

**COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES AND
TRANSPORTATION RULES GOVERNING RIGHT OF ACCESS TO UNUSED OR
UNDERUTILIZED PUBLIC SCHOOL FACILITIES AND THE SALE OR LEASE OF
PUBLIC SCHOOL FACILITIES**

Effective _____

1.00 REGULATORY AUTHORITY

1.01 The Commission for Arkansas Public School Academic Facilities and Transportation (CAPSAFT) enacts these Rules pursuant to its authority set forth in Arkansas Code Ann. §§ 6-21-114, 6-21-804, 25-15-201 et seq., and Act 542 of 2017.

2.00 DEFINITIONS

2.01 “Academic Facilities Master Plan” has the same meaning as in the CAPSAFT Rules Governing the Facilities Master Plan.

2.02 “Academic facility” has the same meaning as in the CAPSAFT Rules Governing the Facilities Master Plan.

2.03 “Charter school authorizer” has the same meaning as in Ark. Code Ann. § 6-23-103.

2.04 “Division” means the Arkansas Division of Public School Academic Facilities and Transportation.

2.05 “Fair market value” means the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

2.06 “Public charter school” means:

2.06.1 An open-enrollment public charter school as defined in Ark. Code Ann. § 6-23-103;

2.06.2 An eligible entity as defined in Ark. Code Ann. § 6-23-103 that applies to authorize, amend, or renew a charter for an open-enrollment public charter school; and

2.06.3 A legal entity that is affiliated with or acting on behalf of an open-enrollment public charter school or eligible entity.

2.07 “Public school facility” has the same meaning as in the CAPSAFT Rules Governing the Facilities Master Plan.

2.08 “School district” has the same meaning as in the CAPSAFT Rules Governing the Facilities Master Plan.

2.09 “Unused or underutilized public school facility” means a public school facility or other real property owned by a public school that:

2.09.1 As a whole or in significant portion is not being used for a public educational, academic, extracurricular, or administrative purpose; and

2.09.2 The nonuse or underutilization threatens the integrity or purpose of the public school facility or other real property as a public education facility; and

2.09.3 As of August 1, 2017, is not subject to a lease to a third party for fair market value or an executed offer to purchase by a third party for fair market value.

2.09.4 A public school facility shall be considered underutilized if it in whole or significant part is being used only irregularly or intermittently by the school district for educational, academic, extracurricular, or administrative purposes, and the district reasonably could satisfy those needs by using other available school district spaces.

2.09.5 “Administrative” activities do not include use of a public school facility or other real property as a whole or in significant portion for storage for a period of longer than one full school year.

3.00 REPORTING AND IDENTIFICATION OF UNUSED OR UNDERUTILIZED PUBLIC SCHOOL FACILITIES

3.01 By February 1 of each year, each school district shall submit to the Division a report that identifies:

3.01.1 All unused or underutilized public school facilities in the school district; and

3.01.2 The unused or underutilized public school facilities, if any, that are designated in the district’s facilities master plan to be re-used, renovated

or demolished as part of a specific committed project or planned new construction project.

3.01.3 The annual report shall be submitted in a format prescribed by the Division through the Master Plan tool.

3.02 By March 1 of each year, the Division shall:

3.02.1 Identify any public school facility or other real property as unused or underutilized if a facility or other real property falls within the definition in Section 2.08 of these rules and the school district fails to identify it in the district's annual report; and

3.02.2 Publish a list on its website identifying all unused or underutilized public school facilities, and notify any affected school district in writing of the identification.

3.03 A school district may appeal an identification made by the Division under section 3.02 of these rules to the Commission for Academic Facilities and Transportation pursuant to the procedures set forth in the CAPSAFT Rules Governing Appeals from Determinations of the Arkansas Division of Public School Academic Facilities and Transportation.

3.03.1 If a school district files an appeal, the Division will indicate on its website that the appeal is pending

3.03.2 The filing of an appeal by a school district under this section will toll the sixty (60) day period set forth in Section 4.03 of these rules until the appeal is resolved.

4.00 RIGHT OF ACCESS

4.01 Except as otherwise provided in this section, a school district shall make unused or underutilized public school facilities available for lease or purchase for no more than fair market value to any public charter school located within the geographical boundaries of the school district.

