

Agency #: 203.00

**COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES
AND TRANSPORTATION RULES GOVERNING THE ACADEMIC
FACILITIES PARTNERSHIP PROGRAM**

Effective: ~~December 3, 2021~~

5.00 DIVISION'S EVALUATION AND APPROVAL OF SCHOOL DISTRICT'S APPLICATION

5.01 The Division shall use criteria to evaluate a school district's application for state financial participation in a new construction project, pursuant to Ark. Code Ann. § 6-20-2507, which shall include, without limitation, the following:

5.01.1 How the school district's facilities master plan and current academic facilities do not address the following:

- (i) Student health and safety, including, without limitation, but not limited to, critical health and safety needs;
- (ii) Compliance with current academic facilities standards, including, without limitation, appropriate space utilization of existing academic facilities in the district;
- (iii) Conformance with sound educational practices;
- (iv) 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;
- (v) Multischool, multidistrict, and regional planning to achieve the most effective and efficient instructional delivery system;
- (vi) Reasonable travel time and practical means of addressing other demographic considerations; and
- (vii) Scheduled and unscheduled maintenance, repair, and renovation as documented in the state-provided Computerized Maintenance Management System;

5.01.2 How the school district's facilities master plan and any new construction project under the facilities master plan address the following:

- (i) Student health and safety, including, without limitation, critical health and safety needs;
- (ii) Compliance with current academic facilities standards, including, without limitation, appropriate space utilization of existing academic facilities in the district;
- (iii) Conformance with sound educational practices;
- (iv) 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;

- (v) Multischool, multidistrict, and regional planning to achieve the most effective and efficient instructional delivery system;
- (vi) Reasonable travel time and practical means of addressing other demographic considerations; and
- (vii) Scheduled and unscheduled maintenance, repair, and renovation as documented in the state-provided Computerized Maintenance Management System (CMMS);

5.01.3 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;

5.01.3.1 The Division may perform on-site inspections of the school district facilities during the evaluation of project applications.

5.01.4 How the new construction project has been prioritized by the school district; and

5.01.5 The allocation and expenditure of funds in accordance with this subchapter and the Arkansas Public School Academic Facility Program Act, Ark. Code Ann. § 6-21-801 et seq.

5.01.6 In evaluating a school district's application for state financial participation in a new construction project, the Division may resolve any internal inconsistency in or conflict among the application components and supporting documentation by giving precedence to the application components in the following order:

- (i) The resolution adopted by the board of directors of the school district;
- (ii) The narrative application contents submitted electronically through the Master Plan Web Tool;
- (iii) Schematic drawings;
- (iv) Other supporting documents submitted with the application; and
- (v) Application consistency and accuracy.

5.02 The Qualified Cost shall be limited to the cost for an alternative project if

the Division determines that an alternative project meets facility standards and addresses the suitability and warm, safe, and dry needs expressed by the district in its master plan and project application. The alternative project may consist of replacement of the original facility or component to the original configuration of construction at the most current state standard.

5.03 If a school district fails to comply with any of the requirements set forth in state law or these Rules concerning the Division's evaluation of its application, the Division and Commission may deny the application for state financial participation.

5.04

(i) The Division shall review all projects submitted to determine their suitability for state financial participation, pursuant to the suitability criteria set forth in Section 3.35 of these Rules.

(ii) No project that is determined by the Division to go beyond "suitable" will be approved for state financial participation.

5.05 Statewide Needs Lists, Project Ranking, and Project Funding

5.05.1 The following process will be used to develop the Statewide Warm, Safe, and Dry Needs List:

(i) First, the Division shall numerically rank each campus based on campus value. The lowest value will be ranked first and the highest value will be ranked last.

(ii) Second, the Division will numerically rank campuses based on the facilities condition index. The highest value will be ranked first and the lowest value will be ranked last. "Facilities condition index" has the same meaning as in the Commission for Academic Facilities and Transportation Rules Governing the Facilities Master Plan.

(iii) Third, the Division will rank campuses by campus value ranking weighted fifty percent (50%) and facility condition index ranking weighted fifty percent (50%). Once each campus is ranked, the Division shall publish a list with the campus with the lowest score being ranked first and the campus with the highest score being ranked last.

5.05.2 The following process will be used to develop the Statewide Space/Growth needs List:

(i) First, the Division will rank districts on five (5) year projected enrollment growth percentage based on Division projections. The highest value will be ranked first and the lowest value will be

ranked last.

- (ii) Second, the Division will rank districts on five (5) year projected student enrollment growth based on Division projections. The highest value will be ranked first and the lowest value will be ranked last.
- (iii) Third, the Division will rank districts on school district suitability based on academic gross square feet needed minus academic gross square feet present. The highest value will be ranked first and the lowest value will be ranked last.
- (iv) Fourth, the Division will rank districts on school district suitability percentage based on suitability divided by academic gross square feet present. The highest value will be ranked first and the lowest value will be ranked last.
- (v) Fifth, the Division will rank districts by five (5) year projected student enrollment percentage ranking weighted twenty-five percent (25%); five (5) year projected student enrollment growth ranking weighted twenty-five percent (25%); school district suitability ranking twenty-five percent (25%); and school district suitability percentage ranking twenty-five percent (25%). Once each district is ranked, the Division shall publish a list with the district with the lowest score being ranked first and the district with the highest score being ranked last.

