

**COMMISSION FOR PUBLIC SCHOOL ACADEMIC
FACILITIES AND TRANSPORTATION
RULES GOVERNING THE ACADEMIC FACILITIES DISTRESS PROGRAM
January 2008**

1.00 AUTHORITY

1.01 The Commission for Public School Academic Facilities and Transportation's (Commission) authority for promulgating these Rules is pursuant to Ark. Code Ann. §§ 6-21-804, 6-21-811, 25-15-201 *et seq.*, and Acts 989 and 996 of 2007.

1.02 These Rules shall be known as the Commission for Public School Academic Facilities and Transportation Rules Governing the Academic Facilities Distress Program.

2.00 PURPOSE

2.01 The purpose of these Rules is to establish how the Arkansas Division of Public School Academic Facilities and Transportation (Division) will evaluate, assess, identify and address those school districts in academic facilities distress.

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

3.01 "Academic Facilities Distress status" - a public school district determined by the Division as being identified in academic facilities distress pursuant to Ark. Code Ann. § 6-21-811.

3.02 "Commission" - the Commission for Arkansas Public School Academic Facilities and Transportation.

3.03 "Commissioner" – the Commissioner of Education.

3.04 "Division" - the Arkansas Division of Public School Academic Facilities and Transportation.

3.05 "Facilities Improvement Plan" (Plan) - an improvement plan developed by a school district for a public school or school district as a result of having been identified as being in academic facilities distress that supplements the school district's facilities master plan by:

- a.) 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 in the school district; and

b.) 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.

3.06 “Material Failure” – an act so significant as to jeopardize any academic facility used by a public school or school district or any other condition of an academic facility or facilities in a public school or school district that is determined by the Division to have a detrimental impact on educational services provided by that public school or school district.

3.07 "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.

3.08 "Reconstitution" - the reorganization of the administrative unit or the governing school board of a school district, including, but not limited to, the replacement or removal of a current superintendent or the removal or replacement of a current school board or both.

3.09 "State Board" - the Arkansas State Board of Education.

4.00 PROCESS AND PROCEDURE FOR THE IDENTIFICATION OF DISTRICTS IN ACADEMIC FACILITIES DISTRESS

4.01 The Commission shall identify a public school or school district as being in academic facilities distress if the Division recommends and the Commission concurs that the public school or school district has engaged in actions or inactions that result in:

4.01.1 Any act or violation determined by the Division to jeopardize any academic facility used by a public school or school district, including, but not limited to:

- a. Material failure to properly maintain academic facilities in accordance with state law and Rules adopted by the Commission;
- b. Material violation of local, state, or federal fire, health, or safety code provisions or laws;
- c. Material violation of applicable building code provisions or laws;
- d. Material failure to provide timely and accurate facilities master plans to the Division;

- e. Material failure to comply with state law governing purchasing or bid requirements in relation to academic facilities projects;
- f. Material default on any school district debt obligation; or
- g. Material failure to plan and progress satisfactorily toward accomplishing the priorities established by the Division and the approved school district master plan; and

4.01.2 Any other condition of an academic facility or facilities in a public school or school district that is determined by the Division to have a detrimental impact on educational services provided by that public school or school district.

4.02 The Division shall provide written notice, via certified mail, return receipt requested, to the president of the school board and the superintendent of the public school or school district identified as being in facilities distress.

5.00 SUBMISSION OF FACILITIES IMPROVEMENT PLAN AND DIVISION AUTHORITY

5.01 A public school district will be required to submit a facilities improvement plan within thirty (30) days after being notified by the Division to do so if the district: (a) effective February 1, 2008, failed to apply for state funding under the Academic Facilities Partnership Program for necessary facilities to meet adequacy requirements, and was notified by the Division of any deficiencies; (b) having been identified as being in facility distress; or (c) during its biennial review of school district's master plans, beginning February 1, 2009, the Division determines whether the progress of each school district complies with the district's facilities master plan and notifies the district of any noncompliance.

5.02 If the Division does not approve the facilities improvement plan submitted by the school district, it shall identify the school district as being in facilities distress.

5.03 A public school or school district identified as being in facilities distress shall develop a facilities improvement plan within thirty (30) days from the date of receipt of the notice and promptly submit the facilities improvement plan to the Division for review and approval.

5.04 A public school or school district shall review and revise its facilities improvement plan on a periodic basis as determined by the Division and submit the updated facilities improvement plan to the Division in order for the Division to determine whether the public school or school district is correcting its deficient areas of practice regarding academic facilities.