4.02 Once the Division identifies a public school facility or other real property as an unused or underutilized public school facility, a public charter school may give notice of its intent to purchase or lease the public school facility or other real property from the school district no earlier than the later of:

- 4.02.1 The date the public school facility or other real property is first identified by the Division as an unused or underutilized public school facility; or
- 4.02.2 If the public school facility or other real property has already been designated in the school district's facilities master plan to be reused, renovated, or demolished as part of a specific committed project or planned new construction project, two years from the date the public school facility or other real property is first identified by the Division as an unused or underutilized public school facility.
- 4.03 If the public charter school and school district are unable to agree on terms and execute the sale or lease within sixty (60) days of the notice of intent, unless the school district has appealed the Division's identification under section 3.03 of these rules (which tolls the 60 days period until the appeal is resolved), the public charter school may petition the Commission for an order directing the school district to lease the public school facility to the public charter school for fair market value in accordance with Section 5.00 of these rules.
- 4.04 If a public school facility or other real property has been identified by the Division of Public School Academic Facilities and Transportation as an unused or underutilized public school facility, or if a school district decides to sell, lease, or otherwise transfer ownership of an academic facility, the school district may sell, lease, or otherwise transfer ownership to a third party other than an open-enrollment public charter school only in a manner consistent with Ark. Code Ann. § 6-21-816.
- 4.05 Nothing in these rules shall be construed to delay or limit the authority of a school district to sell, lease, or otherwise transfer a public school facility or other real property to a public charter school on terms agreed to by the school district and public charter school in a manner consistent with Ark. Code Ann. § 6-21-816.

5.00 PETITIONS TO THE COMMISSION

5.01 Any petition by a public charter school under section 4.03 shall:

5.01.1 Be submitted in writing to the Office of General Counsel of the Arkansas Department of Education by certified mail, with a copy by certified mail to the school district that owns the public school facilities or other real property at issue;

- 5.01.2 Contain a brief written statement of no more than fifteen (15) pages, explaining in clear and express terms the facts of the case and the terms sought by the public charter school;
- 5.01.3 Identify the specific public school facility or other real property that the public charter school seeks to lease;
- 5.01.4 Include a copy of the notice of intent furnished by the public charter school to the school district;
- 5.01.5 Identify the amount that the public charter school contends is a fair market value lease payment for the public school facility or other real property, and include a copy of any supporting documentation;
- 5.01.6 Identify a desired lease term of between (5) and thirty (30) years;
- 5.01.7 Include any other evidence or information deemed relevant; and
- 5.01.8 Indicate whether the public charter school seeks a formal hearing before the Commission.
- 5.02 Within thirty (30) days of receiving a petition, the school district may submit a response to the petition to the Office of General Counsel of the Arkansas Department of Education via certified mail, with a copy by certified mail to the public charter school, to include:
 - 5.02.1 A brief written statement of no more than fifteen (15) pages, explaining in clear and express terms the facts of the case and the terms sought by the school district, or the reasons why the school district contends the petition should be denied;
 - 5.02.2 A statement of the amount the school district contends is a fair market value lease payment for the public school facility or other real property, along with any supporting documentation;
 - 5.02.3 Any other evidence or information deemed relevant; and
 - 5.02.4 A statement of whether the school district seeks a formal hearing before the Commission.
- 5.03 Upon receipt of a petition and school district response, the Commission will consider the petition at the call of its chair. Except for good cause shown, the chair will schedule the petition to be heard within thirty (30) calendar days of

receipt of the school district's written response. Notice of the date, time, and location of the meeting shall be sent to the parties. If requested by either party or if the Commission determines that a hearing is necessary, a hearing concerning the petition will be held during the meeting.

5.04 If a hearing is conducted, the petitioner and school district each shall have up to ten (10) minutes to present an opening statement, beginning with the petitioner. Each party then shall have up to fifteen (15) minutes to present their cases-in-chief and up to five (5) minutes to present a closing statement in that same order. The Commission chair may allow either party additional time.

5.04.1 Members of the Commission may ask questions of either party at any time throughout the proceedings.

5.04.2 Documents offered during the hearing shall be marked in sequential, numeric order, and in a manner identifying the party offering the document.

5.05 After hearing all testimony and evidence presented, the Commission shall deliberate and may announce its decision at the close of the hearing or may take the matter under advisement.

5.06 The Commission shall render a written decision to approve or deny the petition within thirty (30) calendar days of the hearing.