5.05.3 Ranking of Projects: For the 2023-2025 and subsequent project funding cycles, all approved new construction projects shall be entitled to receive state partnership assistance in the following ranked order in two separate categories: (1) Warm, Safe, and Dry (Systems Replacement and Space Replacement) projects; and (2) Space/Growth projects.

- (i) First, the Division will rank all school projects based on the academic facilities wealth index of the school district. The district with the lowest wealth index shall be ranked first and the district with the highest wealth index shall be ranked last.
- (ii) Second, the Division will rank each project according to the Statewide Facilities Needs Lists (as calculated in Sections 5.05.1 and 5.05.2 of these Rules).
- (iii) Third, the Division will rank each project according to the percentage of district expenditures spent on maintenance of academic facilities for the last five (5) fiscal years ~~as reported in accordance with Section 4.05.10 of these Rules~~. The district with the highest percentage spent on maintenance shall be ranked first, and the district with the lowest percentage spent on

maintenance shall be ranked last.

- (iv) Fourth, the Division will rank projects by academic facility wealth index ranking weighted thirty percent (30%); Statewide Facility Needs List ranking weighted at fifty percent (50%); and percentage of district expenditures spent on maintenance of academic facilities for the last five (5) fiscal years ranking weighted twenty-percent (20%). The project with the lowest score will be ranked first, and the project with the highest score will be ranked last.
- (v) The Division will ensure that all required district preventive maintenance inspections are completed and documented for the previous fiscal year. Supporting documentation shall include completed CMMS work orders and uploaded inspection documents. Projects from districts that have not completed and documented all required preventive maintenance inspections shall be moved to the bottom of the project ranking list, in the order the project was ranked under Section 5.05.3(i) through (iv).

5.05.5 Commission Funding of Projects

For each of the two years of a Partnership Program funding cycle there will be two (2) categories of funds from which to fund projects: one for Warm, Safe, and Dry System Replacement and Space Replacement projects; and one for Space/Growth projects. Projects will be funded as follows for each year of a funding cycle:

- (i) Fifty percent (50%) will be allocated to each category to fund projects in ranked order on the respective project ranking list.
- (ii) Warm, Safe, and Dry projects will be funded in ranked order from the Warm, Safe, and Dry category until either all funds are allocated or until all of those projects are funded. ~~If in Year 2 of a funding cycle~~ any funds remain after all Warm, Safe, and Dry projects are funded, and if there are any unfunded Space/Growth projects remaining, the remaining funds will be transferred to the Space/Growth category.
- (iii) Space/Growth projects will be funded in ranked order from the Space/Growth category until either all funds are allocated or until all of those projects are funded. ~~If in Year 2 of a funding cycle~~ funds remain after all Space/Growth projects are funded, and if there are any unfunded Warm, Safe, and Dry projects remaining, the remaining funds will be transferred to the Warm, Safe, and Dry category.
- (iv) If funds become available during the funding cycle year due to rescinded projects, unfunded projects remaining in the

appropriate category will be funded in ranked order.

- (v) ~~Any funds remaining after Year 1 of a funding cycle will carry over into the same category for Year 2 of the funding cycle.~~ Any funds remaining after Year 2 will carry over into the next funding cycle and will not be designated as belonging to one category or the other.

- 5.06 If a school district's new construction project is approved for funding in the current funding cycle, the district must execute the Partnership Agreement, which is Appendix "B" to these Rules. If the Partnership Agreement is not executed within the time period set forth in Section 7.06 of these Rules, unless there is an approved waiver, the state's financial participation in part or in whole may be deemed null and void by the Commission.
- 5.07 In accordance with Ark. Code Ann. § 6-21-114(d) and the Commission's Rules Governing Property Insurance Requirements, every academic facility must be insured and remain insured for one hundred percent (100%) of replacement cost to be eligible for state financial participation. If, as of the date of application or at any point thereafter, an academic facility involved in a project is not sufficiently insured as required, as indicated in the district's current Statement of Values, the application shall be denied by the Division and any state financial participation shall cease.

7.00 AGREEMENT BETWEEN THE DIVISION AND THE SCHOOL DISTRICT
CONCERNING STATE FINANCIAL PARTICIPATION

7.01 If the Division determines that the new construction project is eligible for state financial participation, the Division and the school district shall enter into an agreement specifying the terms of the state's financial participation and the conditions that must be satisfied by the school district.

