



KENTUCKY DEPARTMENT OF EDUCATION

300 Sower Boulevard, Frankfort, KY 40601

MEMORANDUM 55

TO: Kentucky School District Finance Officers and Facility Directors, Design Professionals, Construction Managers, and Fiscal Agents serving K-12 Public Schools

FROM: Greg Dunbar, Manager, District Facilities Branch/Division of District Support

DATE: January 23, 2025

SUBJECT: 702 KAR 4:090. Property Disposal

702 KAR 4:090 Property Disposal has been revised and became effective December 10, 2024.

Pursuant to HB 678 (2022 reg) Section 7, the administrative regulations and the procedures for conducting reviews and approvals have been reviewed and updated by the Kentucky Department of Education to streamline processes. The proposed changes to the regulation were reviewed by constituent groups and approved by the Kentucky Board of Education. This is the first of the revised regulations administered by KDE's District Facilities Branch.

The revisions are summarized below.

The following are included in "Relates To":

Kentucky Revised Statutes (KRS) Chapters 45A.425, 160.160 (8), 162.010, and 424.170.
Codes of Federal Regulation (CFR) 2 CFR 200.310 and 200.311 are included due to the volume of federal funds that were used for new construction, renovation, system replacements, and real property and the federal interest and reporting requirement associated thereto.

The following is removed from "Necessity, Function, and Conformity":

"and personal" to clarify the intent of this regulation which is limited to the disposal of real property (land and permanent structure affixed thereto). Disposal of personal property is not administered by the District Facilities Branch. Refer to KRS 45A.425 for the disposal of personal property.

Section 1 Definitions (this new section has replaced previous Section 1): provides definitions of important terms used in this and other regulations administered by the District Facilities Branch.

Section 2 Disposition Process (includes portions of previous Section 1): expands on the steps which are to be taken by the district, the district's consultants, and the department. It adds the requirement to identify property to which federal interest exists and compliance with applicable state and federal regulations when disposal is proposed.

Sections 3 through 6 describe the various methods available for the disposal of real property and the associated processes. KDE's FACPAC (Facilities, Planning and Construction) system forms are used for contingent, final, and closeout approvals.

Section 3 Disposition by Sale (includes portions of previous Section 1): addresses sale by public auction, receipt of sealed bid, or receipt of minimum acceptable price based on an appraisal.

Section 4 Disposition by Sale to a Governmental or Quasi-Governmental Agency (a new section): added in response to recent legislation by the General Assembly - KRS 160.160 (8) and provides an alternative to Section 3. Please note the following:

- Because title to all property owned by a school district is vested in the Commonwealth for the benefit of the district board of education, KDE is the state agency that maintains copies of the property records of all districts. When using this option, districts shall document such transactions with KDE for record keeping and data collection purposes as required by this regulation.
- This option fails to address the possibility that a mortgage lien (resulting from a bond sale) or other such legal encumbrances might exist and should be resolved prior to a sale. KDE strongly recommends that districts be aware of these issues when utilizing this option.
- This option also fails to address the status of the property on the district's current District Facilities Plan (DFP). Because the DFP informs the Need/Unmet Need Report that KDE is statutorily required to provide to the School Facilities Construction Commission (SFCC), KDE may question the DFP status of the property upon notification of the transaction. If a property disposed under this option is identified to be on the district's current DFP as reported Need, a modification to the current DFP shall be required to remove the associated Need.

Section 5 - Disposition by Easement (previous Section 2): includes process and minor grammatical changes.

Section 6 - Disposition by Lease - District as Lessor/Landlord (previous Section 3): includes process and minor grammatical changes.

Section 7 Waiver Process (a new section): allows districts to request waivers to requirements and submittals through the Commissioner of Education or the Commissioner of Education's designee.

Section 8 Disapproval and Appeals Process (a new section): provides an appeal process to the Kentucky Board of Education should the district not be granted a waiver from KDE as noted in Section 7.

Section 9 Conflict of Interest (previous Section 4): no changes.

Section 10 "Incorporation by Reference" (a new section): includes references to the BG-1 Project Application Form and the BG-5 Project Closeout Form in the FACPAC system.

If you have any questions regarding this matter, please contact the District Facilities Branch. Link follows.
<https://www.education.ky.gov/districts/fac/Pages/default.aspx>