5.07 The Commission may deny the petition if the school district makes an affirmative showing by a preponderance of the evidence that:

5.07.1 The public school facility, or the property to which the public school facility is attached, will be needed by the school district to accommodate future growth of the school district; or

5.07.2 Use of the public school facility or other real property by a public charter school would have a materially negative impact on the overall education of an educational campus located within five hundred feet (500') of the public school facility or other real property sought to be leased.

5.08 If the Commission grants the petition, it shall issue an order:

5.08.1 Directing the school district to lease the public school facility or other real property to the public charter school for fair market value, determining fair market value if it is not agreed to by the parties; and

5.08.2 Setting the term of the lease for a period of between five (5) and thirty (30) years as determined by the public charter school.

6.00 DUTIES OF PUBLIC CHARTER SCHOOL AND SCHOOL DISTRICT UNDER LEASE

6.01 Upon execution of a lease, whether voluntarily or by order of the Commission, the public charter school shall be responsible for all direct expenses related to the public school facility or real estate, including without limitation:

6.01.1 Utilities;

6.01.2 Insurance;

6.01.3 Maintenance;

6.01.4 Repairs; and

6.01.5 Renovation.

6.02 The school district shall remain responsible for any bonded debt incurred or mortgage liens that attached to the public school facility or other real property prior to a sale or lease.

6.03 The public charter school shall take no actions that have a materially negative impact on:

6.03.1 Any bond rights attached to the public school facility or other real property; or

6.03.2 Any tax-exempt financing related to the public school facility or other real property.

6.04 The public charter school shall indemnify the school district for any mortgages, liens, or debt that attach to the public school facility or other real property by the public charter school's action or inaction.

6.05 The terms of a lease executed under this section shall provide that the lease shall be void, cancelled, and of no effect if:

6.05.1 The public charter school fails to use the public school facility or other real property for direct student instruction or administrative purposes within two (2) years of the effective date of the lease;

6.05.2 The public charter school closes, has its charter revoked, or has its charter application denied by the authorizer; or

6.05.3 The public charter school initially uses the public school facility or other real property, but then leaves the public school facility or other real property unused for more than one hundred eighty (180) days.

6.06 A standard lease form, which is attached to these rules as Appendix “A,” also will be placed on the Division’s website in a fillable format.

7.00 ENFORCEMENT

7.01 The Division may classify a school district that fails to comply with the above provisions as being in academic facilities distress under Ark. Code Ann. § 6-21-811.

7.02 The charter school authorizer may take action under Ark. Code Ann. § 6-23-105 on the charter of a public charter school that fails to comply with the above provisions.

Author's note: Please assume that all language in this mark-up version of the Standard Lease Agreement is underlined. I did not underline because it likely would result in a confusing document.

STANDARD LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") is entered into this ____ day of _____, 20____, by and between the _____ School District ("Lessor") and the _____ ("Lessee"). This Lease is entered into in accordance with Ark. Code Ann. § 6-21-815 and is governed by that section.

The parties hereto hereby agree as follows:

1. Property. Lessor agrees to lease to Lessee the following described property in _____ County, Arkansas, to wit:

[Legal Description]

2. Term. The term of this Agreement shall be a period of _____ years beginning on the date hereof, at a monthly rental fee of _____ Dollars (\$_____.00) per month to be paid in monthly installments beginning on _____, and ending on _____.

3. Improvements/Renovation. All improvements to or renovation of the leased property by Lessee must be approved by the Lessor in writing before the improvements are made.

4. Condition of Premises. Lessee accepts said premises in its current condition as of the beginning of the Lease and agrees to take good care of the premises and keep same in a good clean condition; to refrain from loud or unnecessary noise or other disturbances such as may disturb others; to make no alteration or additions to the same without written agreement between the parties; to commit no waste thereon; to obey all laws and ordinances affecting said premises; and not to use the premises in violation of any laws; to replace all glass broken or cracked; to repay the Lessor the cost of all damage to the premises caused by Lessee, its employees or guests. Lessee will permit no nuisance to exist on the premises.

5. Delivery of Possession. It is understood that if the Lessee shall be unable to enter to and occupy the premises leased at the time above provided by reason of said premises not being ready for occupancy, or by reason of the holding over of any previous occupant of said premises, or as a result of any other cause or reason beyond the direct control of the Lessor, the Lessor shall not be liable in damages to the Lessee therefore, but during the period the Lessee shall be unable to occupy said premises as hereinafter before provided, the rental therefore shall be abated.

