

1 EDUCATION AND LABOR CABINET

2 Kentucky Board of Education

3 Department of Education

4 (Amendment)

5 702 KAR 4:090. Property disposal.

6 RELATES TO: KRS 45A.425, 156.070, 156.160, 160.160(8), 162.010, 424.170; 2CFR

7 200.310, 200.311

8 STATUTORY AUTHORITY: KRS 156.070, 156.160

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of

10 Education~~[State Board for Elementary and Secondary Education]~~ to promulgate administrative

11 regulations establishing standards for~~[dealing with]~~ the disposal of real ~~[and personal]~~ property owned

12 by local boards of education. This administrative regulation is necessary to provide for real property

13 disposal, leases, and easements in accordance with an approved educational program. KRS 156.070

14 provides that the Kentucky Board of Education shall have the management and control of the common

15 schools.

16 Section 1. Definitions. (1) “District Facilities Plan” or “DFP” means a school district’s capital

17 construction plan prepared every four years pursuant to 702 KAR 4:180.

18 (2) “Facilities Planning and Construction System” or “FACPAC” means the Kentucky Department of

19 Education’s web-based application for construction, planning, and real property transactions.

20 (3) “BG-1” means the form used to initiate and revise a capital construction project or property

21 transaction in FACPAC.

22 (4) “BG-5” means the form used to closeout a capital construction project or property transaction in

23 FACPAC.

24 (5) “Fair Market Value” or “FMV” means the value of a site based on an appraisal performed by a real

25 property appraiser licensed to practice in the Commonwealth of Kentucky under KRS Chapter 324A.

1 (6) “Survey” means a formal assessment of a real property that is sealed and signed by a professional  
2 land surveyor providing an official record of its size, location, and features, including, applicable  
3 boundaries, easements, title, and any requirements of the purchaser for disposal.

4 Section 2. Disposition Process. (1) Real property for disposal shall be declared surplus to the educational  
5 needs of the district by the local school board. Real property may include a transitional center and  
6 property not included in the DFP.

7 (2) A local board of education requesting approval from the Kentucky Department of Education to  
8 dispose of real property by sale, lease, or easement shall submit the request and required documentation  
9 electronically through the FACPAC system.

10 (3) The district shall provide the applicable contingent, final, and closeout documentation by electronic  
11 submission in the FACPAC system in a format approved by the department for review.

12 (4) All documentation required by this administrative regulation shall be reviewed by the local board’s  
13 legal counsel, and if applicable, the district’s insurance carrier and fiscal agent or bond counsel prior to  
14 being presented to the local board of education and submission to the department.

15 (5) Disposal of property purchased or improved using federal funds that is no longer needed for the  
16 originally authorized purpose shall comply with state and federal requirements.

17 (6) The department shall review and provide the applicable contingent approval, final approval, closeout  
18 approval, or disapproval, to the local school district within thirty (30) business days of receipt of a  
19 completed documentation.

20 Section 3. Disposition by Sale. (1) A request for disposal shall be approved by the local board of  
21 education and submitted to the department. The request shall include:

22 (a) Initial, signed BG-1 identifying the following:

23 1. Address or general legal property description;

24 2. Current official reported name through the District and School Collection Repository (DASCR);

25 3. Approximate acreage or area;

1 (b) Declaration assuring that the disposal shall not affect the integrity or usefulness of property crucial to  
2 the educational needs of the district; and

3 (c) Plan for resolving mortgage liens or other encumbrances as applicable.

4 (2) Upon receipt of written contingent approval from the department through an approved initial BG-1,  
5 the district may continue the disposal process using one of the following methods to secure the fair  
6 market value with assurance that the district will not retain any residual interest as owner or lender:

7 (a) By public auction;  
8 (b) By accepting sealed bids; or  
9 (c) By setting a minimum acceptable price, which is at least the fair market value of the property.

10 (3) For real property disposal by public auction or sealed bids, the proposed sale shall be advertised in  
11 accordance with KRS 424.130(1)(b) which shall include the statement, "The board of education reserves  
12 the right to reject any and all bids and final approval by the Kentucky Department of Education is  
13 required."