5.05 A school district shall use facilities improvement plans as necessary to supplement and update its facilities master plan.

5.06 A public school or school district in facilities distress may petition the Commission for removal from facilities distress status only after the Division has certified in writing that the public school or school district has corrected all criteria for being classified as in facilities distress and has complied with all Division recommendations and requirements for removal from facilities distress.

5.07 The Division shall submit a written evaluation on the status of each district in facilities distress to the Commission and the State Board at least once every six (6) months.

5.08 If a school district is identified as being in facilities distress and has immediate repairs, growth or suitability improvement issues, the Division, in addition to any other remedy under these Rules and Ark. Code Ann. § 6-21-811 and 6-21-812, may provide a loan to the school district to be repaid from any funds available that are not required to provide an adequate education.

5.08.1 Funds available that are not required to provide an adequate education include:

5.08.1.1 Fund balances and any cash on hand that are not part of foundation funding or categorical funding under Ark. Code Ann. § 6-20-2305 and are not otherwise required to provide an adequate education for students in the public school district;

5.08.1.2 Revenues that are not obligated on bonds; and

5.08.1.3 Funds remaining after the annual payment on a bond obligation are included in funds that are not required to provide an adequate education.

5.08.2 The public school district shall repay the loan on the schedule determined by the Division.

6.00 FAILED MILLAGES

6.01 A public school district whose millage election, necessary to fulfill its obligations under its master plan, fails to pass will be provided written notice by the Division, within ten (10) days from the date of the election, to meet for a conference with the Division to determine whether as a result of the failed millage there are facilities issues relating to:

6.01.1 Immediate repairs under Ark. Code Ann. § 6-20-2504(b)(4);

6.01.2 Presence and number of suitability needs of public school academic facilities and;

6.01.3 Immediate needs for facilities to meet student growth.

- 6.02 At the conference the sanctions and requirements that are available to the Commission if the school district is identified as being in facilities distress will be thoroughly discussed and explained.
- 6.03 The written notice required under Section 6.01 of these Rules shall be provided via certified mail to the president of the school board and the superintendent of the school district.
- 6.04 If it determines that there are existing immediate repairs, growth or suitability issues, the Commission may direct the school district to conduct a special election to vote on a millage increase.
 - 6.04.1 The special election shall only include those issues that are mutually agreed upon between the Division and the school district.
 - 6.04.2 The special election date will be mutually agreed to by the Division and the school district and will not be later than seven (7) months after the date of the election at which the millage failed. (Unless an extension beyond seven (7) months is necessary because of restrictions on the number of elections that may be held within a calendar year.)
- 6.05 If within ninety (90) days from the notice provided to the district pursuant to Section 6.01 of these Rules, the school district has not set an election date, the Division shall identify the school district as being in facilities distress.
- 6.06 A public school district able to finance the immediate repairs, growth and suitability improvements determined to exist by the Commission without the necessity of a special election on increasing its millage may enter into an agreement with the Division, to fund its improvements separately; the agreement shall include timeframes for completion.
 - 6.06.1 A public school district which fails to implement the agreement stated above, within the specified time frame, shall be identified by the Division as being in facilities distress.

7.00 PRIOR APPROVAL OF DEBT

- 7.01 No school district identified by the Division as being in facilities distress may incur any debt without the prior written approval of the Commission.

8.00 DIVISION AUTHORITY OVER PUBLIC SCHOOLS AND SCHOOL DISTRICTS IN ACADEMIC FACILITIES DISTRESS

- 8.01 When a school district is identified by the Commission to be in facilities distress, the Division may with the approval of the Commission:
 - 8.01.1 Provide on-site technical evaluation and assistance and make recommendations to the district superintendent regarding the care and

maintenance of any academic facility in the district. Any school district identified as being in facilities distress status shall accept on-site technical evaluation and assistance from the Division. The recommendations of the Division are binding on the district, the superintendent, and the school board.

