

THE ARKANSAS COMMISSION OF PUBLIC SCHOOL
ACADEMIC FACILITIES AND TRANSPORTATION
EMERGENCY RULE GOVERNING THE
ACADEMIC FACILITIES IMMEDIATE REPAIR PROGRAM
May 3, 2005

1.00 REGULATORY AUTHORITY

1.01 These emergency rules are promulgated pursuant to Act 1327 and Act 2206 of the 85th General Assembly and Ark. Code Ann. § 25-15-204.

2.00 PURPOSE

2.01 The purpose of these emergency rules is to establish a program and process of providing state financial participation on a qualified basis for the correction of deficiencies in academic facilities that present an immediate hazard to the health and safety of students and staff, for meeting minimum health and safety building standards, or for addressing the extraordinary deterioration of the academic facility.

3.00 DEFINITIONS

3.01 For purposes of these rules, the following terms are as defined in § 1 of Act 2206 of the Regular Session of the 85th 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 Immediate repair project;
- 3.01.6 Local enhancements;
- 3.01.7 Local resources;
- 3.01.8 Maintenance, repair and renovation;
- 3.01.9 Millage rate;
- 3.01.10 New construction;
- 3.01.11 Project; and
- 3.01.12 Space utilization

4.00 ACADEMIC FACILITIES IMMEDIATE REPAIR ELIGIBILITY CRITERIA

4.01 The Division of Public School Academic Facilities and Transportation shall provide qualified school districts with state financial participation for eligible immediate repair projects based on the following criteria:

- 4.01.1 The school district's application for financial participation is received by the division on a form provided by the division and incorporated into this rule as attached Exhibit A, via certified first

- class mail or via stamped receipt of hand delivery to the office of the Director of the Division, no later than July 1, 2005;
- 4.01.2 The condition for which the immediate repair is needed was in existence on January 1, 2005;
 - 4.01.3 The facility condition index (FCI) of the academic facility involved in the proposed repair is less than a threshold amount of sixty-five percent (65%); and
 - 4.01.4 The repair project involves one (1) or more of the following:
 - 4.01.4.1 Heating, ventilation, and air conditioning systems;
 - 4.01.4.2 Floors;
 - 4.01.4.3 Roofs;
 - 4.01.4.4 Sewage systems;
 - 4.01.4.5 Water supplies;
 - 4.01.4.6 Asbestos abatement;
 - 4.01.4.7 Fire alarm systems;
 - 4.01.4.8 Exterior doors;
 - 4.01.4.9 Emergency exit or egress passageway lighting;
 - 4.01.4.10 Academic program or facility accessibility for individuals with disabilities; and
 - 4.01.4.11 Any other repair to a building system necessary to satisfy life-safety code requirements as determined by the division.
- 4.02 In addition, as part of and at the time of submission of its application for state financial participation in an immediate repair project, a school district shall provide the division with evidence of:
- 4.02.1 Documentation, including photographs, of the deficiency in need of correction and how it presents an immediate hazard to:
 - (A) The health or safety of students, teachers, administrators, or staff of a school district;
 - (B) The integrity of the public school academic facility with regard to meeting minimum health or safety standards; or
 - (C) The extraordinary deterioration of the public school academic facility.
 - 4.02.2 That the estimated cost of an immediate repair project shall at a minimum be one hundred dollars (\$100) per student or fifty thousand dollars (\$50,000), whichever is less;
 - 4.02.3 The availability of insurance and any other public or private emergency assistance to pay for the immediate repair project; and
 - 4.02.4 Whether or not the academic facility is reasonably expected to close or be substantially replaced within three (3) years.

5.00 APPLICATION PROCESS

- 5.01 School districts may only submit one application and shall identify all immediate repair projects on the application that need immediate repair assistance.
- 5.02 School districts are required to identify and prioritize repair projects and provide a narrative description of the project including photographic documentation.
- 5.03 All applications shall be received, 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., Suite 520S, Little Rock, Arkansas 72201, no later than 4:30 pm on July 1, 2005.

