

Lease Checklist Guidance

KRS65.944(1) (b) and 702 KAR 3:300 establish the requirement and procedures for school district leases in excess of \$100,000 to be approved by the Commissioner of Education. Please find guidance on the lease process and checklist below.

1. Leasing/Financial Information: Districts should work with the Leasing/Finance vendor to understand the types of leasing/financing options available to best meet their district needs. Below are descriptions of the two most commonly used equipment leases:
 - a. Fair Market Value (FMV) Lease: Most common option. You do not own the product(s) at the end of the term. You are only paying for the usage of the product, not the purchase price. End of lease options include:
 - Return some or all of the equipment to the lessor (the party renting out the hardware). This is the most common option.
 - Continue to rent the systems for a couple extra months while you decide on their replacements. Extend the lease for six months or more at a possible lower payment if the lessor agrees.
 - Purchase the equipment at the current fair market value.
 - b. \$1 Buyout Lease (also known as a set price buyout): This lease option is most like a car loan, where you spread out payments and own the product(s) at the end of the term. While this is called a lease, you actually finance the purchase price.
2. Completed Checklist

Lease packages should be submitted via e-mail to the district's [KETS Field Staff representative](#). Leases are reviewed to ensure each item identified as required on the Lease Checklist is included. Missing documents or incomplete information in the lease package will result in the lease being returned to the point of contact listed on the Lease Checklist with a request to include or complete missing information. The lease will not move forward for a KDE review until all required information is made available to the KDE. Common items that are often forgotten or left out that slow the review down include:

- A copy of the meeting minutes showing review and approval by the district board members of the lease pending final KDE approval.
- If a district went to bid for the hardware/service include a copy of both the bid and the overview scores of all respondents. Score sheet showing low bidder selection or justification of why the low bidder was not selected.
- If the lease is an addition (sometimes called a schedule or addendum) to an existing lease or references any existing master lease agreement, include a copy of that executed (signed) master lease agreement. Without the lease agreement KDE legal will not be able to do their review.

3. District Cover Letter

See the example [Sample District Cover Letter](#). The cover letter should include signatures from the District Superintendent, the District Finance Office and the District CIO/DTC. The letter should include the purpose of the lease and the following:

- a. The District Superintendent's request for KDE lease approval
- b. The District Finance Officer's identification of the district funding source(s) to be used for the lease and confirmation that there are available funds to make timely lease payments.
- c. The District CIO/DTC's confirmation of warranty coverage and/or a district support plan for products/services in the lease. Reference (date submitted) to the most current district technology plan submitted to KDE and inclusion of the products/services leased in the district technology plan.

4. District Board Attorney Letter

Please take note that the KDE review process typically requires the most time for review during the legal review (the terms and conditions). There are certain areas that seem to cause the review to slow down (either because it is not addressed or addressed by the vendor in a way that is not agreeable to KDE/district). By requesting the district attorney to look for and request vendor correction of these common issues during their review, the overall KDE review will move faster:

- a. Laws of KY govern the lease and any lawsuits arising out of the lease are filed in KY: "The laws of the Commonwealth of Kentucky shall govern all questions as to the execution, validity, interpretation, construction and performance of this agreement or any of its terms. Any suit, action or other proceeding regarding the execution, validity, interpretation, construction or performance of this agreement shall be filed in the Franklin Circuit Court of the Commonwealth of Kentucky."
- b. Either no indemnity clause, or an indemnity clause stating the contract will be enforced "as allowed by Kentucky law." An acceptable indemnity clause would state "All allowed by Kentucky law, District "X" agrees to indemnify..."
- c. Cancellation/Non-appropriation
 - Cancellation: "Either party may cancel the agreement at any time for cause or may cancel without cause on 30 day's written notice."
 - Non-appropriation: "In the event sufficient funds are not appropriated and budgeted by your governing body or are not otherwise available in any fiscal period for Lease Payments (or any amount due hereunder) under a Schedule, and provided that you have exhausted all funds legally available for payment of the Lease Payments, then you shall immediately notify us of such occurrence and provide us with evidence of such non-appropriation acceptable to us (e.g. written certification by your legal counsel) and the Schedule shall terminate on the last day of the fiscal period for which funds for Lease Payments are available without penalty or expense to you of any kind."

5. Proposed Lease - The lease should include the lease agreement and any lease attachments, addendums, schedules or other documents that make a complete lease package. The lease should include a listing of equipment and/or services and pricing. 702 KAR 3:300, Section 2 limits technology lease term to the five (5) year useful life of the equipment.
6. Funding Source - Indicate on the lease checklist what initial and ongoing funding source(s) will be used to pay the lease. Ed Tech money cannot be used for interest.
7. Procurement Source - Indicate on the lease checklist what procurement source is being utilized. The district should ensure they have a legal procurement source (contract) to complete the lease which may include available KETS or state master agreements, cooperative contracts where the district is a member of the cooperative, other existing contracts that meet the districts procurement requirements and or a district contract (as a result of a competitive bid). The district should ensure the contract meets their procurement requirements. Ed Tech money cannot be used for interest.