- 8.01.2 Require the superintendent to relinquish all administrative authority with respect to the school district;
- 8.01.3 Appoint an individual in place of the superintendent to administratively operate the school district under the supervision and approval of the Commissioner of Education, or his designee;
- 8.01.4 Direct the school district to compensate from school district funds the individual appointed to operate the school district;
- 8.01.5 Suspend or remove all of the current board of directors and call for the election of a new school board for the school district, in which case the school district shall reimburse the county board of election commissioners for election costs as otherwise required by law;
- 8.01.6 Require the school district to operate without a local school board under the supervision of the local superintendent;
- 8.01.7 Require the school district to operate without a local school board under the supervision of an individual or panel appointed by the Commissioner;
- 8.01.8 Return the administration of the school district to the former board or place the administration of the school district in a newly elected school board;
- 8.01.9 Require school district staff and employees to attend training in areas of concern for the public school or school district;
- 8.01.10 Require a school district to cease all expenditures related to activities not described as part of an adequate education in Ark. Code Ann. § 6-20-2302 and place money that would have been spent on the activities into an academic facilities escrow account to be released only upon approval by the Division for use in conjunction with a local academic facilities project. School districts shall include a clause addressing this contingency in all contracts with personnel who are involved with activities not described as part of an adequate education;
- 8.01.11 Notify the public school or school district in writing that the deficiencies regarding academic facilities shall be corrected within a time period designated by the Division;

8.01.12 Correct the failure of the school district to complete its agreed plan or to pass the millage in the special election as described in Section 6.02 of these Rules by contracting for and completing the necessary improvements under the agreed plan;

8.01.13 Take any other action allowed by law that is deemed necessary to assist a public school or school district in removing criteria of facilities distress.

8.02 If a school district is identified as being in facilities distress and has immediate repairs, growth or suitability issues, the Division, in addition to any other remedy under these Rules and Ark. Code Ann. § 6-21-812, may provide a loan to the school district to be repaid from any funds available that are not required to provide an adequate education.

9.00 STATE BOARD AUTHORITY

9.01 The Division may, with the approval of the Commission, petition the State Board at any time for the consolidation, annexation, or reconstitution of a school district in facilities distress, or to take other appropriate action as allowed by law in order to secure and protect the best interest of the educational resources of the state or to provide for the best interests of students in the school district.

9.02 The State Board may approve the petition or take other appropriate action as allowed by law. The State Board may take any other action allowed by law that is deemed necessary to assist a public school or school district in removing criteria of facilities distress.

9.03 The State Board shall consolidate, annex, or reconstitute any school district that fails to remove itself from the classification of a school district in facilities distress within two (2) consecutive school years of receipt of notice of identification of facilities distress status by the Division.

9.04 If the Division recommends and the Commission concurs that the academic facilities in the public school district in facilities distress are inadequate to provide an adequate education, the State Board may dissolve the district and transfer students to public schools in other public school districts.

9.04.1 The State Board shall assign the public school district's territory, property and debt.

10.00 APPEAL PROCESS

10.01 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 p.m. 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.

10.02 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 Procedure Act, § 25-15-201, *et seq.*

10.03 Section 10.00 of these rules shall remain effective until new rules governing Commission appeals have been promulgated at that time, Section 10.00 of these Rules shall be sunsetted and will be of no further force or effect. All subsequent appeals shall be considered under the new Commission Rules Governing Commission Appeals when such Rules are promulgated and become effective.

11.00 SCHOOL CHOICE AND ACADEMIC FACILITIES DISTRESS

11.01 Any student attending a public school district classified as being in facilities distress shall automatically be eligible and entitled under the Arkansas Public School Choice Act of 1989, Ark. Code Ann. § 6-18-206, to transfer to another geographically contiguous school district not in facilities distress during the time period that a district is classified as being in facilities distress. The student is not required to file a petition by July 1 but shall meet all other requirements and conditions of the Arkansas Public School Choice Act of 1989, Ark. Code Ann. § 6-18-206.

11.02 The resident district shall pay the cost of transporting the student from the resident district to the nonresident district.

11.03 The nonresident district shall count the student for average daily membership purposes.

12.00 INSPECTIONS

12.01 The Division shall conduct random unannounced on-site inspections of all academic facilities that have been funded wholly or in part by moneys from the state to ensure compliance with the school district's facilities master plan and, if applicable, the school district's facilities improvement plan in order to preserve the integrity of and extend the useful life of public school academic facilities and equipment across the state.

12.02 The Division shall submit reports regarding its on-site inspections of academic facilities to the Commission within thirty (30) days of completion of the on-site inspections.

12.03 Based on the Division's on-site inspection or notification by the Division to the Commission that the changes or additions to a school district's facilities master plan or facilities improvement plan required by the Division have not been implemented within the time period prescribed by the Division, the Commission shall restrict the use of the necessary funds or otherwise allocate funds from moneys appropriated by the General Assembly.