

With regard to the disapproval status of 40 projects state-wide, on the basis of schematic drawings lacking either “outside dimensions” or “gross square footage” (GSF), we attest that these disapprovals should be overturned. These projects, as this evidence will provide, were disapproved based on decisions not fully founded in guideline, rule, or law, and because of that, the Division of Public School Academic Facilities & Transportation (aka Facilities Division) operated outside of the legal authority vested to them.

1) Most recent guidelines direct to the wrong rule

With every annual master plan district submission timeframe (every February 1), the Division of Public School Academic Facilities & Transportation publishes guidelines (usually in the fall of the year before), providing direction to districts. Also, every other year (with the biennium Partnership funding program), those master plan guidelines are accompanied by guidelines to complete an application for partnership funding (due March 1). This most recent submittal (2014) was no different. However, those guidelines directed districts to the wrong rule. More accurately, those guidelines directed districts to a rule that didn’t exist.

Please refer to page 13 of 56, at the citation found at the bottom of the page, cited from the above section on “Eligibility for Funding.” The citation states that “Rules cited throughout Partnership Program Section of this document refer to Partnership Program Rules dated July 1, 2013.” There are no rules that exist dated, or labeled July 2013. There are rules changes from July 2012, and as of the publication of these guidelines, no further rules changes had been approved and finalized.

2) Commissioner’s Memo (COM-14-039, 1-13-2014) didn’t amend guidelines

Commissioner’s Memo COM-14-039, published January 13th, 2014, months after the publication of the above-referenced guidelines, provided for a finalized rules document, but did not amend previously published guidelines to provide any clarification or indication of properly dated rules. The Commissioner’s Memo on the 2014 Partnership Rules Change was not even listed under the Facilities & Transportation but rather under "Legal Services". District employees and Facility Planners who do the Master Plans and Partnership Applications look to the Facilities & Transportation Section and not Legal Services. As you can by the PDF attachment, there is no mention of this in the Facilities Section.

3) Division Website home page led to old rules, with no designation of OLD rules

As per their charges (from their establishment laws), The Division of Public School Academic Facilities & Transportation, maintains a website, intended to provide information on public school facilities, to said public schools (<http://arkansasfacilities.arkansas.gov>). However, the current website is NOT accomplishing one of its established goals, which is disseminating information, as the website is hard to navigate, and they layout isn’t quite clear.

With no direction or guidance, as to how to navigate and maintain target with the drop down menus, the most obvious place to find information would be the clearly-defined lower middle section of the homepage, which is labeled as “Browse All Documents.” Clicking on that, and scrolling down to the Partnership section, districts and support organizations (such as architects, who in most cases with most 15-17 Partnership projects, drafted the schematic diagrams) would discover Partnership rules needed in order to properly draft schematic diagrams. However, this is linked to rules from July 2012, again – not the only ones labeled “July.” If these old rules aren’t to be followed, then why were they directly linked from the homepage of the Division web site?

Since this error was discovered, and that information shared, the web site has changed. The link to Browse All Documents page now directs to an empty page. Apparently, this was an oversight that should

have been corrected prior to the 15-17 Partnership applications publication, but has just now occurred. If this truly wasn't an issue, why would the change have occurred exactly now? And if it weren't an error at all, wouldn't ALL documents currently be listed, rather than a rushed-for-correction blank page? (Appendix A)

4) New Rules posted in different location, with no designation of superseding old rules

If these old rules are allowed to exist on the DPSAFT web site, as perhaps an archived version of the rules, to be superseded by the newer rules, then why wouldn't they be designated as such? It would be very easy to label the links or pages of these different sets of rules, or to at least change the links so that one couldn't navigate to the older rules without first noticing any designations.

Another point with this issue is that since this was obviously such a major rules change, as evidenced by the number of affected projects, it would seem logical to have some sort of training. Since this obviously created parameters for a very different sort of schematic submission in comparison to past submissions, direction and guidance were obviously needed for this minor, but drastic change (and drastic is used in the sense of such a large number of disapprovals, based on just this one issue).

5) Master Plan and Partnership Guidelines published in October 2013; before the new Rules were finalized, on January 13, 2014

a) New Rules did not go before Legislative Rules and Regulations Committee until mid-December 2013

As previously mentioned, the master plan and partnership guidelines are always so very definitive and helpful to districts to provide them with the necessary information to submit master plans and partnership applications. These 2014 master plan and 2015-2017 partnership guidelines were published, as usual, along the same historical timelines as in years past, around October 2013 (of the odd year, preceding the 2/1 & 3/1 deadlines of the even years).