7.02 At a minimum, the agreement shall:

- (i) Identify the estimated amount of local financial participation and state financial participation in the new construction project. The estimated amount of the state's financial participation, as stated in the agreement, will be arrived at after the schematic drawings and any variances to the Arkansas Public School Academic Facilities Manual are considered for new facilities, new additions to facilities, or renovations or conversions. The final amount of the State's financial participation will be specified upon receipt of the final contract amount and determined as specified in Section 6.03 of these Rules;
- (ii) Define the method of and schedule for transferring state financial participation funds to the school district;
- (iii) Identify whether the new construction project includes any improvements that are classified as maintenance, repair, and renovation, and how the project costs will be allocated between new construction activities and maintenance, repair, and renovation activities;
- (iv) Define the detailed scope of work for which the agreement applies;
- (v) Provide that changes to the plans for the new construction project shall be made in consultation with the Division;
- (vi) Provide the areas of project responsibility of both parties during the course of the project;
- (vii) Provide that the district shall be in compliance with all state laws concerning bidding and construction;
- (viii) Provide that the Division or any person acting on behalf of the Division may conduct on-site inspections of the new construction project as frequently as the Division deems necessary to assure the prudent and resourceful expenditure of state funds with regard to public school academic facilities;
- (ix) Determine how risk will be allocated between the school district and the state if the new construction project is not completed;

- (x) Describe how changes in the school district's wealth index over the course of the new construction project will be treated; and
 - (xi) Specify that the agreement is void and the state will have no further obligation to provide state funds to the school district for the new construction project that is the subject of the agreement if the school district does not raise local resources and apply local resources toward the project as provided under the agreement; and
 - (xii) Specify that any facility built with Partnership Program funds must be used only for academic purposes as described in Section 3.01 of these Rules.
- 7.03 The agreement specified above and required by Ark. Code Ann. § 6-20-2507 and Section 5.06 of these Rules is Appendix “B” to these Rules.
- 7.04 All funding agreements under these Rules are contingent upon the prudent and resourceful expenditure of state funds as determined by the Division.
- 7.05 A district may *at its own expense and risk* begin developing construction plans and specifications and begin seeking all required state agency approvals before the Commission approves and funds the project. The Division and State of Arkansas are not obligated to pay an expenditure until the project has been approved and funded by the Commission. The Division will not review project plans/agency approvals until the project has been approved and funded by the Commission absent an early construction start waiver approved by the Division.
- 7.05.1 The district shall not begin construction on a project before the Commission approves and funds the project except in unusual and limited circumstances ~~an emergency situation that threatens the safety of students and faculty, or that creates a learning environment that is not warm, safe, or dry.~~ If the district believes unusual and limited circumstances ~~such an emergency situation exists~~ exist, the district shall contact the Division explaining these unusual and limited circumstances and ~~request~~ requesting a written early construction start waiver from the Division allowing the district to begin construction *at its own expense and risk*.
- 7.05.2 Upon receipt of an early construction start request, the Division may:
- (i) Grant the early construction start request. All project expenses may be reimbursed pending Commission approval and funding;
 - (ii) Grant a partial early construction start request in which the district shall pay for and not be reimbursed for any construction activities prior to the project funding date (the Division will recalculate the qualified project cost to

subtract costs already incurred; or

(iii) Deny the early construction start request completely.

- 7.06 Before the district is allowed to proceed and start construction on a project, the district must submit, and the Division must approve, its final plans and specifications, as well as all required state agency approvals.
- 7.07 Within sixty (60) days of the Commission's final approval and funding of the district's partnership project, the agreement referenced in Sections 7.02 and 7.03 of these Rules must be executed by the district and the Division. The Division shall have the right to grant a waiver from this provision if the district has unusual and limited circumstances which prevent it from executing the agreement within the sixty (60) day timeframe.
- 7.08 If the Partnership Agreement is not executed within the time period set forth in Section 7.07 of these Rules, unless there is an approved waiver request or appeal pending before the Academic Facilities Review Board or Commission, the state's financial participation in whole or in part may be deemed null and void by the Division.
- 7.09 Construction of the project, as evidenced by a signed construction contract, must begin within eighteen (18) months from the date of the final approval of the project by the Commission.
- 7.10 The district must obtain the Division's approval of the completion of all district project requirements within four (4) years from the date of final approval of the project by the Commission.
- 7.11 For the purpose of Section 7.00, the phrase "signed construction contract" includes construction management contracts specific to the approved and funded project.
- 7.12 For the purpose of these Rules, "completion" is defined as successful inspection by the Division and the Division's receipt from the district of a copy of the certificate of occupancy from the appropriate code authority.
- 7.13 Districts must complete all construction activities, successfully complete a "punch" list, make final retainage payments to the contractor, and submit its final pay request to the Division within five (5) years of funding of the project by the Commission.
- 7.14 Absent a written waiver or variance, the Division shall rescind, recapture, or both, Partnership funds if the project is found not to have been built to approved plans and specifications.
- 7.15 A district may request a waiver of timelines in Section 7.07 through 7.13 of these Rules if the district believes it can show unusual and limited

circumstances which prevent it from meeting the timelines. State financial participation in a district's project is contingent upon the district meeting all timelines and deadlines set forth in these Rules.

- 7.16 Absent an approved appeal or waiver, the Division shall render the state's financial participation in a district's project null and void in whole or in part for failure to meet all of the timelines and deadlines set forth in these Rules and may recapture any state partnership funding assistance funds already paid to the district.
- 7.17 Payment of an incentive awarded pursuant to Section 10.0 of these Rules shall not be made to a district until the new facilities project is completed and the appropriate third-party certification entity or assessor has awarded final certification for the project.