

Exhibit D2

THE ARKANSAS COMMISSION OF PUBLIC SCHOOL
ACADEMIC FACILITIES AND TRANSPORTATION
RULES GOVERNING THE
ACADEMIC FACILITIES CATASTROPHIC PROGRAM
Proposed July 2007

1.00 REGULATORY AUTHORITY

- 1.01 These rules are promulgated pursuant to ~~Act 1327 and Act 2206 of the 85th Arkansas General Assembly and Ark. Code Ann. § 25-15-204 §§ 6-20-2501 et seq., 6-21-112 et seq., 25-15-201 et seq., and Act 989 of 2007.~~

2.00 PURPOSE

- 2.01 The purpose of these rules is to establish the rules governing a program and process of providing state financial participation to a school district based on a school district's academic facilities wealth index for eligible catastrophic repair and new construction projects to supplement insurance or other public or private emergency assistance received by or payable to the school district.

3.00 DEFINITIONS

- ~~3.01 For purposes of these rules, terms 3.01.1-3.01.12 shall be as defined in § 1 of Act 2206 of the 85th Arkansas General Assembly:~~

~~3.01.1 Academic facility;~~

~~3.01.2 Academic facilities wealth index;~~

~~3.01.3 Average daily membership;~~

~~3.01.4 Facility condition index;~~

~~3.01.5 Immediate repair project;~~

~~3.01.6 Local enhancements;~~

~~3.01.7 Local resources;~~

~~3.01.8 Maintenance, repair and renovations;~~

~~3.01.9 Millage rate;~~

~~3.01.10 New construction;~~

~~3.01.11 Project;~~

~~3.01.12 Space utilization;~~

~~3.01.13 "Act of God or Violence" means an act, event, happening or occurrence due to natural or man made causes (whether a criminal act or otherwise) such as flood, tornado, fire, earthquake, explosion, or other disasters which could not have been prevented by reasonable maintenance, repair or renovation of an academic facility.; and~~

~~3.01.14 "Catastrophic project" means a repair, renovation, or construction project necessary due to such great damage or destruction to an academic facility caused by and Act of God or Violence.~~

3.01 “Academic facility” means a building or space, including related areas such as the physical plant and grounds, where 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 court as defined in Ark. Code Ann. § 6-16-137 shall not be considered an academic facility for the purposes of this Rule to the extent that the building, space, or related area is used for extracurricular activities or organized physical activities courses, except for physical educational training and instruction under Ark. Code Ann. § 6-16-132.

3.01.2 The Division of Public School Academic Facilities and Transportation shall determine the extent to which a building, space, or related area is used for extracurricular activities or organized physical activities courses based on information supplied by the school district and, if necessary, on-site inspection.

3.01.3 Buildings or spaces, including related areas such as the physical plant and grounds, used for pre-kindergarten education shall not be considered academic facilities for purposes of this Rule.

3.01.4 District administration buildings and spaces, including related areas such as the physical plant and grounds, shall not be considered academic facilities for the purposes of this Rule.

3.02 “Academic facilities wealth index” means a percentage derived from the following computations:

3.02.1 Determine the value of one (1) mill per student in each school district as follows:

- (a) Multiply the value of one (1) mill by the total assessed valuation of taxable real, personal, and utility property in the school district as shown by the applicable county assessment for the most recent year; and
- (b) Divide the product from Section 3.02.1(a) of this Rule by the greater of the prior year average daily membership of the school district or the prior three-year average of the school district’s average daily membership.

3.02.2 Determine student millage rankings by listing the computation under Section 3.02.1(a) of this Rule for each school district from students with the lowest value per mill to students with the highest value per mill;

- 3.02.3 Allocate the student millage rankings into percentiles with the first percentile containing the one percent (1%) of students with the lowest value per mill and the one-hundredth percentile containing the one percent (1%) of students with the highest value per mill; and
- 3.02.4 Divide the value of one (1) mill per student in each school district as computed under Section 3.02.1 of this Rule by the amount corresponding to the ninety-fifth percentile of the student millage rankings under Section 3.02.3 of this Rule.
- 3.02.5 The percentage derived from the computation under Section 3.02.4 of this Rule is the academic facilities wealth index for a school district, which shall be computed annually and used to determine the amount of the school district's share of financial participation in a local academic facilities project eligible for state financial participation under priorities established by the Division.
- 3.02.6 The state's share of financial participation in a local academic facilities project eligible for state financial participation under priorities established by the Division is the percentage derived from subtracting the school district's percentage share of financial participation determined under Section 3.02.5 of this Rule from one hundred percent (100%).
- 3.03 "Act of God or violence" means an act, event, happening or occurrence due to natural or man-made causes (whether a criminal act or otherwise) such as flood, tornado, fire, earthquake, explosion or other disasters which could not have been prevented by reasonable maintenance, repair or renovation of an academic facility.
- 3.04 Average daily membership" means the total number of days of school attended plus the total number of days absent by students in grades kindergarten through twelve (K-12) during the first three (3) quarters of each school year divided by the number of school days actually taught in the school district during that period of time rounded up to the nearest hundredth.
- 3.04.1 As applied to this Rule, students who may be counted for average daily membership are:
- 3.04.1.1 Students who reside within the boundaries of the school district and who are enrolled in a public school operated by the school district;