6. Insurance. Lessee will be responsible for fully insuring the premises upon the execution of this Lease. This includes but is not limited to property, fire, extended coverage, and liability insurance, as well as any other insurance deemed necessary by the Lessee. The Lessee shall be solely responsible for all costs associated with any damage to the property or any injury

to its employees or guests. Upon request of Lessor, Lessee shall provide proof of such insurance, including the types and amounts.

7. Utilities. Lessee will pay direct to the utility companies all statements and deposits for utility services rendered or charged to the property during the term of the Lease Agreement, and will pay any tax assessment by an improvement district made against the property during the term of the Lease Agreement.

8. Destruction of Premises. In case of partial or total destruction or injury to said premises by fire, windstorm, lightning, the elements, or any other casualty of a type insurable by usual fire and extended coverage insurance, the Lease shall not terminate, and Lessee shall bear responsibility for payment of any insurance deductible, as well as for any costs above and beyond that covered by insurance up to and including the fair market value of the premises in the event that restoration or rebuilding is necessary.

9. Assignment or Subletting. Lessee further covenants that Lessee will not allow anyone to share said premises, keep roomers or boarders, nor assign, sublet or transfer said premises or any part thereof without the Lessor's consent endorsed in writing.

10. Condemnation. It is agreed by and between the Lessor and the Lessee that if the whole or any part of said premises hereby leased shall be taken by any competent authority for any public or semi-public use or purpose, then for that event, the term of this Lease shall cease and terminate from the date when the possessions of the part so taken shall be required for such use or purpose. All damages awarded for such taking shall belong to and be the property of the Lessor.

11. Liability of Lessor. Lessee agrees that Lessor shall not be liable for injury or damage to person or property of Lessee, its guests, employees, or invitees, occurring in, on or about the leased premises or occurring anywhere in or on the building in which the leased premises are located or in or upon the grounds in which the building is located or in any building or structure on said grounds, howsoever caused or arising.

12. Manner of Payment. All payments of rents shall be made to the Lessor via automatic check draft or at such other places Lessor may designate in writing.

13. Surrender. Lessee further covenants and agrees that upon the expiration of said term, or upon the termination of the Lease for any cause, it will at once peacefully surrender and deliver up the whole of the above described premises together with all improvements thereon to the Lessor, its agents and assigns.

14. Holdover Tenant. Lessee covenants that its occupancy of the said premises beyond the term of this Lease shall not be deemed as a renewal of this Lease for the whole term or any part thereof, but that the acceptance by the Lessor of rent accruing after the expiration of this Lease shall be considered as a renewal of this Lease for one month only and for successive periods of one month only.

15. Prohibited Use. Lessee will not do or permit anything to be done, in, upon, or about the leased premises that increases the fire hazard beyond that which exists by reason of the ordinary use or occupancy of the premises for the purpose described hereinabove. Lessee will not do or permit to be done anything in, about, or upon the leased premises that interferes with the rights or tends to annoy other tenants or Lessor, or that conflicts with state or local laws, or that violates regulations of the local fire department or state board of health, or that otherwise creates a nuisance that is dangerous to persons or property.

16. Maintenance. Lessee agrees to maintain the property in good repair and not to permit any nuisance to be maintained thereon. Lessee will maintain the premises, including all buildings, equipment, fixtures and appurtenances, in as adequate and usable condition as they are in at the commencement of the term of this Lease except for fair wear and tear, and will provide such protection of the property from damage by vandalism and trespass, and promptly repair and restore any property damaged thereby. The Lessee will perform the necessary repairs and remodeling, including but not limited to repairs to the roof, to make and maintain the premises suitable for an educational facility. Lessee shall assume the cost of maintaining the heating and cooling system. All other maintenance costs also shall be the responsibility of the Lessee. Lessee shall not make alterations, additions, changes, or improvements to the leased premises without the prior written consent of Lessor.

17. Fee Simple. Lessor warrants that it is the owner in fee simple absolute of the premises and may lease said premises as provided within this Agreement. Upon rental payments by Lessee as provided for within this Agreement, as well as the observance and performance of all of the other terms and conditions stated within this Agreement by Lessee, Lessee shall be entitled to peaceably and quietly hold and enjoy the leased premises without hindrance or interruption by the Lessor or any other person as to any claims subject to the terms and conditions of this Lease.

