

EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(Amended at ARRS Committee)

702 KAR 4:090. Property disposal.

RELATES TO: KRS 45A.425, 156.070, 156.160, 160.160(8), 162.010, 424.170, 2 C.F.R. 200.310, 200.311

STATUTORY AUTHORITY: KRS 156.070, 156.160

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

Section 1. Definitions. ~~[Disposition of Real Property.]~~

(1) "District Facilities Plan" or "DFP" means a school district's capital construction plan prepared every four years pursuant to 702 KAR 4:180.

(2) "Facilities Planning and Construction System" or "FACPAC" means the Kentucky Department of Education's web-based application for construction, planning, and real property transactions.

(3) "BG-1" means the form used to initiate and revise a capital construction project or property transaction in FACPAC.

(4) "BG-5" means the form used to closeout a capital construction project or property transaction in FACPAC.

(5) "Fair Market Value" or "FMV" means the value of a site based on an appraisal performed by a real property appraiser licensed to practice in the Commonwealth of Kentucky under KRS Chapter 324A.

(6) "Survey" means a formal assessment of a real property that is sealed and signed by a professional land surveyor providing an official record of its size, location, and features, including, applicable boundaries, easements, title, and any requirements of the purchaser for disposal. ~~[School property proposed for disposal shall be surplus to the educational program need of the district as determined by the effective district facility plan. Surplus property includes real property designated as a "Transitional Center" or not listed on the effective district facility plan. Request for approval to dispose of real property shall be submitted in writing to the Kentucky Department of Education. The request shall identify the property by its address and last reported name and include a plan for resolving mortgage liens or other encumbrances. Upon receipt of written contingent approval from the department, the district may start the disposal process using one (1) of the following methods that secures the fair market value for the property and ensures that the district retains no residual interest as owner or lender:]~~

~~[(a)] [By public auction;]~~

~~[(b)] [By accepting sealed bids; or]~~

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

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

~~conclusion of the auction or receipt of bids, the local board of education shall submit the following to the department for review and final approval:}]~~

~~[(a)] [The appraisal;]~~

~~[(b)] [An affidavit attesting to the publication of legal notice;]~~

~~[(c)] [Results of the public auction or sealed bids;]~~

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

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

~~[(3)] [For property disposal by setting a minimum acceptable price, the minimum acceptable price shall be the fair market value, which shall be 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. Following receipt of an acceptable offer to purchase, the local board of education shall submit the following documentation to the department for review and final approval:]~~

~~[(a)] [The appraisal;]~~

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

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

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

Section 2. Disposition Process~~[by Easement]~~.

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

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

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

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

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

~~(6) The department shall review and provide the applicable contingent approval, final approval, closeout approval, or disapproval, to the local school district within thirty (30) business days of receipt of a completed documentation. [Prior to the execution of a proposed easement upon school property, the agreement shall be reviewed by the local district's board attorney. The reviewed agreement and an appraisal from a certified general real property appraiser commissioned by the school district and obtained in connection with the easement shall be submitted to the local board of education for its consideration. Upon approval, the local school district's written board order shall be forwarded to the department for review and approval. The local board of education shall include assurance that disposal will not affect the integrity or usefulness of property crucial to the educational needs of the district.]~~

~~{(2)} [Proposed easement agreements, including 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 shall 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 Sale~~[Lease (District as Lessor/Landlord)]~~.

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

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

1. Address or general legal property description;

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

3. Approximate acreage or area;

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

(c) A plan for resolving mortgage liens or other encumbrances as applicable.

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

(a) By public auction;

(b) By accepting sealed bids; or

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

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

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

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

(b) The appraisal;

(c) A copy of the published legal notice and an affidavit attesting to publication;

(d) The results of the public auction or sealed bids; and ~~the~~

(e) The proposed sale agreement.

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

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

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

(b) The appraisal; and

(c) The proposed sale agreement.

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

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

(a) A copy of the executed sale agreement; and ~~the~~

(b) A signed BG-5. ~~[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 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 annual renewal and 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.]~~

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

Section 4. Disposition by Sale to a Governmental or Quasi-Governmental Agency ~~[Conflict of Interest].~~

(1) Districts conducting a disposal with another governmental or quasi-governmental agency under KRS 160.160(8) shall submit ~~the following~~ to the department within thirty (30) business days after the completion of the transaction for record keeping and data collection: ~~[If a local school board uses a third party to dispose of or lease property, the third party shall not have any financial interest in the transaction or adjacent property beyond a standard commission approved by the school board. If the third party has any financial interest in the transaction or adjacent property beyond a standard commission, the third party shall publicly disclose his or her conflict of interest to the local school~~

~~board and the conflict shall be spread on the local school board's meeting minutes. The local school board shall provide minutes of any such meeting to the department when requesting approval under any section of this administrative regulation.~~

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

- ~~1. Address or general legal description of the property;~~
- ~~2. Last official reported name through the District and School Collection Repository (DASCR), if applicable; and~~
- ~~3. Approximate acreage or area;~~

~~(b) A declaration assuring that the disposal shall ~~will~~ not affect the integrity or usefulness of property crucial to the educational needs of the district;~~

~~(c) The appraisal; and~~

~~(d) An executed copy of the sale agreement.~~

~~(2) Upon receipt of a processed initial BG-1 from the department, the local board of education shall submit a ~~is~~ signed BG-5.~~

Section 5. Disposition by Easement.

~~(1) Easements shall not conflict with the requirements contained in 702 KAR 4:050 and 702 KAR 4:170.~~

~~(2) The local board shall approve and submit ~~the~~ the following to the department for review and approval consideration:~~

~~(a) An initial, signed BG-1 identifying the :~~

- ~~1. Address or general legal property description[;] and~~
- ~~2. Approximate acreage or area.~~

~~(b) A declaration assuring that the disposal shall ~~will~~ not affect the integrity or usefulness of property crucial to the educational needs of the district ; ~~is~~~~

~~(c) A survey by a professional land surveyor indicating the easement boundaries, size, and its relationship to the larger property;~~

~~(d) The appraisal; and ~~is~~~~

~~(e) A copy of the proposed easement agreement with language that includes:~~

- ~~1. The parties to the agreement;~~
- ~~2. The official address of the district property;~~
- ~~3. The legal description and easement type;~~
- ~~4. 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~~
- ~~5. Receipt of fair market value or equivalent valuable consideration for permanent access and permanent utility easements.~~

~~(3) Easements for the exclusive use of the district shall ~~do~~ not require receipt of fair market value unless the easement is expanded to benefit additional parties beyond the local school district.~~

~~(4) Upon receipt of an approved initial BG-1 from the department, the local board may execute the easement agreement.~~

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

~~(a) A copy of the executed easement agreement; and~~

~~(b) A signed BG-5.~~

Section 6. Disposition by Lease (District as Lessor/Landlord).

~~(1) The local board shall approve and submit ~~the following~~ to the department for review and approval consideration:~~

~~(a) An initial, signed BG-1 identifying the :~~

- ~~1. Address or general legal property description ; and~~
- ~~2. Approximate floor area or acreage.~~

(b) A declaration assuring that the disposal ~~shall~~ ~~will~~ not affect the integrity or usefulness of property crucial to the educational needs of the district;

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

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

1. The parties to the agreement;

2. The proposed use;

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

4. Conditions of site access and parking;

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

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

7. Insurance requirements of the parties;

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

9. Notice provisions;

10. Provisions for security

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

12. Other applicable terms or conditions.

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

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

(a) A copy of the executed lease agreement; and ~~the~~

(b) A signed BG-5.

Section 7. Waiver Process.

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

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

Section 8. Disapproval and Appeals Process. After evaluation of the submitted documentation, ~~if~~ ~~should~~ the Kentucky Department of Education ~~disapproves~~ ~~disapprove~~ the proposed disposal, the local board of education may:

(1) Discontinue the disposal process;

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

(3) Appeal to the Kentucky Board of Education.

Section 9. Conflict of Interest.

(1) If a local school board uses a third party to dispose of or lease property, the third party shall not have any financial interest in the transaction or adjacent property beyond a standard commission approved by the school board. If the third party has any financial interest in the transaction or adjacent property beyond a standard commission, the third party shall publicly disclose his or her conflict of interest to the local school board and shall be documented in the local school board's meeting minutes.

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

Section 10. Incorporation by References.

(1) The following material is incorporated by reference:

(a) "BG-1 Project Application Form", July 2024 ; and ~~the~~

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

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

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