14 (4) Following the conclusion of the auction or receipt of bids for which fair market value is received, the  
15 local board of education shall approve and submit the following to the department for review and  
16 consideration for final approval:

17 (a) A revised BG-1 noting the agreed-upon sale price and any costs incurred;  
18 (b) The appraisal;  
19 (c) A copy of the published legal notice and an affidavit attesting to publication;  
20 (d) The results of the public auction or sealed bids; and,  
21 (e) The proposed sale agreement.

22 (5) The local board shall notify the department in the event the auction or receipt of bids failed to attain  
23 the required fair market value.

24 (6) For real property disposal by setting a minimum acceptable price, the local board of education shall  
25 approve and submit the following documentation to the department for review and final approval:

1 (a) A revised BG-1 noting the agreed-upon sale price and any costs incurred by the local school district;

2 (b) The appraisal; and

3 (c) The proposed sale agreement.

4 (7) Upon receipt of an approved revised BG-1 from the department, the local school district may execute  
5 the sale agreement.

6 (8) To complete and closeout the disposal process, the local board shall approve and submit the  
7 following to the department:

8 (a) a copy of the executed sale agreement; and,

9 (b) Signed BG-5.

10 Section 4. Disposition by Sale to a Governmental or Quasi-Governmental Agency. (1) Districts  
11 conducting a disposal with another governmental or quasi-governmental agency under KRS 160.160(8)  
12 shall submit the following to the department within thirty (30) business days after the completion of the  
13 transaction for record keeping and data collection:

14 (a) The initial, signed BG-1 identifying the following:

15 1. Address or general legal description of the property;

16 2. Last official reported name through the District and School Collection Repository (DASCR), if  
17 applicable;

18 3. Approximate acreage or area;

19 (b) Declaration assuring that the disposal will not affect the integrity or usefulness of property crucial to  
20 the educational needs of the district;

21 (c) The appraisal; and

22 (d) Executed copy of the sale agreement.

23 (3) Upon receipt of a processed initial BG-1 from the department, the local board of education shall  
24 submit:

1 (a) Signed BG-5.  
2 Section 5. Disposition by Easement. (1) Easements shall not conflict with the requirements contained in  
3 702 KAR 4:050 and 702 KAR 4:170.  
4 (2) The local board shall approve and submit the following to the department for review and approval  
5 consideration:  
6 (a) Initial, signed BG-1 identifying:  
7 1. Address or general legal property description and  
8 2. Approximate acreage or area.  
9 (b) Declaration assuring that the disposal will not affect the integrity or usefulness of property crucial to  
10 the educational needs of the district.  
11 (c) A survey by a professional land surveyor indicating the easement boundaries, size, and its  
12 relationship to the larger property;  
13 (d) The appraisal; and,  
14 (e) A copy of the proposed easement agreement with language that includes:  
15 1. The parties to the agreement;  
16 2. The official address of the district property;  
17 3. The legal description and easement type;  
18 4. A reversionary clause that reverts the property back to the exclusive unrestricted control of the local  
19 board of education when the need for the easement no longer exists; and  
20 5. Receipt of fair market value or equivalent valuable consideration for permanent access and permanent  
21 utility easements.  
22 (3) Easements for the exclusive use of the district do not require receipt of fair market value unless the  
23 easement is expanded to benefit additional parties beyond the local school district.  
24 (4) Upon receipt of an approved initial BG-1 from the department, the local board may execute the  
25 easement agreement.

1 (5) The local board shall approve and submit to the department the following to close the disposal  
2 process:

3 (a) a copy of the executed easement agreement; and

4 (b) Signed BG-5.

5 Section 6. Disposition by Lease (District as Lessor/Landlord). (1) The local board shall approve and  
6 submit the following to the department for review and approval consideration:

7 (a) Initial, signed BG-1 identifying:

8 1. Address or general legal property description and

9 2. Approximate floor area or acreage.