18. Default. In the event Lessee should fail to pay any one of the aforesaid installments of rent or any part thereof pursuant to the provisions of this Agreement set forth in paragraph 2 hereof, or in the event Lessee should fail to perform or observe any of the covenants, agreements, terms or conditions herein made, assumed or agreed to by Lessee, or in the event Lessee abandons or vacates the leased premises, or in the event of the insolvency of Lessee, then in any of the said events, at the option of Lessor (to be exercised within ninety (90) days after the occurrence of any one of the said events), Lessor may (a) immediately forfeit this Lease and terminate the same and repossess the premises, removing therefrom all goods and chattels not belonging thereto and expelling Lessee and any other person in possession thereof and hold Lessee liable for all accrued rent and for any and all damages caused by or thus arising from Lessee's breach; or (b) immediately repossess the premises and collect same for the account of Lessee, hold Lessee liable monthly for any deficiencies resulting for the residue of the term; or (c) may declare due and payable all unpaid rentals for the entire residue of the term or (d) produce any other right or remedy available in law or equity. All such rights and remedies are in addition to and not to the exclusion or exhaustion of any other rights, remedies or causes of action which Lessor may have at law or in equity (including the right to collect past due rent and distraint), and the exercise

or pursuit by Lessor or any of the rights, remedies or cause of action accruing hereunder shall not be in exhaustion or exclusion of any other rights, remedies or cause of action Lessor might otherwise have. In the event Lessee abandons the premises, nothing herein shall require Lessor to release same for Lessee's account and there shall be no duty so to do. The failure of Lessor to exercise the options herein available to Lessor in any one or more instances shall not be a waiver of the right to exercise such options for any future breach of the same or any other covenant, agreement or condition. Lessee further covenants to pay a reasonable attorney's fee should Lessor find it necessary to employ an attorney by reason of default by Lessee.

20. Cancellation of Lease. This Lease shall be canceled and be of no effect if the Lessee fails to use the public school facility or other real property for direct student instruction or administrative purposes within two (2) years of the effective date of the Lease, if the Lessee has its charter revoked or closes its school, has its charter revoked, or has its charter application denied by the authorizer, or if the Lessee initially uses the public school facility or other real property, but then leaves the public school facility or other real property unused for more than one hundred eighty (180) days.

19. No Waiver. The failure the parties to insist upon the performance of any of the covenants, agreements or conditions herein in any one or more instances shall not be a waiver of the right thereafter to insist upon full and complete performance of the same or any other covenant, agreement or condition. Receipt by the Lessor of rent with knowledge of the breach of any of the conditions, covenants or agreements hereof shall not be deemed and shall not be a waiver of such breach.

20. Care of Premises. It shall be the duty of the Lessee to properly care for the lawn, shrubbery, and trees on the premises.

21. Taxes. Lessee will pay any taxes assessed against the real property and the improvements thereon.

22. Bonded debt/mortgage liens. The Lessor shall remain responsible for any bonded debt incurred or mortgage liens that attached to the public school facility or other real property prior to the execution of the Lease. Lessee shall take no actions that have a materially negative impact on any bond rights attached to the public school facility or other real property, or any tax-exempt financing related to the public school facility or other real property by the public charter school's action or inaction.

23. Notices. Any notice or document required or permitted to be delivered by this Lease shall be deemed to be delivered (whether or not actually received) when deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the parties at the respective addresses set out below, or by delivering the same in person to Lessor or Lessee as set out below:

IF TO LESSOR:

_____ School District

ATTN: _____

[Address]

[City, State Zip Code]

(501) _____

IF TO LESSEE:

ATTN: _____

[Address]

[City, State Zip Code]

(501) _____

24. Governing Law. This agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Arkansas.

25. Effect of Partial Invalidity. The invalidity of any part of this agreement will not and shall not be deemed to affect the validity of any other part. In the event that any provision of this agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

26. Entire Agreement. This agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this agreement shall not be binding on either party except to the extent incorporated in this agreement.

27. Modification of Agreement. Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement on this _____ day of _____, 20__.

LESSOR:

_____ SCHOOL DISTRICT

By: _____

[Name]

Title: Superintendent

LESSEE:

By: _____
[Name]

Title: _____

DRAFT

