

1 EDUCATION AND WORKFORCE DEVELOPMENT CABINET

2 Kentucky Board of Education

3 Department of Education

4 Office of District Support Services

5 702 KAR 4:090. Property disposal.

6 RELATES TO: KRS 156.160

7 STATUTORY AUTHORITY: KRS 156.160, 156.070

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the State  
9 Board for Elementary and Secondary Education to promulgate administrative regulations  
10 dealing with the disposal of real and personal property owned by local boards of  
11 education. This administrative regulation is necessary to provide for real property  
12 disposal, leases, and easements in accordance with an approved educational program.  
13 KRS 156.070 provides that the Kentucky Board of Education shall have the management  
14 and control of the common schools.

15 Section 1. Disposition of Real Property. (1) School property proposed for disposal  
16 shall be surplus to the educational program need of the district as determined by the  
17 effective district facility plan. Surplus property includes real property designated as a  
18 "Transitional Center" or not listed on the effective district facility plan. Request for  
19 approval to dispose of real property shall be submitted in writing to the Kentucky  
20 Department of Education. The request shall identify the property by its address and last  
21 reported name and include a plan for resolving mortgage liens or other encumbrances.

1 Upon receipt of written contingent approval from the department, the district may start the  
2 disposal process using one of the following methods that secures the fair market value for  
3 the property and ensures that the district retains no residual interest as owner or lender:

4 (a) By public auction;

5 (b) By accepting sealed bids; or

6 (c) By setting a minimum acceptable price, which is at least the fair market value of the  
7 property.

8 (2) For property disposal by public auction or sealed bids, the proposed sale shall be  
9 advertised in accordance with KRS 424.130(1)(b), and the legal notice shall include the  
10 following statement: "The board of education reserves the right to reject any and all bids  
11 and final approval by the Kentucky Department of Education is required." Following the  
12 conclusion of the auction or receipt of bids, the local board of education shall submit the  
13 following to the department for review and final approval:

14 (a) The appraisal;

15 (b) An affidavit attesting to the publication of legal notice;

16 (c) Results of the public auction or sealed bids;

17 (d) The proposed sale agreement reviewed and approved by the board's attorney; and

18 (e) The local board order approving the sale contingent on approval by the department.

19 (3) For property disposal by setting a minimum acceptable price, the minimum  
20 acceptable price shall be the fair market value, which shall be determined by an appraisal  
21 from a certified general real property appraiser commissioned by the school district and  
22 obtained in connection with the disposal of the property. Following receipt of an  
23 acceptable offer to purchase, the local board of education shall submit the following

1 documentation to the department for review and final approval:

2 (a) The appraisal;

3 (b) The proposed sale agreement reviewed and approved by the board's attorney; and

4 (c) The local board order approving the sale contingent on approval by the department.

5 (4) Upon receipt of written final approval from the department, the local school district  
6 may execute the sale agreement. The district shall provide the department with a copy of  
7 the executed agreement within thirty (30) days from the date of execution.

8 Section 2. Disposition by Easement. (1) Prior to the execution of a proposed  
9 easement upon school property, the agreement shall be reviewed by the local district's  
10 board attorney. The reviewed agreement and an appraisal from a certified general real  
11 property appraiser commissioned by the school district and obtained in connection with  
12 the easement shall be submitted to the local board of education for its consideration.  
13 Upon approval, the local school district's written board order shall be forwarded to the  
14 department for review and approval. The local board of education shall include assurance  
15 that disposal will not affect the integrity or usefulness of property crucial to the educational  
16 needs of the district.

17 (2) Proposed easement agreements, including but not limited to utility and access  
18 easement agreements shall include:

19 (a) The parties to the agreement;

20 (b) A legal description of the easement;

21 (c) Documentation regarding receipt of fair market value as determined by an appraisal  
22 from a certified general real property appraiser commissioned by the school district and  
23 obtained in connection with the disposal of the property or equivalent valuable

1 consideration;

2 (d) A reversionary clause that reverts the property back to the exclusive unrestricted  
3 control of the local board of education when the need for the easement no longer exists;  
4 and

5 (e) A plat by a licensed surveyor indicating the easement boundaries, acreage and its  
6 relationship to the larger property.