- 3.04.1.2 Legally transferred students living outside the school district but attending a public school in the school district; and
- 3.04.1.3 Students who are eligible to attend and reside within the boundaries of a school district and who are enrolled in the Arkansas National Guard Youth Challenge Program, so long as the students are participants in the program.
- 3.05 “Catastrophic project” means a repair, renovation or construction project necessary due to such great damage or destruction to an academic facility caused by an Act of God or violence.
- 3.06 “Commission” means the Arkansas Commission for Public School Academic Facilities and Transportation.
- 3.07 “Division” means the Arkansas Division of Public School Academic Facilities and Transportation.
- 3.08 “Facility condition index” means a methodology established by the Division for comparing the cost of repairing the condition of a public school academic facility to the cost of replacing the public school academic facility with a public school academic facility containing the same amount of square footage.
- 3.05 ~~“Immediate repair project” means a project involving a public school academic facility that is necessary to resolve a deficiency that presents an immediate hazard to:~~
- ~~3.05.1 The health or safety of students, teachers, administrators, or staff;~~
- ~~3.05.2 The integrity of the public school academic facility with regard to meeting minimum health and safety standards; or~~
- ~~3.05.3 The extraordinary deterioration of the public school academic facility.~~
- 3.09 “Local enhancements” means the portion of any maintenance, repair or renovation project or new construction project that is designed to bring an academic facility or related areas such as the physical plant or grounds to a state or condition or efficiency that exceeds state academic facilities standards.
- 3.10 “Local resources” means any moneys lawfully generated by a school district for the purpose of funding the school district’s share of financial participation in any academic facilities project for which a school district

is eligible to receive state financial participation under priorities established by the Division.

- 3.11 “Maintenance, repair and renovation” means any activity or improvement to an academic public school facility and, if necessary, related areas such as the physical plant and grounds that:
- 3.11.1 Maintains, conserves or protects the state of condition or efficiency of the academic facility; or
- 3.11.2 Brings the state of condition or efficiency of the academic facility up to the facility’s original condition of completeness or efficiency.
- 3.12 “Millage rate” means the millage rate listed in the most recent tax ordinance approved by the county quorum court under the authority of Ark. Code Ann. § 14-14-904.
- 3.13 “New construction” means any improvement to an academic facility and, if necessary, related areas such as the physical plant and grounds that brings the state of condition or efficiency of the academic facility to a state of condition or efficiency better than the academic facility’s original condition of completeness or efficiency.
- 3.13.1 “New construction” includes ~~additions to existing academic facilities and new academic facilities.~~ a new addition to an existing academic facility and construction of a new academic facility.
- 3.14 “Project” means an undertaking in which a school district engages in:
- 3.14.1 Maintenance, repair and renovation activities with regard to an academic facility;
- 3.14.2 New construction of an academic facility;
- 3.14.3 Any combination of maintenance, repair and renovation activities with regard to an academic facility and new construction activities with regard to an academic facility.
- 3.15 “Space utilization” means the number of gross square feet per student in a public school academic facility adjusted for academic program, school enrollment, grade configuration, and type of public school in accordance with rules promulgated by the Commission for Arkansas Public School Academic Facilities and Transportation.

4.00 ACADEMIC FACILITIES CATASTROPHIC PROGRAM

- 4.01 A school district may apply for state financial participation to assist with a catastrophic project provided an academic facility in the district has been damaged due to an Act of God or violence that otherwise could not have been prevented by reasonable maintenance, repair or renovation of the academic facility.
- 4.02 In order to apply, a school district shall submit a written application on the form herein incorporated as Attachment A and shall provide the division with documented evidence of:
- 4.02.1 The estimated cost of the project;
 - 4.02.2 The availability of insurance and any other public or private emergency assistance to pay for the project; ~~and~~
 - 4.02.3 How the catastrophic project supports the prudent and resourceful expenditure of state funds and improves the school district's ability to deliver an adequate and equitable education to public school students in the district; and
 - 4.02.4 Proof of full replacement value insurance to include a provision requiring code upgrades.
- 4.03 The division shall evaluate a school district's application for catastrophic assistance and may conduct an on-site inspection prior to making a decision on the application as it deems necessary.

5.00 APPLICATION PROCESS

- 5.01 Applications for catastrophic assistance may be made to the division beginning on Wednesday, May 4, 2005. A school district should apply within sixty (60) days of the event of damage occurring. However, the division may waive this requirement for good cause.
- 5.02 In order to qualify for state financial participation to assist with a catastrophic project, a school district shall submit to the Office of the Director of the Division of Public School Academic Facilities and Transportation, 501 Woodlane St., Suite 520S, Little Rock, Arkansas 72201, the following:
- 5.02.1 A Catastrophic Program Application form (see Attachment "A");
 - 5.02.2 A notarized statement from the school district treasurer certifying that the amount of state assistance requested for the emergency project is not covered by insurance or other public or private emergency assistance received by or payable to the school district;
 - 5.02.3 A written estimate from a licensed architect, engineer or contractor of the cost to repair the damaged facilities; and

5.02.4 A written statement how the catastrophic project supports the prudent and resourceful expenditure of state funds and improves the school district's ability to deliver and adequate and equitable education to public school students in the district.

5.03 The application shall be submitted via first class mail return receipt requested or via stamped recognition of hand delivery during normal business hours.

6.00 DIVISION APPROVAL CRITERIA

6.01 The division's consideration and approval will be based on several factors, including but not limited to the following:

6.01.1 School district compliance with appropriate academic facility standards, including but not limited to, appropriate space utilization;

6.01.2 The amount and availability of insurance or other public or private emergency assistance;

6.01.3 The academic facilities wealth index of the school district;

6.01.4 The prudent and resourceful expenditure of state funds with regard to public school academic facilities; ~~and~~

6.01.5 Whether the facility is considered an academic facility. For example, the division shall not consider for approval applications for the replacement or repair of administrative buildings, athletic fields, and other facilities not meeting the definition of an academic facility; and

6.01.6 Whether the insurance as required in Section 4.02.4 of these Rules is in force at the time of the catastrophic loss.

6.02 The division shall consider each application for state financial participation in a catastrophic project on a case-by-case basis, taking into account the funding for the catastrophic program.

7.00 DIVISION AND SCHOOL DISTRICT OBLIGATIONS

7.01 If a school district qualifies for state financial participation under these rules, the division shall, within thirty (30) calendar days of approval, certify the amount of the state financial participation to the Commission for oversight purposes and the Commission shall, within thirty (30) calendar days written notice of certification, certify the amount to the Arkansas Department of Education.

7.02 School districts shall track and account for the catastrophic funds received as state financial participation under these rules as restricted funds and shall account for the funds in accordance with provisions of law, including

but not limited to, the Arkansas Educational Financial Accounting and Reporting Act of 2005, Ark. Code Ann. § 6-20-2201 *et seq.* and rules established by the Arkansas State Board of Education and the Commission.

- 7.03 Approved school districts shall make every effort a catastrophic project to current academic facilities standards, including appropriate space utilization requirements, unless the division determines it is impractical to conform the catastrophic project to current standards.
- 7.04 School districts shall use state financial participation funds in a catastrophic program to pay only for the cost of that portion of a catastrophic project that is not covered by insurance or other public or private emergency assistance received by or payable to the school district.
- 7.05 School districts shall comply with all local, state and federal laws and rules related to construction, repair or renovation projects including, but not limited to, bidding laws and rules.
- 7.06 The amount of state financial participation shall not exceed the amount resulting from the application of the academic facilities wealth index to the cost necessary to bring the academic facility into compliance with the Arkansas Public School Academic Facility Manual, less any withholding or reduction imposed by the Commission under Ark. Code Ann. § 6-21-114(d) for a school district's failure to comply with the Commission's insurance requirements, including without limitation, the failure to carry replacement cost coverage, if applicable, on all buildings and facilities.

8.00 APPEAL PROCESS

- 8.01 A school district may appeal any determination of the division to the Commission as follows:
- (i) A school district may request and the Division shall provide upon request a written determination of any appealable issue by the division.
 - (ii) After receipt of a written determination from the Division, the school district shall file its written appeal within ten (10) calendar days via first class mail, return receipt requested, in the Office of the Director of the Division of Public School Academic Facilities and Transportation, 501 Woodlane St., Suite 600, Little Rock, Arkansas 72201, no later than 4:30 pm on the tenth calendar day from receipt of the Division's written determination. The Division shall within thirty (30) calendar days receipt of the appeal schedule the appeal for the Commission's consideration and determination.
 - (iii) The school district shall provide in clear express terms a detailed

explanation and evidence showing that the Division's decision was clearly erroneous or outside the legal authority vested in the division.

- (iv) The school district shall have the burden to establish a *prima facie* case, unless the Commission shall decide to hear the appeal *sua sponte*.
- (v) The school district shall not be entitled to a hearing before the Commission unless the Commission should indicate in writing that it desires to hear the appeal and provides notice of the time and location of the hearing.
- (vi) Any appeal hearing shall be conducted pursuant to the hearing policy established by the Commission.
- (vii) Provided the Commission determines the school district has established a *prima facie* case or the Commission *sua sponte* decides to hear an appeal, the Commission shall render a decision to approve or deny the appeal within sixty (60) calendar days of receipt of the appeal by the Commission from the division.

- 8.02 All decisions of the Commission regarding a school district's appeal of a division determination shall be final and shall not be subject to any right of further appeal or request for rehearing to the Commission or subject to right to petition for judicial review under the Arkansas Administrative Procedures Act, §25-15-201 *et seq.*
- 8.03 Section 8.00 of these rules shall remain effective until new rules governing Commission appeals have been promulgated.