6.00 DIVISION APPROVAL PROCESS AND AUTHORITY

- 6.01 The division shall evaluate a school district's immediate repair application and may conduct an on-site inspection prior to making a decision on the application as it deems necessary.
- 6.02 The division shall notify a school district in writing to the office of the superintendent of the district, via first class mail return receipt, of the division's decision on the application and, if applicable, the amount of state financial participation provided.
- 6.03 The division shall base its decision to approve or not approve an application on several factors, including, but not limited to the following:
 - 6.03.1 The seriousness of the deficiency that the immediate repair project is intended to correct;
 - 6.03.2 Compliance with current academic facility standards, including, but not limited to, appropriate space utilization;
 - 6.03.3 The amount and availability of insurance and any other public or private emergency assistance;
 - 6.03.4 Whether the academic facility is reasonably expected to close or be substantially replaced within three (3) years;
 - 6.03.5 The academic facilities wealth index of the school district; and
 - 6.03.6 The prudent and resourceful expenditure of state funds with regard to public school academic facilities.
- 6.04 If a school district qualifies for state financial participation under this section, 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 payment to the approved school district.

7.00 PROCESS FOR USE OF IMMEDIATE REPAIR STATE FUNDS

7.01 Upon receipt of written notification of award of state funds, the qualifying school district shall proceed as follows:

7.01.1 Contract with qualified design firm to correct immediate repair project(s) as required by law;

7.01.2 Advertise for bids to correct immediate repair project(s) as required by law; and

7.01.3 Receive and open bids to correct immediate repair projects(s) and notify the division of results and selection of contractor.

7.02 Upon receipt of the bid results from the school district, the division shall proceed with the following actions:

7.02.1 Review the submitted bid information;

7.02.2 If information is approved, the division shall approve the distribution of funds for the final immediate repair project cost(s); and

7.02.3 Certify the necessary funding and request the Arkansas Department of Education forward the required funds to the local school district.

7.03 Upon receipt of funding from the Arkansas Department of Education, the school district shall:

7.03.1 Enter into contract with construction trades to correct those approved immediate repair project(s);

7.03.2 Commence with approved repairs;

7.03.3 Provide monthly reports on the progress of the repairs to the division; and

7.03.4 Provide a close-out report on the approved project(s) to the division.

7.04 Upon receipt of a close-out report, the Division shall proceed as follows:

7.04.1 Dispatch an evaluation team to inspect the corrections to the immediate repair project(s);

7.04.2 After the school district obtains a final written approval from the division, the school district may release any retainage provided for in the contract; and

7.04.3 The immediate repair project shall be deemed completed and closed-out.

8.00 SCHOOL DISTRICT OBLIGATIONS

- 8.01 For tracking purposes, school districts 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 but not limited to, 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.
- 8.02 School districts shall make every effort to conform any immediate repair project to current academic facilities standards, including but not limited to, appropriate space utilization requirements, unless the division determines it is impractical for the school district to conform the immediate repair project to current standards.
- 8.03 School districts shall use state financial participation funds in an immediate repair project to only pay the cost of the portion of an immediate repair project that is not covered by insurance proceeds or other public or private emergency assistance received by or payable to the school district.
- 8.04 School districts shall be solely responsible for all costs incurred in an immediate repair project(s) that is in excess of the state financial participation grant award and for any cost ineligible for state financial participation assistance.

9.00 EMERGENCY

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 immediate needs of school districts related to catastrophic damage or destruction to academic facilities caused by an act of God or violence; and, whereas, these needs may currently exist due to catastrophic damage caused by acts of God or violence; and, whereas, there currently is not a similar program to address these immediate needs caused by catastrophic damage or destruction of academic facilities, 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 rule pursuant to the authority of Ark. Code Ann. § 25-15-204.

10.00 EFFECTIVE DATE

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