With such a limited time, only 4-5 months from release of Guidelines to the submission of *the 6-Year Facilities Master Plan* on **February 1** and the submission of *the Partnership Application* on **March 1**, it is critical for districts to work on all aspects of submission during this time. Architects who assisted with schematic drawings began as early as October 2013 with the release of the Master Plan/Partnership Guidelines and utilized Rules which were available, or found on the website.

Are other state agencies permitted to release guidelines, which are based on rules changes that haven't been approved, OR even release guidelines, and then change rules?

For final rules to not be published until almost three-quarters of that minimal timeline between publication and deadline had already passed, would obviously present quite a strain on district submissions.

6) No Training Provided on Rules Changes

195 Changes made to the Partnership Rules with **no** training provided for School Districts.

Historically, the Facilities Division has offered training to school district personnel and facility planners around the state through cooperative training sessions, via Webinars, or at the Arkansas Association of School Facility Planners meetings, for every PRIOR master plan/partnership submittal. *No training was offered with this master plan/partnership submittal.*

I turn to the responsibilities of the Division required by *6.00 Division Of Public School Academic Facilities And Transportation Responsibilities* Rules 6.02.1 and 6.02.2 which mandate that: The Division shall:

6.02.1 Assure understanding of the general goals of the master plans and reports, and the criteria by which projects will be evaluated;

The Division did not meet this responsibility when they issued 195 Rules changes after Guidelines were published and did not provide training for said Rules Changes.

7) Division of Public School Facilities and Transportation Partnership Applications are the only grant program applications in the state for school districts which do not allow for revisions.

ABC Program, ACSIP, McKinney Vento Program, Alternative Learning all offer and require revisions to applications once submitted; and then are gauged on merit of need.

Arkansas Department of Emergency Management in conjunction with FEMA continually are reviewing and returning applications to school districts for revisions for the HMGP Grant Program for Safe Rooms. Applications are not submitted to FEMA until perfect and, then again, as the others noted above, are scored on the district's NEED.

8) Schematics provided a scale, which when coupled with GSF, would provide dimensions.

As most architects can attest, with the scale provided at the bottom of a schematic, there isn't a need for a separate listing for outside dimensions. This is standard protocol, and is also information that can be easily calculated by the listed Gross Square Footage (GSF), coupled with the scale, and confirmed by an interior dimensions. Given that, the Division then has the information that was required, anyway, and there was no basis for this disapproval.

9) Why are outside dimensions needed? No RS Means funding calculations are based on that.

Why would the Division even need to see outside dimensions with schematic diagrams? As is provided in their definitions, these aren't final construction plans, but are merely schematics to assist with the Division's review, so that they can get an idea of what the project will entail. By their own admission, they can be revised, and changed, so providing outside dimensions on a project, where they will most certainly change, is ludicrous, a guess, and a waste of time (for both submitter and reviewer).

The Facilities Division bases their funding for projects on the utilization of RS Means, as a method of determining qualifying cost for a project. Their method to do so is by multiplying the applicable RS Means figure times the GSF of a project, not the outside dimensions. There is no relevance for it to be required.

10) For GSF disapprovals, that information was redundant, as that information was found in other places of the application, such as the application itself, the POR (Program of Requirements), etc.

For those projects with Gross Square Footage disapprovals (GSF), it seems absurd to disapprove a project based on data that is provided, in many other places on the application itself. An application window, through the division's separate master plan web tool, cannot be saved and closed, unless that data of GSF is entered. Therefore, the data is provided with the application, and to disapprove a project based on

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information that is provided is unfounded. It is provided with the full application, if one were to look at the application as a whole.

Also, the information is typically there on the schematic, in the form of outside dimensions, which can easily then be calculated to provide a GSF number. So, that data is also provided. All of this fits perfectly with the older Partnership rule, which required either outside dimensions or GSF, which was legally, the only rule in place at the time of the publication of the guidelines.

SUMMATION:

Across the state, districts have continually strived to insure that adequacy and equitability are maintained at their district, and have worked diligently to meet all the required rules and regulations regarding school facilities. While funding to school facilities may be limited, potential partnership projects deserved to be judged on merit. It is difficult to lobby our Senators and Representatives for additional appropriations, when projects are denied on a technicality, resulting from improperly timed and executed rules changes, AFTER guidelines have been published.

Appendix Listing

Appendix A: PDF Screen Shot of Division Website dated July 10, 2014

Appendix B: PDF Screen Shot of Facilities & Transportation Rules Listing

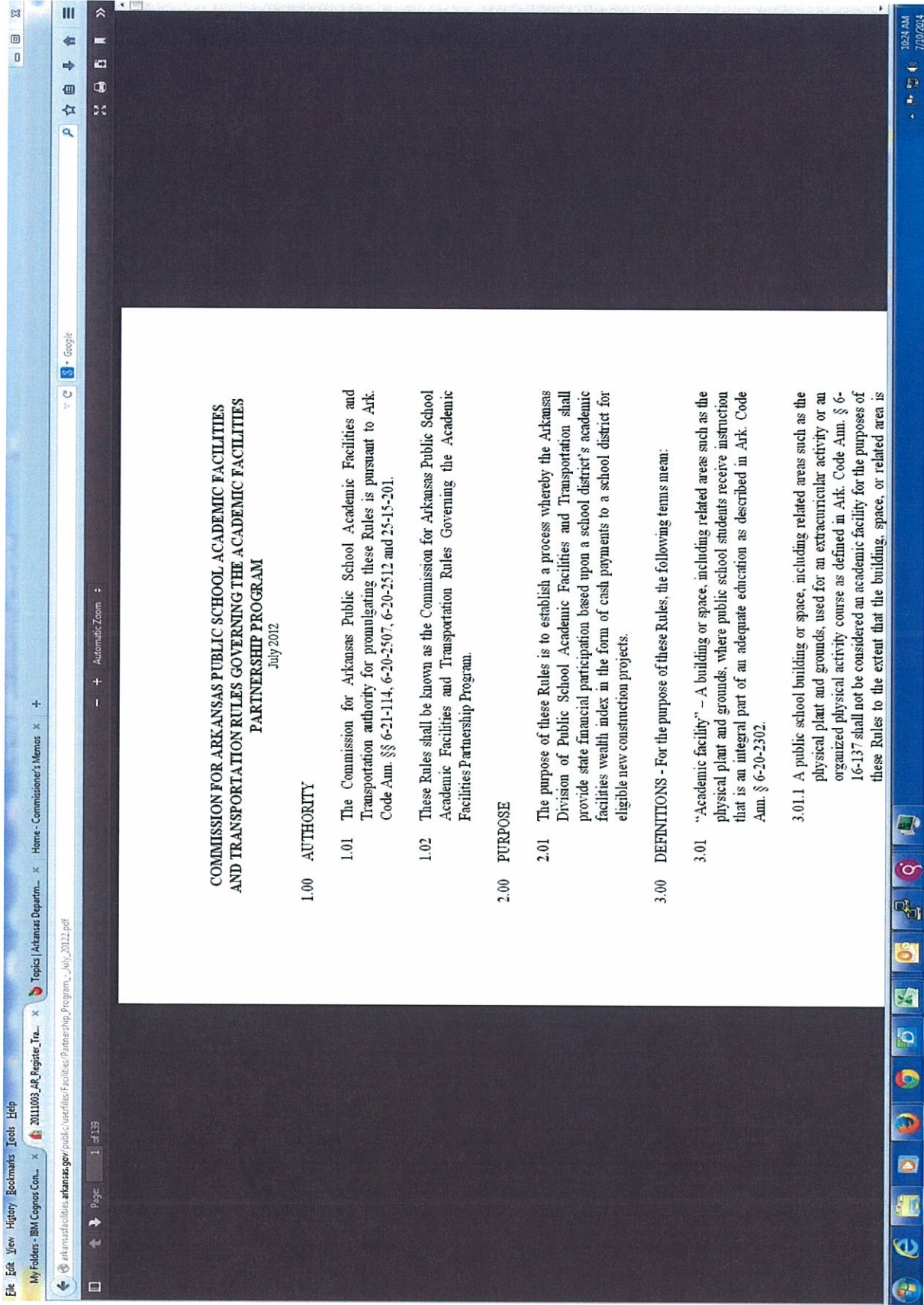
Commissioner's Memos

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Approved Memos

Official memos from the Commissioner of the Arkansas Department of Education

Actions	Title	Memo Number	Memo Date	Memo Type	Attention
	Adjustment of 2013 Academic Facilities Wealth Index	COM-15-001	7/2/2014	Informational	Co-op Directors; Superintendents; Facilities Consultants
	National School Bus Illegal Passing Survey	COM-14-073	4/22/2014	Informational	Co-op Directors; Superintendents; Transportation Directors
	Arkansas Association of Pupil Transportation Conference	COM-14-072	4/21/2014	Informational	Co-op Directors; Superintendents; Transportation Personnel
	2014 Arkansas School Bus Mechanic Workshop	COM-14-069	4/15/2014	Informational	Co-op Directors; Superintendents; Transportation Managers
	Academic Facilities Partnership Program, 2013-2015 Biennium, FY 15 Funding	COM-14-064	4/3/2014	Informational	Co-op Directors; Superintendents; Facility Consultants
	Second Notice - Transportation Survey per Act 1288	COM-14-063	4/1/2014	Regulatory	Co-op Directors; Superintendents; Transportation Managers
	State Fire Marshal Facility Inspections	COM-14-053	3/5/2014	Informational	Co-op Directors; Superintendents; Facilities Managers
	Southeastern States Pupil Transportation Scholarships	COM-14-044	2/24/2014	Informational	Co-op Directors; High School Principals; Superintendents; Transportation Personnel and High School Counselors
	Transportation Survey per Act 1288 of 2013	COM-14-040	1/15/2014	Regulatory	Co-op Directors; Superintendents; Transportation Managers
	Maintenance Inspections of Public School Facilities	COM-14-036	1/3/2014	Regulatory	Co-op Directors; Superintendents; Facilities Managers
	Academic Facilities Distress Early Intervention for 2013-2014	COM-14-037	1/2/2014	Regulatory	Co-op Directors; Superintendents; Facilities Managers
	National and State School Bus Safety Week	COM-14-006	10/8/2013	Informational	Co-op Directors; Elementary Principals; Middle School Principals; High School Principals; Superintendents; Transportation Directors
	Green Ribbon Schools Program (2014)	COM-14-021	9/24/2013	Informational	Co-op Directors; Elementary Principals; Middle School Principals; High School Principals; Superintendents
	New address of Division of Public School Academic Facilities and Transportation	COM-14-018	9/11/2013	Informational	Co-op Directors; Superintendents
