

EDUCATION AND LABOR CABINET
Board of Education
Department of Education
(Amendment)

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 provides that the Kentucky Board of Education 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);

3. Approximate acreage or area;

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

(c) 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 of the following methods to secure the fair market value with assurance that the district 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,

(e) The proposed sale agreement.

(5) The local board shall notify the department 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,

(b) 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;~~
- ~~3. Approximate acreage or area;~~

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

~~(c) The appraisal; and~~

~~(d) 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: 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 following to the department for review and approval consideration:~~

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

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

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

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

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

~~(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 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) 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) Initial, signed BG-1 identifying:~~

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

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

(c) 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,

(b) 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, should the Kentucky Department of Education 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.

(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>.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

ROBBIE FLETCHER, Commissioner

SHARON PORTER ROBINSON, Chair

APPROVED BY AGENCY: August 12, 2024

FILED WITH LRC: August 13, 2024 at 3:00 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held October 23, 2024 at 10:00 a.m., in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five 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 October 31, 2024. 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: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This regulation establishes the process by which a school district disposes of surplus property.

(b) The necessity of this administrative regulation:

KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations establishing standards for the disposal of surplus local school district property.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation establishes the standards for districts to dispose of surplus property.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

The regulation establishes standards for the disposal of surplus property as required by KRS 156.160.

(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:

the amendment attempts to provide a clearer and more efficient process for a district to dispose of surplus property by clarifying procedures and delegating authority from the Kentucky Board of Education to the Department of Education to waive certain filing requirements.

(b) The necessity of the amendment to this administrative regulation:

Since the original promulgation of this regulation as required by KRS 156.160, it has become clear through the experience of school districts that it is necessary to improve the disposal process to increase agency timeliness and efficiency.

(c) How the amendment conforms to the content of the authorizing statutes:

This administrative regulation establishes the standards for local school districts to dispose of surplus property as required by KRS 156.160.

(d) How the amendment will assist in the effective administration of the statutes:

The regulation sets forth the process by which a local school district may dispose of surplus property.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

Local school districts and the Kentucky Department of Education.

(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:

Changes to the regulation should establish a clear and efficient process by which a district may dispose of surplus property. In addition to cleaning up and reorganizing the existing regulation, the amendment provides for the delegation of the authority to waive certain submittal requirements to the Kentucky Department of Education.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There is no additional cost to school districts.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The property disposal process should be more clearer and take less time for local school districts.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

Cost to implement on the administrative body should be minimal.

(b) On a continuing basis:

The ongoing cost to the Kentucky Department of Education will be minimal. In fact, there may be cost savings in reduced staff time processing district disposals.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

General Funds

(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:

There are no fees associated with this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

There are no fees associated with this regulation.

(9) TIERING: Is tiering applied?

Tiering is not applied. The regulation applies uniformly.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations establishing standards for local school districts to dispose of surplus property.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

The Kentucky Board of Education, the Department of Education and local school districts.

(a) Estimate the following for the first year:

Expenditures: Any expenditures are expected to be minimal to nil.

Revenues: The proposed amendment is not expected to generate revenue for the state agency or local school districts.

Cost Savings: Any cost savings will result from an expedited disposal process.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

Expenditures are expected to continue to be minimal to nil.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

Local school districts.

(a) Estimate the following for the first year:

Expenditures: There are no expected costs to school districts.

Revenues: The regulation is not expected to generate revenue for local school districts.

Cost Savings: Costs savings may be realized as a result of more a more efficient disposal process.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

They are all expected to remain consistent and as previously described.

(4) Identify additional regulated entities not listed in questions (2) or (3):

N/A

(a) Estimate the following for the first year:

Expenditures: N/A.

Revenues: The proposed regulation is not expected to generate revenue.

Cost Savings:

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

All expenditures, revenues or costs are expected to remain consistent as described herein.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

The proposed regulation establishes the process by which local school districts may dispose of surplus property. The regulation attempts to lessen the administrative

burden while preserving record keeping. There should be no additional costs associated with the regulation. Districts may see cost savings resulting from less staff time and quicker disposal times.

(b) Methodology and resources used to determine the fiscal impact:

The estimates contained herein are based on prior program operations.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

The administrative regulation is not expected to have an overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion:

Given the nature of the proposed amendments with revisions not impacting costs, expenditures are not expected to increase over current program expenses.