shall be considered underutilized if it in whole or significant part is being used only irregularly or intermittently by the school district for educational, academic, extracurricular, or administrative purposes, and the district reasonably could satisfy those needs by using other available school district spaces.

2.09.5 “Administrative” activities do not include use of a public school facility or other real property as a whole or in significant portion for storage for a period of longer than one full school year.

3.00 REPORTING AND IDENTIFICATION OF UNUSED OR UNDERUTILIZED PUBLIC SCHOOL FACILITIES

3.01 By February 1 of each year, each school district shall submit to the Division a report that identifies:

3.01.1 All unused or underutilized public school facilities in the school district; and

3.01.2 The unused or underutilized public school facilities, if any, that are designated in the district’s facilities master plan to be re-used, renovated

or demolished as part of a specific committed project or planned new construction project.

3.01.3 The annual report shall be submitted in a format prescribed by the Division through the Master Plan tool.

3.02 By March 1 of each year, the Division shall:

3.02.1 Identify any public school facility or other real property as unused or underutilized if a facility or other real property falls within the definition in Section 2.08 of these rules and the school district fails to identify it in the district's annual report; and

3.02.2 Publish a list on its website identifying all unused or underutilized public school facilities, and notify any affected school district in writing of the identification.

3.03 A school district may appeal an identification made by the Division under section 3.02 of these rules to the Commission for Academic Facilities and Transportation pursuant to the procedures set forth in the CAPSAFT Rules Governing Appeals from Determinations of the Arkansas Division of Public School Academic Facilities and Transportation.

3.03.1 If a school district files an appeal, the Division will indicate on its website that the appeal is pending

3.03.2 The filing of an appeal by a school district under this section will toll the sixty (60) day period set forth in Section 4.03 of these rules until the appeal is resolved.

4.00 RIGHT OF ACCESS

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

4.02 Once the Division identifies a public school facility or other real property as an unused or underutilized public school facility, a public charter school may give notice of its intent to purchase or lease the public school facility or other real property from the school district no earlier than the later of:

- 4.02.1 The date the public school facility or other real property is first identified by the Division as an unused or underutilized public school facility; or
- 4.02.2 If the public school facility or other real property has already been designated in the school district's facilities master plan to be reused, renovated, or demolished as part of a specific committed project or planned new construction project, two years from the date the public school facility or other real property is first identified by the Division as an unused or underutilized public school facility.
- 4.03 If the public charter school and school district are unable to agree on terms and execute the sale or lease within sixty (60) days of the notice of intent, unless the school district has appealed the Division's identification under section 3.03 of these rules (which tolls the 60 days period until the appeal is resolved), the public charter school may petition the Commission for an order directing the school district to lease the public school facility to the public charter school for fair market value in accordance with Section 5.00 of these rules.
- 4.04 If a public school facility or other real property has been identified by the Division of Public School Academic Facilities and Transportation as an unused or underutilized public school facility, or if a school district decides to sell, lease, or otherwise transfer ownership of an academic facility, the school district may sell, lease, or otherwise transfer ownership to a third party other than an open-enrollment public charter school only in a manner consistent with Ark. Code Ann. § 6-21-816.
- 4.05 Nothing in these rules shall be construed to delay or limit the authority of a school district to sell, lease, or otherwise transfer a public school facility or other real property to a public charter school on terms agreed to by the school district and public charter school in a manner consistent with Ark. Code Ann. § 6-21-816.

5.00 PETITIONS TO THE COMMISSION

5.01 Any petition by a public charter school under section 4.03 shall:

5.01.1 Be submitted in writing to the Office of General Counsel of the Arkansas Department of Education by certified mail, with a copy by certified mail to the school district that owns the public school facilities or other real property at issue;