10 (b) Declaration assuring that the disposal will not affect the integrity or usefulness of property crucial to  
11 the educational needs of the district;

12 (c) Affirmation that the proposed lease agreement has been reviewed by the local board attorney and  
13 district insurer carrier; and

14 (d) The proposed lease agreement which shall include the following:

15 1. The parties to the agreement;

16 2. The proposed use;

17 3. A description of the leased space including leased area, use, and common areas as applicable or  
18 description of the leased land including use and acreage as applicable;

19 4. Conditions of site access and parking;

20 5. Beginning and ending dates, including annual renewal and cancellation provisions;

21 6. Determination of fair market value and how payments are to be made;

22 7. Insurance requirements of the parties;

23 8. Identification of the parties' responsibilities for payment of utilities, performance of maintenance, and  
24 related supplies;

1 9. Notice provisions;

2 10. Provisions for security

3 11. Requirements for compliance with established board policies if tenants will be in contact with  
4 students; and

5 12. Other applicable terms or conditions.

6 (2) Upon receipt of an approved initial BG-1 from the department, the local board may execute the lease  
7 agreement.

8 (3) The local board shall approve and submit the following to the department:

9 (a) a copy of the executed lease agreement; and,

10 (b) Signed BG-5.

11 Section 7. Waiver Process. (1) A local board may request a waiver of the required submission items by  
12 submitting a written request with supporting documentation to the Commissioner of Education or  
13 designee who shall approve or disapprove the request within thirty (30) business days.

14 (2) A disapproved waiver request may be appealed by a local board to the Kentucky Board of Education.

15 Section 8. Disapproval and Appeals Process. (1) After evaluation of the submitted documentation,  
16 should the Kentucky Department of Education disapprove the proposed disposal, the local board of  
17 education may:

18 (a) Discontinue the disposal process;

19 (b) Provide the department with updated documentation for reconsideration; or

20 (c) Appeal to the Kentucky Board of Education.

21 Section 9. Conflict of Interest. (1) If a local school board uses a third party to dispose of or lease  
22 property, the third party shall not have any financial interest in the transaction or adjacent property  
23 beyond a standard commission approved by the school board. If the third party has any financial interest  
24 in the transaction or adjacent property beyond a standard commission, the third party shall publicly

1 disclose his or her conflict of interest to the local school board and shall be documented in the local  
2 school board's meeting minutes.

3 (2) The local school board shall provide the minutes of any such meeting to the department when  
4 requesting approval under any section of this administrative regulation.

5 Section 10. Incorporation by References. (1) The following material is incorporated by reference:

6 (a) "BG-1 Project Application Form", July 2024.

7 (b) "BG-5 Project Closeout Form", July 2024.

8 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the  
9 Department of Education, 300 Sower Boulevard 4<sup>th</sup> Floor, Frankfort, Kentucky 40601, Monday through  
10 Friday, 8 a.m. to 4:30 p.m. or this material may be viewed on the Kentucky Department of Education's  
11 Web site at <https://www.education.ky.gov/districts/fac/Pages/Construction.aspx>.

12 [~~Disposition of Real Property. (1) School property proposed for disposal shall be surplus to the~~  
13 ~~educational program need of the district as determined by the effective district facility plan. Surplus~~  
14 ~~property includes real property designated as a "Transitional Center" or not listed on the effective district~~  
15 ~~facility plan. Request for approval to dispose of real property shall be submitted in writing to the~~  
16 ~~Kentucky Department of Education. The request shall identify the property by its address and last~~  
17 ~~reported name and include a plan for resolving mortgage liens or other encumbrances. Upon receipt of~~  
18 ~~written contingent approval from the department, the district may start the disposal process using one (1)~~  
19 ~~of the following methods that secures the fair market value for the property and ensures that the district~~  
20 ~~retains no residual interest as owner or lender:~~

