

Title 6. Education

Chapter III. Division of Public School Academic Facilities and Transportation, Department of Education

Subchapter A. Generally

Part 323. Right of Access to Unused or Underutilized Public School Facilities and the Sale or Lease of Public School Facilities

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "Regulatory authority[.] The Commission for Arkansas Public School Academic Facilities and Transportation enacts these rules pursuant to its authority set forth in Arkansas Code §§ 6-21-114, 6-21-804, 25-15-201 et seq., and Acts 2017, No. 542."

Subpart 1. Generally

6 CAR § 323-101. Definitions.

As used in this part:

(1) "Academic" means any activity, objective, or purpose that is reasonably necessary for and related to a school district's provision of instruction to students permitted or required by state or federal law;

(2) "Academic Facilities Master Plan" has the same meaning as in the Commission for Arkansas Public School Academic Facilities and Transportation Rules Governing the Facilities Master Plan, 6 CAR pt. 322;

(3) "Academic facility" has the same meaning as in the Commission for Arkansas Public School Academic Facilities and Transportation Rules Governing the Facilities Master Plan, 6 CAR pt. 322;

(4) "Administrative" means an activity, objective, or purpose that is reasonably necessary for and related to the suitable and efficient operation of a school district in its provision of an adequate education to each of its students;

(5) "Charter school authorizer" has the same meaning as "authorizer" in Arkansas Code § 6-23-103;

(6) "Division" means the Division of Public School Academic Facilities and Transportation;

(7) "Educational" means an activity, objective, or purpose that is reasonably necessary for and related to a school district's provision of an education to students as permitted or required by state or federal law;

(8) "Extracurricular" means an activity sponsored by the school district or the Arkansas Activities Association for the district's students that falls outside the realm of the normal curriculum;

(9) "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;

(10) "Public charter school" means:

(A) An open-enrollment public charter school as defined in Arkansas Code § 6-23-103;

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

(C) A legal entity that is affiliated with or acting on behalf of an:

(i) Open-enrollment public charter school; or

(ii) Eligible entity;

(11) "Public school facility" has the same meaning as in the Commission for Arkansas Public School Academic Facilities and Transportation Rules Governing the Facilities Master Plan, 6 CAR pt. 322;

(12) "Regular basis" means:

(A) For public school facilities that by their nature are ordinarily characterized by intermittent use, such as auditoriums, gymnasiums, and athletic facilities, the facility is used no fewer than ten (10) times per school year; and

(B) For all other public school facilities, the facility is used on no fewer than ninety (90) days per school year;

(13) "School district" has the same meaning as in the Commission for Arkansas Public School Academic Facilities and Transportation Rules Governing the Facilities Master Plan, 6 CAR pt. 322;

(14) "Significant portion" means that a school district must use at least forty percent (40%) or more of the gross square footage of a public school facility on a regular basis; and

(15)(A) "Unused or underutilized public school facility" means a public school facility or other real property owned by a public school that:

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

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

(iii) 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.

(B) A public school facility shall not be considered underutilized if the district does not have other available school district spaces in which it can reasonably satisfy the educational, academic, extracurricular, or administrative activities being conducted in the facility.

(C) Use of a public school facility solely for commercial purposes or for generating revenue for the district shall not constitute an educational, academic, extracurricular, or administrative purpose.

Authority. Arkansas Code § 6-21-815.

6 CAR § 323-102. Reporting and identification of unused or underutilized public school facilities.

(a)(1) By February 1 of each year, each school district shall submit to the Division of Public School Academic Facilities and Transportation a report that identifies:

(A) All unused or underutilized public school facilities in the school district;

and

(B) The unused or underutilized public school facilities, if any, that are designated in the district's facilities master plan to be reused, renovated, or demolished as part of a:

(i) Specific committed project; or

(ii) Planned new construction project.

(2) The annual report shall be submitted in a format prescribed by the division through the master plan tool.

(3) **Note.**

(A) If a public charter school believes that a particular public school facility is unused or underutilized, the public charter school may bring this to the division's attention by notifying the Director of the Division of Public School Academic Facilities and Transportation by email on or before February 1 to afford the division sufficient time to consider the assertion.

(B) The public charter school has no right of appeal from the division's determination, however, as the applicable law does not provide an appeal right.

(b)(1) On or before March 1 of each year, the division shall:

(A) Identify any public school facility or other real property as unused or underutilized if:

(i) A facility or other real property falls within the definition in 6 CAR § 323-101(15); and

(ii) The school district fails to identify it in the district's annual report;

(B) Publish a list on its website identifying all unused or underutilized public school facilities on or before March 1 of each year; and

(C) Notify any affected school district in writing (via email or otherwise) of the identification prior to the publication of the list required in subdivision (b)(1)(B) of this section.

(2) If the division is in possession of information prior to March 1 that a public school facility is unused or underutilized but fails to place the facility on the list, it shall place the facility on the list within ten (10) working days after the division discovers the error.

(c)(1) A school district may appeal an identification made by the division under subsection (b) of this section to the Commission for Arkansas Public School Academic Facilities and Transportation pursuant to the procedures set forth in Appeals from Determinations of the Division of Public School Academic Facilities and Transportation, 6 CAR pt. 320.

(2) If a school district submits to the division a written appeal or written notification of intent to file an appeal, the division will indicate on its website that an appeal is pending.

(3) The submission of a written appeal or written notification of intent to file an appeal by a school district under this section will toll the sixty (60) day period set forth in 6 CAR § 323-103(c) until the appeal is resolved.

