

**THE ARKANSAS COMMISSION OF PUBLIC SCHOOL ACADEMIC
FACILITIES AND TRANSPORTATION EMERGENCY AMENDMENT TO
RULES GOVERNING THE
TRANSITIONAL ACADEMIC FACILITIES PROGRAM
~~November 2005~~ January 23, 2006**

1.0 REGULATORY AUTHORITY

- 1.01 These rules are promulgated pursuant to Ark. Code Ann. §§ 6-20-2506, 6-21-804(b), 25-15-204 and Acts 1327, 1426 and 2206 of the 85th Arkansas General Assembly.

2.0 PURPOSE

- 2.01 The purpose of this rule is to establish the process and procedures governing the Transitional Academic Facilities Program under which the Division of Public School Academic Facilities and Transportation shall provide state financial participation based on an eligible school district's academic facilities wealth index in the form of reimbursement to a school district for eligible new construction projects for which the debt is incurred or funds are spent after January 1, 2005, and on or before June 30, 2006.

3.0 DEFINITIONS

- 3.01 For purposes of this rule, the following terms are as defined in Ark. Code Ann. §6-21-803 and §6-20-2502 (§ 1 of Act 1426 and Act 2206 of the 85th Arkansas General Assembly):

- 3.01.1 Academic facility;
- 3.01.2 Academic facilities wealth index;
- 3.01.3 Average daily membership;
- 3.01.4 Facility condition index;
- 3.01.5 Facilities improvement plan;
- 3.01.6 Facilities master plan;
- 3.01.7 Foundation funding;
- 3.01.8 Immediate repair project;
- 3.01.9 Local enhancements;
- 3.01.10 Local resources;
- 3.01.11 Maintenance, repair and renovation;
- 3.01.12 Millage rate;
- 3.01.13 New construction;
- 3.01.14 Project;
- 3.01.15 School district; and,
- 3.01.16 Space utilization

- 3.02 For purposes of this rule:

3.02.1 “Debt” means a properly executed legal liability incumbrance to be paid out of future revenues or current revenues of the district which legally obligates the school district for eligible new academic facility construction projects as allowed pursuant to Ark. Code Ann. § 6-20-2506.

4.0 TRANSITIONAL ACADEMIC FACILITIES PROGRAM

- 4.01 Under the rules of this program, a school district may proceed with new construction of an academic facility through the expenditure of local resources prior to the school district’s eligibility for state financial participation and may apply the expenditure of local resources after January 1, 2005, and on or before June 30, 2006, toward meeting the school district’s share of financial participation in the cost of the new construction project when, and if, the school district becomes eligible for state financial participation.
 - 4.01.1 However, without regard to the general provisions of § 4.01, no school district may become eligible for state financial participation if the funding used to fund the new construction project resulted from proceeds of a debt issue prior to January 1, 2005.
 - 4.01.2 No open-enrollment charter school shall be eligible for state financial participation in this program.
- 4.02 In the application process for state financial participation under this program, a school district shall provide the division with evidence of the following:
 - 4.02.1 A new construction project for which debt was incurred or funds were spent after January 1, 2005, and on or before June 30, 2006;
 - 4.02.2 The total cost of the new construction project. Districts have to be prepared to fund the entire project, as there is no guarantee of state funding. Total cost of new construction will include professional fees for design and construction management;
 - 4.02.3 The new construction project’s conformance with sound educational practices. The division shall consider, but is not limited to, rules, standards, practices and goals established by the division, the Department of Education, State Board of Education and the Arkansas General Assembly;
 - 4.02.4 The new construction project’s compliance with current academic facilities standards, including, without limitation, appropriate space utilization of existing academic facilities in the district as determined by the division. Appropriate space utilization refers to a district’s over or under utilization of space based on the number of students within each academic facility within the school district.

- 4.02.4.1 The academic facilities standards in effect on the date the plans are submitted to the division are the academic facilities standards that will apply to the new construction project subject to § 6.0 of this rule;
 - 4.02.5 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,
 - 4.02.6 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 All applications for state financial participation under this program shall be postmarked and submitted via first class mail, return receipt requested, or via stamped receipt of hand delivery, in the Office of the Director of The Division of Public School Academic Facilities and Transportation, 501 Woodlane St., 520-S, Little Rock, Arkansas 72201, no later than 4:30 p.m. on December 2, 2005.
 - 4.04 School districts may only submit one application and shall identify all new construction transitional academic facilities projects on the application.
 - 4.05 School districts may identify and prioritize new construction projects and provide a narrative description of the project(s) including graphic documentation and descriptions.

5.0 THE EVALUATION PROCESS AND AUTHORITY

- 5.01 The division shall evaluate a school district's application for state financial participation under the program and shall conduct an on-site inspection prior to making a determination of the new construction project's eligibility for reimbursement from the state.
- 5.02 During the on-site inspection, the division shall evaluate all of the following:
 - 5.02.1 Student health and safety, including, without limitation, critical health and safety needs;
 - 5.02.2 The new construction project's compliance with current academic facilities standards, including, without limitation, appropriate space utilization of existing academic facilities in the district;
 - 5.02.3 The new construction project's conformance with sound educational practices;

- 5.02.4 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;
 - 5.02.5 Multischool, multidistrict and regional planning to achieve the most effective and efficient instructional delivery system;
 - 5.02.6 Reasonable travel time and practical means of addressing other demographic considerations; and,
 - 5.02.7 Regularly scheduled maintenance, repair and renovation.
- 5.03 The division shall base its decision to approve or not approve an application in § 4.0 of this rule on certain factors, including, without limitation, the following:
- 5.03.1 The division's evaluation of the evidence submitted in the application as required in § 4.02 of this rule;
 - 5.03.2 The division's evaluation of the on-site inspection required in § 5.02 of this rule;
 - 5.03.3 The academic facilities wealth index of the school district; and,
 - 5.03.4 The prudent and resourceful expenditure of state funds with regard to public school district academic facilities.
- 5.04 As soon as practicable, upon determination to approve or not approve an application for state participation under this program, the division shall provide written notice to the superintendent of the school district of the division's determination via first class mail, return receipt requested, at the mailing address of the administrative office of the school district.
- 5.05 If a school district qualifies for state financial participation under this program, the division shall, within thirty (30) calendar days of approval, certify in writing the amount of participation to the Commission on Public School Academic Facilities and Transportation for oversight purposes. The Commission shall certify in writing, within thirty (30) calendar days of receipt of certification from the division, the amount to the Department of Education, who shall then make payments to the approved school district.
- 5.06 For tracking purposes, the approved 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. (Act 730 of the 85th Arkansas General Assembly) and related rules established by the State Board of Education or the Commission.

6.0 FUNDING

6.01 To the extent a school district's new construction project is approved, the project may be funded as follows:

~~6.01.1 The project may qualify for funding in the amount of the product of \$90.00 or the actual contract dollar amount or a dollar amount established by the Division (whichever is the lesser amount) per square foot multiplied by the difference of one hundred percent (100%) minus the school district's wealth index.~~

6.01.1 The project 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 as evidenced by Exhibit A attached hereto and incorporated herein or otherwise known as "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.

6.01.2 The Division and Commission shall have the right in its discretion to deny application funding approval in whole or in part when the Division of Commission determines denial of application for funding is prudent and in the best interest of the resourceful expenditures of state funds with regard to public school district academic facilities.

6.02 School districts shall make every effort to conform a new construction project to current academic facilities standards, including, without limitation, appropriate space utilization requirements, unless in the judgment of the division it is impractical to conform the new construction project to current standards.

6.03 If the division determines that it is impractical for a school district to conform to current standards, the division shall establish which academic facilities standards the school district shall conform to in order to be eligible for state participation under this program.

6.04 If a school district does not substantially begin the new construction project which received application approval pursuant to these rules by June 30, 2006, the state's approved financial participation may be rescinded and otherwise applied as in the best interest of resourceful expenditures of state funds with regard to public school district academic facilities.

7.0 APPEAL PROCESS

- 7.01 A school district may appeal any determination of the division to the Commission as follows:
 - 7.01.1 A school district may request and the division shall provide upon request a written determination of any appealable issue by the division.
 - 7.01.2 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 520-S, 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.
 - 7.01.3 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.
 - 7.01.4 The school district shall have the burden to establish a *prima facie* case, unless the Commission shall decide to hear the appeal *sua sponte*.
 - 7.01.5 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.
 - 7.01.6 Any appeal hearing shall be conducted pursuant to the hearing policy established by the Commission.
 - 7.01.7 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.
- 7.02 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.*

8.00 EMERGENCY

8.01 WHEREAS, the 85th Arkansas General Assembly enacted legislation in response to the matter of *Lake View School District No. 25, et al v. Mike Huckabee, et al* to create a program to provide state financial participation to school districts to help address needs of school districts related to academic facilities; and, whereas, there currently is not a similar program to address the proper funding immediate transitional needs, the Arkansas Commission of Public School Academic Facilities and Transportation finds imminent peril exists to the public health, safety and welfare to school children and staff; therefore, the Arkansas Commission of Public School Academic Facilities and Transportation promulgate this emergency amendment to this rule pursuant to the authority of Ark. Code Ann. § 25-15-204.

9.00 EFFECTIVE DATE

9.01 These emergency rules shall become effective immediately upon approval by the Arkansas Commission of Public School Academic Facilities and Transportation.