- 5.01.2 Contain a brief written statement of no more than fifteen (15) pages, explaining in clear and express terms the facts of the case and the terms sought by the public charter school;
- 5.01.3 Identify the specific public school facility or other real property that the public charter school seeks to lease;
- 5.01.4 Include a copy of the notice of intent furnished by the public charter school to the school district;
- 5.01.5 Identify the amount that the public charter school contends is a fair market value lease payment for the public school facility or other real property, and include a copy of any supporting documentation;
- 5.01.6 Identify a desired lease term of between (5) and thirty (30) years;
- 5.01.7 Include any other evidence or information deemed relevant; and
- 5.01.8 Indicate whether the public charter school seeks a formal hearing before the Commission.
- 5.02 Within thirty (30) days of receiving a petition, the school district may submit a response to the petition to the Office of General Counsel of the Arkansas Department of Education via certified mail, with a copy by certified mail to the public charter school, to include:
- 5.02.1 A brief written statement of no more than fifteen (15) pages, explaining in clear and express terms the facts of the case and the terms sought by the school district, or the reasons why the school district contends the petition should be denied;
- 5.02.2 A statement of the amount the school district contends is a fair market value lease payment for the public school facility or other real property, along with any supporting documentation;
- 5.02.3 Any other evidence or information deemed relevant; and
- 5.02.4 A statement of whether the school district seeks a formal hearing before the Commission.
- 5.03 Upon receipt of a petition and school district response, the Commission will consider the petition at the call of its chair. Except for good cause shown, the chair will schedule the petition to be heard within thirty (30) calendar days of

receipt of the school district's written response. Notice of the date, time, and location of the meeting shall be sent to the parties. If requested by either party or if the Commission determines that a hearing is necessary, a hearing concerning the petition will be held during the meeting.

5.04 If a hearing is conducted, the petitioner and school district each shall have up to ten (10) minutes to present an opening statement, beginning with the petitioner. Each party then shall have up to fifteen (15) minutes to present their cases-in-chief and up to five (5) minutes to present a closing statement in that same order. The Commission chair may allow either party additional time.

5.04.1 Members of the Commission may ask questions of either party at any time throughout the proceedings.

5.04.2 Documents offered during the hearing shall be marked in sequential, numeric order, and in a manner identifying the party offering the document.

5.05 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.

5.06 The Commission shall render a written decision to approve or deny the petition within thirty (30) calendar days of the hearing.

5.07 The Commission may deny the petition if the school district makes an affirmative showing by a preponderance of the evidence that:

5.07.1 The public school facility, or the property to which the public school facility is attached, will be needed by the school district to accommodate future growth of the school district; or

5.07.2 Use of the public school facility or other real property by a public charter school would have a materially negative impact on the overall education of an educational campus located within five hundred feet (500') of the public school facility or other real property sought to be leased.

5.08 If the Commission grants the petition, it shall issue an order:

5.08.1 Directing the school district to lease the public school facility or other real property to the public charter school for fair market value, determining fair market value if it is not agreed to by the parties; and

5.08.2 Setting the term of the lease for a period of between five (5) and thirty (30) years as determined by the public charter school.

6.00 DUTIES OF PUBLIC CHARTER SCHOOL AND SCHOOL DISTRICT UNDER LEASE

6.01 Upon execution of a lease, whether voluntarily or by order of the Commission, the public charter school shall be responsible for all direct expenses related to the public school facility or real estate, including without limitation:

6.01.1 Utilities;

6.01.2 Insurance;

6.01.3 Maintenance;

6.01.4 Repairs; and

6.01.5 Renovation.

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

6.03 The public charter school shall take no actions that have a materially negative impact on:

6.03.1 Any bond rights attached to the public school facility or other real property; or

6.03.2 Any tax-exempt financing related to the public school facility or other real property.

6.04 The public charter school shall indemnify the school district for any mortgages, liens, or debt that attach to the public school facility or other real property by the public charter school's action or inaction.

6.05 The terms of a lease executed under this section shall provide that the lease shall be void, cancelled, and of no effect if:

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

6.05.2 The public charter school closes, has its charter revoked, or has its charter application denied by the authorizer; or

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

6.06 A standard lease form, which is attached to these rules as Appendix “A,” also will be placed on the Division’s website in a fillable format.

7.00 ENFORCEMENT

7.01 The Division may classify a school district that fails to comply with the above provisions as being in academic facilities distress under Ark. Code Ann. § 6-21-811.

7.02 The charter school authorizer may take action under Ark. Code Ann. § 6-23-105 on the charter of a public charter school that fails to comply with the above provisions.