

THE COMMISSION FOR ARKANSAS PUBLIC SCHOOL
ACADEMIC FACILITIES AND TRANSPORTATION
RULES GOVERNING COMMISSION APPEALS

March 17, 2008

1.00 REGULATORY AUTHORITY

- 1.01 These Rules shall be known as the Arkansas Commission for Public School Academic Facilities and Transportation (Commission) Rules Governing Commission Appeals.
- 1.02 These Rules are promulgated pursuant to Ark. Code Ann. §§ 6-20-2512, 6-20-2513, 6-21-814 and 25-15-201 *et seq.*

2.00 PURPOSE OF RULES

- 2.01 The purpose of these Rules is to implement the requirements of Ark. Code Ann. §§ 6-20-2513 and 6-21-814 and to provide for a method by which school districts may appeal decisions made by the Arkansas Division of Public School Academic Facilities and Transportation to the Commission (Division). These Rules shall govern the appeals from decisions of the Division to the Commission as provided for in Ark. Code Ann. §§ 6-20-2513 and 6-20-814.

3.00 APPEAL PROCESS

- 3.01 Pursuant to Ark. Code Ann. §§ 6-20-2513 and 6-21-814, a school district may appeal any final determination of a Division decision made under the provisions of the Arkansas Public School Academic Facilities Funding Act, Ark. Code Ann. §6-20-2501 *et seq.*, or the Arkansas Public School Academic Facilities Program Act, Ark. Code Ann. § 6-21-801 *et seq.*, by following this process:
 - 3.01.1 A school district may request in writing, and the Division shall (within 20 calendar days) provide, a written determination on any request submitted to the Division. The school district must make its written request for an appeal of the Division's determination within sixty (60) calendar days from the receipt of the Division's written decision. No appeals will be considered if not filed within the sixty (60) day timeline.
 - 3.01.2 After receipt of a written determination from the Division, the school district's written appeal must be received in the Office of the Director of the Division of Public School Academic Facilities and Transportation, 501 Woodlane Street, Suite 600, Little Rock,

AR 72201, no later than 4:30 p.m. on the sixtieth (60th) calendar day from receipt of the Division's written determination.

- 3.01.3 The school district shall provide in clear express terms a detailed written explanation and evidence showing that the Division's decision is not supported by substantial evidence or is outside the legal authority vested in the Division.
- 3.01.4 The school district shall have the burden to establish in its written appeal submission a *prima facie* case establishing the basis of appeal as required in § 3.01.3.
- 3.01.5 Upon receipt of the school district's written appeal submission, the Commission shall establish a briefing schedule for the school district and the Division to follow and transmit it to each party. The briefing schedule shall be strictly enforced by the Commission. At the time of submitting its initial brief, the school district shall indicate whether it desires to request a hearing to call witnesses and give testimony before a meeting of the Commission.
- 3.01.6 After reviewing the briefs and evidence submitted on a school district's appeal, the Commission, in its sole discretion, may issue a decision on the written material submitted in a public meeting of the Commission without taking additional testimony or evidence from either party or the Commission, at its discretion, may require the taking of formal sworn testimony, evidence and statements based on the request of either party or on the action of the Commission. Proper notice of the meeting at which the appeal will be considered shall be sent to the respective parties.
- 3.01.7 Any appeal hearing requiring public testimony shall be conducted pursuant to the procedures set forth in Section 4.00 of these Rules and proper notice shall be sent to the respective parties.
- 3.01.8 The Commission shall render a written decision to approve, deny or place in abeyance each appeal within sixty (60) calendar days of the hearing of the appeal by the Commission.
- 3.01.9 If the district appeals the determination of the Division to the Commission, the Commission shall have the authority to fully review all parts of the district's Partnership Project(s) (projects) and may approve, deny, reduce or increase the amount of state financial participation in any or all of the appealed project(s).

4.00 APPEAL HEARING PROCEDURE

- 4.01 Each party will have the opportunity, should it so choose, to make an opening statement. The opening statement shall be no longer than ten (10) minutes in length. The appealing district shall present its opening statement first followed by the Division. The Chair of the Commission may grant additional time if he or she deems it necessary.
- 4.02 The Division and the appealing district shall have up to fifteen (15) minutes each to present their cases-in-chief to the Commission. The appealing district shall present its case-in-chief first, followed by the Division. The Chair of the Commission, at his or her discretion, may grant additional time to either or both parties, if necessary.
- 4.03 After the parties' cases-in-chief have been presented, the appealing district shall have up to five (5) minutes to present a closing statement followed by the Division, if desired. The Chair of the Commission may grant additional time if he or she deems it necessary.
- 4.04 After the appealing district has made a closing statement or waived the opportunity for the same, the Division shall have up to five (5) minutes to make its closing statement, if desired. The Chair of the Commission may grant additional time if he or she deems it necessary.
- 4.05 Members of the Commission shall then have the opportunity to ask questions of any party.
- 4.06 After asking any question that it wishes to ask of the parties, the Commission shall deliberate and may vote and then may orally announce its decision; or, unless required by a specific time frame required in law or rule, the Commission may defer final action until a later time.

5.00 FINALITY OF COMMISSION DECISIONS

- 5.01 All decisions of the Commission resulting from a school district's appeal of a Division determination shall be final and shall not be subject to further appeal or request for rehearing to the Commission or petition for judicial review under the Arkansas Administrative Procedure Act, Ark. Code Ann. § 25-15-201 *et.seq.*

6.00 SUNSET PROVISION

- 6.01 At such time as these Rules become effective, all other "appeal" provisions contained within Rules promulgated by the Commission shall be sunsetted and will be null and void or of no further force or effect in conflict with this rule.

