

1 EDUCATION AND WORKFORCE DEVELOPMENT CABINET

2 Kentucky Board of Education

3 Department of Education

4 Office of District Support Services

5 (Amendment)

6 702 KAR 4:090. Property disposal.

7 RELATES TO: KRS ~~[156.031,]~~ 156.160

8 STATUTORY AUTHORITY: KRS 156.160, 156.070

9 NECESSITY, FUNCTION, AND CONFORMITY: ~~[KRS 156.031 requires that~~
10 ~~administrative regulations relating to statutes amended by the 1990 Kentucky Education~~
11 ~~Reform Act be reviewed, amended if necessary and resubmitted to the Legislative~~
12 ~~Research Commission prior to December 30, 1990; and]~~ KRS 156.160 requires the State
13 Board for Elementary and Secondary Education to promulgate administrative regulations
14 dealing with the disposal of real and personal property owned by local boards of
15 education. This administrative regulation is necessary to provide for real property
16 disposal, leases, and easements in accordance with an approved educational program.
17 KRS 156.070 provides that the Kentucky Board of Education shall have the management
18 and control of the common schools.

19 Section 1. Disposition of Real Property. (1) School property proposed for disposal
20 shall be surplus to the ~~[need for the]~~ educational program need of the district as
21 determined by the effective district facility plan. Surplus property includes real property

1 designated as a "Transitional Center" or not listed on the effective district facility plan.

2 Request for approval to dispose of real property shall be submitted in writing to the

3 Kentucky Department of Education~~[chief state school officer]~~. The request shall identify

4 the property by its address and last reported name and include a plan for resolving

5 mortgage liens or other encumbrances. Upon receipt of written contingent approval from

6 the department, the district may start the disposal process using one of the following

7 methods that secures the fair market value for the property and ensures that the district

8 retains no residual interest as owner or lender:

9 ___ (a) By public auction;

10 ___ (b) By accepting sealed bids; or

11 ___ (c) By setting a minimum acceptable price, which is at least the fair market value of the

12 property.

13 ___ (2) For property disposal by public auction or sealed bids, the proposed sale shall be

14 advertised in accordance with KRS 424.130(1)(b), and the legal notice shall include the

15 following statement: "The board of education reserves the right to reject any and all bids

16 and final approval by the Kentucky Department of Education is required." Following the

17 conclusion of the auction or receipt of bids, the local board of education shall submit the

18 following to the department for review and final approval:

19 ___ (a) The appraisal;

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

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

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

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

1 (3) For property disposal by setting a minimum acceptable price, the minimum
2 acceptable price shall be the fair market value, which shall be determined by an appraisal
3 from a certified general real property appraiser commissioned by the school district and
4 obtained in connection with the disposal of the property. Following receipt of an
5 acceptable offer to purchase, the local board of education shall submit the following
6 documentation to the department for review and final approval:

7 (a) The appraisal;

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

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

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

13 ~~[Disposal may be implemented upon approval.]~~

14 Section 2. Disposition by Easement. (1) Prior to the execution of a proposed
15 easement upon school property, the agreement shall be reviewed by the local district's
16 board attorney. The reviewed agreement and an appraisal from a certified general real
17 property appraiser commissioned by the school district and obtained in connection with
18 the easement~~[the proposed lease agreement for, or easement upon, public school~~
19 ~~property]~~ shall be submitted to the local board of education for its consideration. Upon
20 approval, the local school district's [and] written board order~~[recommendation]~~ shall be
21 forwarded to the department~~[chief state school officer]~~ for review and approval.~~[his~~
22 ~~review, approval and]~~ The local board of education shall include assurance that disposal
23 will not affect the integrity or usefulness of property crucial to the educational needs of the

district.

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

(a) The parties to the agreement;

(b) A legal description of the easement;

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

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

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

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

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

Section 3. Disposition by Lease (District as Lessor/Landlord). (1) Prior to the execution of a proposed lease agreement for school property, the proposed lease agreement shall be reviewed by the local district's board attorney and the board's

insurance carrier. The proposed lease agreement shall be submitted to the local board of education for its consideration and a written board order forwarded to the department for review and approval. The local board of education shall provide assurance that the disposal will not affect the integrity or the usefulness of the property subject to the educational need of the district.

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

(a) The parties to the agreement;

(b) The proposed use and occupation;

(c) A description of the leased space including square footage and description of common areas if applicable;

(d) Use of site and parking;

(e) Term of lease including beginning and ending dates. The term shall include an annual renewal/cancellation provisions;

(f) Determination of fair market value and how payments are to be made;

(g) Insurance requirements of the parties;

(h) Identification of the parties' responsibilities for payment of utilities, performance of maintenance and related supplies;

(i) Notice provisions;

(j) Provisions for security;

(k) Requirements for compliance with established board policies if tenants will be in contact with students; and

(l) Any other applicable terms or conditions.

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

4 Section 4. Conflict of Interest. (1) Members of the local school board requesting
5 department approval to lease or dispose of surplus property shall submit a certification
6 that the members of the local school board have no conflict of interest with regard to the
7 transaction and that neither board members, nor member of their family, have any
8 financial interest in the transaction. In the event of any conflict of interest in the
9 transaction, a conflicted local school board member shall publicly disclose the conflict of
10 interest to the school board and recuse himself/herself from voting on the matter. The
11 local school board shall provide minutes of any such meeting to the department when
12 requesting approval under any section of this administrative regulation.

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

APPROVED:

NAME, Title

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: