

Category: Recommended

ANNUAL FACILITY PLAN and UNUSED DISTRICT PROPERTY

See Also: Policy FA

- A. **Drafting and Adoption.** The School Board shall adopt and approved an Annual Facilities Plan. The first Facility Plan by June 1 of each year.

The Facility Plan shall be developed and drafted by the Superintendent or his/her designee, and it shall be proposed to the School Board for comment and adoption at least 30 days prior to the adoption deadline articulated above.

- B. **Contents of Facility Plan.** In preparing the annual Facility Plan, due consideration will be given to the most recent Capital Improvement Program prepared pursuant to Board Policy FA. The Facility Plan shall account for each facility owned by the District and document the use of each such facility. For each then unused facility, the plan shall specify any uses intended within the next two years of the annual plan approval relative to academic purposes, extracurricular activities, administrative functions, and/or sports. Facilities for which no current or intended use is included on the plan shall be referred to in this policy as “Unused Facilities”.

- C. **“Unused Facility” Defined.** As used in the policy, “Unused Facility” or “Unused Facilities” shall mean any district owned school building which is not currently used for academic purposes, extracurricular activities, administrative school functions, or sports, and for which the School Board has not approved a written plan for future use.

- D. **Annual Report to N.H. Department of Education.** The Superintendent shall submit a report of Unused Facilities to the New Hampshire Department of Education, no later than July 1 of each year.

- E. **Charter School Rights Relative to Unused Facilities.**

1. **Right of First Refusal:** Pursuant to RSA 194:61, such Unused Facilities are encumbered by a right of first refusal (ROFR) available to every approved charter school operating in New Hampshire. If the District has an Unused Facility which it seeks to sell or lease to a party other than an approved charter school, the District will include ROFP provision in the offer for sale/lease and/or a sale/lease contract.
2. **Conditional Contract for Sale/Lease.** If a prospective purchaser which is not an approved charter school enters into a contract with the District for purchase, lease or sale, (that is, an offer to sell/lease by the District is accepted by the prospective purchaser), the contract (the “Original Contract”) will be conditioned upon the expiration of the ROFR. **It is essential that the prospective purchaser or lessee is made aware of the ROFR prior to execution of the Original Contract, and that the Original Contract clearly articulates the ROFR with specific reference to RSA 194:61.** The District will promptly

notify the Charter School Administrator of the Department of Education (DOE Charter School Administrator) in order for the Department to alert all approved charter schools in the state and allow them a chance to respond. The notice provided to the DOE Charter School Administrator shall contain clear language that the Unused Facility is available to any approved chartered public school in this state only, and shall list the offering school district's name and location, the square footage of the Unused Facility, the contact information of the offering school district's representative, and the expiration date of the right of first refusal which shall be 60 days after the date of the date the District provides notice to the DOE Charter School Administrator.

3. **Charter School Rights if No Other Offer Received.** If the offering school district has not received an offer to purchase or lease an unused Facility from a party, other than an approved chartered public school operating in this state, a chartered public school may initiate, and Board shall engage in, good faith negotiations for the purchase or lease of the Unused Facility.
4. **Invocation of Rights by One or More Approved Charter Schools.** If the District receives an offer on an Unused Facility from an approved charter school prior to the expiration date of the ROFR, the District will respond promptly to the offer and notify the prospective purchaser under the Original Contract and engage in good faith negotiations. If more than one chartered public school makes an offer on the District's Unused Facility, the School Board will make the final selection between the parties based on criteria established by the School Board and in accordance with the best interest of the District.
5. **Procedure for Resolution of Negotiations Impasse.** A chartered public school that makes an offer shall have 6 months after the date of making a written offer complete the purchase or lease of the Unused Facility for a price which the District has agreed upon.
6. **District Discretion.** In right of first refusal negotiations with a chartered public school, it shall be the option of the Board whether to sell or to lease the property under consideration, at fair market value or less, for a term to be agreed upon by the parties. Any lease terms shall include, among others agreed upon by the parties, any required provisions for such leases as found in RSA 194:61
7. **Expiration of Right of Charter School After Written Offer.** The chartered public school shall have 6 months after the date of making a written offer to complete the purchase or lease of the unused facility for a price negotiated with the school district.

Legal References:

RSA 194:61, Unused District Facilities