21 ~~(a) By public auction;~~

22 ~~(b) By accepting sealed bids; or~~

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

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

- 6 ~~(a) The appraisal;~~
- 7 ~~(b) An affidavit attesting to the publication of legal notice;~~
- 8 ~~(c) Results of the public auction or sealed bids;~~
- 9 ~~(d) The proposed sale agreement reviewed and approved by the board's attorney; and~~
- 10 ~~(e) The local board order approving the sale contingent on approval by the department.~~

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

- 16 ~~(a) The appraisal;~~
- 17 ~~(b) The proposed sale agreement reviewed and approved by the board's attorney; and~~
- 18 ~~(c) The local board order approving the sale contingent on approval by the department.~~

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

22 ~~Section 2. Disposition by Easement. (1) Prior to the execution of a proposed easement upon school~~  
23 ~~property, the agreement shall be reviewed by the local district's board attorney. The reviewed agreement~~  
24 ~~and an appraisal from a certified general real property appraiser commissioned by the school district and~~  
25 ~~obtained in connection with the easement shall be submitted to the local board of education for its~~

1 ~~consideration. Upon approval, the local school district's written board order shall be forwarded to the~~  
2 ~~department for review and approval. The local board of education shall include assurance that disposal~~  
3 ~~will not affect the integrity or usefulness of property crucial to the educational needs of the district.~~  
4 ~~(2) Proposed easement agreements, including utility and access easement agreements, shall include:~~  
5 ~~(a) The parties to the agreement;~~  
6 ~~(b) A legal description of the easement;~~  
7 ~~(c) Documentation regarding receipt of fair market value as determined by an appraisal from a certified~~  
8 ~~general real property appraiser commissioned by the school district and obtained in connection with the~~  
9 ~~disposal of the property or equivalent valuable consideration;~~  
10 ~~(d) A reversionary clause that reverts the property back to the exclusive unrestricted control of the local~~  
11 ~~board of education when the need for the easement no longer exists; and~~  
12 ~~(e) A plat by a licensed surveyor indicating the easement boundaries, acreage, and its relationship to the~~  
13 ~~larger property.~~  
14 ~~(3) Upon receipt of written final approval from the department, the local school district may execute the~~  
15 ~~agreement. The district shall provide the department with a copy of the executed agreement within thirty~~  
16 ~~(30) days from the date of execution.~~  
17 ~~(4) Temporary and construction easements shall not require department approval but shall include~~  
18 ~~provisions related to the amount of time in effect, and a requirement that any disturbed areas shall be~~  
19 ~~returned to original condition.~~  
20 ~~Section 3. Disposition by Lease (District as Lessor/Landlord). (1) Prior to the execution of a proposed~~  
21 ~~lease agreement for school property, the proposed lease agreement shall be reviewed by the local~~  
22 ~~district's board attorney and the board's insurance carrier. The proposed lease agreement shall be~~  
23 ~~submitted to the local board of education for its consideration and a written board order forwarded to the~~  
24 ~~department for review and approval. The local board of education shall provide assurance that the~~

1 disposal will not affect the integrity or the usefulness of the property subject to the educational need of  
2 the district.

3 ~~(2) The proposed lease agreement shall include the following provisions:~~

4 ~~(a) The parties to the agreement;~~

5 ~~(b) The proposed use and occupation;~~

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

8 ~~(d) Use of site and parking;~~

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

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

12 ~~(g) Insurance requirements of the parties;~~

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

15 ~~(i) Notice provisions;~~

16 ~~(j) Provisions for security;~~

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

19 ~~(l) Any other applicable terms or conditions.~~

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

23 ~~Section 4. Conflict of Interest. (1) If a local school board uses a third party to dispose of or lease~~

24 ~~property, the third party shall not have any financial interest in the transaction or adjacent property~~

25 ~~beyond a standard commission approved by the school board. If the third party has any financial interest~~

1 ~~in the transaction or adjacent property beyond a standard commission, the third party shall publicly~~  
2 ~~disclose his or her conflict of interest to the local school board and the conflict shall be spread on the~~  
3 ~~local school board's meeting minutes. The local school board shall provide minutes of any such meeting~~  
4 ~~to the department when requesting approval under any section of this administrative regulation.]~~