7 (3) Upon receipt of written final approval from the department, the local school district  
8 may execute the agreement. The district shall provide the department with a copy of the  
9 executed agreement within thirty (30) days from the date of execution.

10 (4) Temporary and construction easements do not require department approval but  
11 shall include provisions related to the amount of time in effect, and a requirement that any  
12 disturbed areas shall be returned to original condition.

13 Section 3. Disposition by Lease (District as Lessor/Landlord). (1) Prior to the  
14 execution of a proposed lease agreement for school property, the proposed lease  
15 agreement shall be reviewed by the local district's board attorney and the board's  
16 insurance carrier. The proposed lease agreement shall be submitted to the local board of  
17 education for its consideration and a written board order forwarded to the department for  
18 review and approval. The local board of education shall provide assurance that the  
19 disposal will not affect the integrity or the usefulness of the property subject to the  
20 educational need of the district.

21 (2) The proposed lease agreement shall include, but is not limited to the following  
22 provisions:

23 (a) The parties to the agreement;

- 1 (b) The proposed use and occupation;
- 2 (c) A description of the leased space including square footage and description of  
3 common areas if applicable;
- 4 (d) Use of site and parking;
- 5 (e) Term of lease including beginning and ending dates. The term shall include an  
6 annual renewal/cancellation provisions;
- 7 (f) Determination of fair market value and how payments are to be made;
- 8 (g) Insurance requirements of the parties;
- 9 (h) Identification of the parties' responsibilities for payment of utilities, performance of  
10 maintenance and related supplies;
- 11 (i) Notice provisions;
- 12 (j) Provisions for security;
- 13 (k) Requirements for compliance with established board policies if tenants will be in  
14 contact with students; and
- 15 (l) Any other applicable terms or conditions.

16 (3) Upon receipt of written final approval from the department, the local school district  
17 may execute the lease agreement. The district shall provide the department with a copy  
18 of the executed agreement within thirty (30) days from the date of execution.

19 Section 4. Conflict of Interest. (1) Members of the local school board requesting  
20 department approval to lease or dispose of surplus property shall submit a certification  
21 that the members of the local school board have no conflict of interest with regard to the  
22 transaction and that neither board members, nor member of their family, have any  
23 financial interest in the transaction. In the event of any conflict of interest in the

1 transaction, a conflicted local school board member shall publicly disclose the conflict of  
2 interest to the school board and recuse himself/herself from voting on the matter. The  
3 local school board shall provide minutes of any such meeting to the department when  
4 requesting approval under any section of this administrative regulation.

5 (2) If a local school board uses a third party to dispose of or lease property, the third party  
6 shall not have any financial interest in the transaction or adjacent property beyond a  
7 standard commission approved by the school board. In the event the third party has any  
8 financial interest in the transaction or adjacent property beyond a standard commission,  
9 the third party must publicly disclose his/her conflict of interest to the local school board  
10 and said conflict shall be spread on the local school board's meeting minutes. The local  
11 school board shall provide minutes of any such meeting to the department when  
12 requesting approval under any section of this administrative regulation.

APPROVED:

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NAME, Title

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Date

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on **Month ##, 20##**, at **time**, at **location of the meeting**. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through **Month ##, 20## {Insert last day of the month}**. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** **Name, title, agency name, full address, phone (###) ###-####, fax (###) ###-####, email {Insert contact person's email address}**.



## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

### KAR ##:###

Contact Person: \_\_\_\_\_, phone \_\_\_\_\_, email \_\_\_\_\_

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does:
  - (b) The necessity of this administrative regulation:
  - (c) How this administrative regulation conforms to the content of the authorizing statutes:
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:
  
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
  - (a) How the amendment will change this existing administrative regulation:
  - (b) The necessity of the amendment to this administrative regulation:
  - (c) How the amendment conforms to the content of the authorizing statutes:
  - (d) How the amendment will assist in the effective administration of the statutes:
  
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:
  - (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
    - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:
    - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):
    - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3):
  
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
  - (a) Initially:
  - (b) On a continuing basis:
  
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:
  
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment:
  
- (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:
  
- (9) TIERING: Is tiering applied? **Explain why tiering was or was not used.**

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

### KAR #:###

Contact Person: \_\_\_\_\_, phone \_\_\_\_\_, email \_\_\_\_\_

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: