

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 to promulgate administrative regulations establishing standards for the disposal of real 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 the Kentucky Board of Education to have the management and control of the common schools.

Section 1. Definitions.

- (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.

Section 2. Disposition Process.

- (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.

Section 3. Disposition by Sale.

(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:

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 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 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 if 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 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 to the department:

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

(b) A signed BG-5.

Section 4. Disposition by Sale to a Governmental or Quasi-Governmental Agency.

(1) Districts conducting a disposal with another governmental or quasi-governmental agency under KRS 160.160(8) shall submit to the department within thirty (30) business

days after the completion of the transaction for record keeping and data collection:

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

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 to the department:

- (a) A copy of the executed lease agreement; and
- (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 the Kentucky Department of Education disapproves 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
- (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>.

(SBE 22.070; 1 Ky.R. 1049; eff. 6-11-1975; 8 Ky.R. 329; eff. 12-2-1981; 17 Ky.R. 2029; eff. 2-7-1991; Crt eff. 11-16-2018; 47 Ky.R. 545, 1409, 1557; eff. 5-4-2021; 51 Ky.R. 554, 1107; eff. 12-10-2024.)

FILED WITH LRC: November 13, 2024

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.