	Academic Facilities Partnership Program Project Agreements, Funded 2013-2015 Year One Projects	COM-13-064	5/29/2013	Administrative	Co-op Directors; Superintendents; School Facility Managers
	2013 Preliminary Master Plan	COM-13-059	4/25/2013	Informational	Co-op Directors; Superintendents; Facilities Consultants
	Academic Facilities Partnership Program, 2013-2015 Project Funding Cycle	COM-13-060	4/25/2013	Informational	Co-op Directors; Superintendents; Facilities Consultants
	2013 Arkansas School Bus Mechanic Workshop	COM-13-053	4/8/2013	Informational	Co-op Directors; Superintendents; Transportation Directors
	National School Bus Illegal Passing Survey	COM-13-050	3/27/2013	Informational	Co-op Directors; Superintendents; Transportation Directors
	Southeastern States Pupil Transportation Scholarships	COM-13-042	1/24/2013	Informational	Co-op Directors; High School Principals; Superintendents; Transportation Personnel and High School Counselors



**COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES
AND TRANSPORTATION RULES GOVERNING THE ACADEMIC FACILITIES
PARTNERSHIP PROGRAM**

July 2012

1.00 AUTHORITY

1.01 The Commission for Arkansas Public School Academic Facilities and Transportation authority for promulgating these Rules is pursuant to Ark. Code Ann. §§ 6-21-114, 6-20-2507, 6-20-2512 and 25-15-201.

1.02 These Rules shall be known as the Commission for Arkansas Public School Academic Facilities and Transportation Rules Governing the Academic Facilities Partnership Program.

2.00 PURPOSE

2.01 The purpose of these Rules is to establish a process whereby the Arkansas Division of Public School Academic Facilities and Transportation shall provide state financial participation based upon a school district's academic facilities wealth index in the form of cash payments to a school district for eligible new construction projects.

3.00 DEFINITIONS - For the purpose of these Rules, the following terms mean:

3.01 "Academic facility" - A building or space, including related areas such as the physical plant and grounds, where public school students receive instruction that is an integral part of an adequate education as described in Ark. Code Ann. § 6-20-2302.

3.01.1 A public school building or space, including related areas such as the physical plant and grounds, used for an extracurricular activity or an organized physical activity course as defined in Ark. Code Ann. § 6-16-137 shall not be considered an academic facility for the purposes of these Rules to the extent that the building, space, or related area is