(4) A written appeal or written notification of intent to file an appeal will be considered submitted by the school district upon receipt by the Department of Education, Office of General Counsel, with a copy to the division.

(5) The submission of a written notification of intent to appeal does not alter the timeline for appealing an identification under Appeals from Determinations of the Arkansas Division of Public School Academic Facilities and Transportation, 6 CAR pt. 320.

Authority. Arkansas Code § 6-21-815.

6 CAR § 323-103. Right of access.

(a) 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.

(b) Once the Division of Public School Academic Facilities and Transportation 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:

(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

(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 (2) 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.

(c) 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 6 CAR § 323-102(c) (which tolls the sixty-day period until the appeal is resolved), the public charter school may petition the Commission for Arkansas Public School Academic Facilities and Transportation 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 6 CAR § 323-104.

(d) If a public school facility or other real property has been identified by the division 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 Arkansas Code § 6-21-816.

(e) Nothing in this part 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 Arkansas Code § 6-21-816.

Authority. Arkansas Code § 6-21-815.

6 CAR § 323-104. Petitions to the commission.

(a) Any petition by a public charter school under 6 CAR § 323-103(c) shall:

(1) Be submitted in writing to the Department of Education, Office of General Counsel 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;

(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;

(3) Identify the specific public school facility or other real property that the public charter school seeks to lease;

(4) Include a copy of the notice of intent furnished by the public charter school to the school district;

(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;

(6) Identify a desired lease term of between (5) and thirty (30) years;

(7) Include any other evidence or information deemed relevant; and

(8) Indicate whether the public charter school seeks a formal hearing before the Commission for Arkansas Public School Academic Facilities and Transportation.

(b) Within thirty (30) days of receiving a petition, the school district may submit a response to the petition to the Department of Education, Office of General Counsel via certified mail, with a copy by certified mail to the public charter school, to include:

(1) A brief written statement of no more than fifteen (15) pages, explaining in clear and express terms the facts of the case and:

(A) The terms sought by the school district; or

(B) The reasons why the school district contends the petition should be denied;

(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;

(3) Any other evidence or information deemed relevant; and

(4) A statement of whether the school district seeks a formal hearing before the commission.

(c)(1) Upon receipt of a petition and school district response, the commission will consider the petition at the call of its chair.

(2) 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.

(3) Notice of the date, time, and location of the meeting shall be sent to the parties.

(4) 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.

(d)(1) 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.

(2) Each party then shall have up to:

(A) Fifteen (15) minutes to present their cases-in-chief; and

(B) Five (5) minutes to present a closing statement in that same order.

(3)(A) The commission chair may allow either party additional time.

(B) Members of the commission may ask questions of either party at any time throughout the proceedings.

(C) Documents offered during the hearing shall be marked in:

(i) Sequential, numeric order; and

(ii) A manner identifying the party offering the document.

(e) After hearing all testimony and evidence presented, the commission shall deliberate and may:

(1) Announce its decision at the close of the hearing; or

(2) Take the matter under advisement.

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

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

(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

(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.

(h) If the commission grants the petition, it shall issue an order:

(1) Directing the school district to lease the public school facility or other real property to the public charter school for fair market value;

(2) Determining fair market value if it is not agreed to by the parties; and

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

Authority. Arkansas Code § 6-21-815.

6 CAR § 323-105. Duties of public charter school and school district upon sale or lease.

(a) Upon execution of a lease, whether voluntarily or by order of the Commission for Arkansas Public School Academic Facilities and Transportation, the public charter school shall be responsible for all direct expenses related to the public school facility or real estate, including without limitation:

(1) Utilities;

(2) Insurance;

(3) Maintenance;

(4) Repairs; and

(5) Renovation.

(b)(1) 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.

(2) **Note.** If the public school facility at issue was financed with tax-exempt debt and that tax-exempt debt remains allocated to the public school facility as of the date of sale or lease of the property, the school district should be mindful of Internal Revenue Code restrictions/processes concerning the sale or lease of the property.

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

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

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

(d) 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.

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

(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;

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

(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.

(f) A standard lease form, which may be used to guide or assist in negotiations but which is not intended to provide specific requirements or responsibilities of the parties:

(1) Is attached to this part as Appendix "A"; and

(2) Will be placed on the Division of Public School Academic Facilities and Transportation's website in an editable format.

(g) For the duration of a lease of a public school facility to a public charter school, the facility shall be:

(1) Exempt from the provisions of Arkansas Code §§ 6-21-801 to 814, and the commission's rules governing those sections, to the same extent that other public charter school facilities are exempt; and

(2) Excluded from gross square footage calculations for the school district's campus value, program of requirements, and suitability analysis under the Academic Facilities Partnership Program.

Authority. Arkansas Code § 6-21-815.

6 CAR § 323-106. Securing vacant public school facilities.

Vacant public school facilities must be secured:

(1) To prevent unauthorized entry through:

(A) Doors;

(B) Windows; or

(C) Any other means; and

(2) In accordance with state and local fire prevention codes or other applicable law.

Authority. Arkansas Code § 6-21-815.

6 CAR § 323-107. Enforcement.

(a) The Division of Public School Academic Facilities and Transportation may identify a school district that fails to comply with the above provisions as being in academic facilities distress under Arkansas Code § 6-21-811.

(b) The charter school authorizer may take action under Arkansas Code § 6-23-105 on the charter of a public charter school that fails to comply with the above provisions.

Authority. Arkansas Code § 6-21-815.