



**COMMISSION ON PUBLIC SCHOOL ACADEMIC FACILITIES  
AND TRANSPORTATION**

**Dr. Ken James, Chair**

**MEETING AGENDA**

**December 19, 2005**

**9:30 a.m.**

**Arkansas Department of Education Auditorium**

Call to Order/Roll Call

1. Meeting Minutes: November 30, 2005 and December 12, 2005
2. Contracts
  - A. DeJong & Associates, Inc.
  - B. Magellan K12, Inc.
  - C. Summit Consulting Services, LLC.
3. Transitional Academic Facilities Program Status
4. Academic Facilities Partnership Program Guidelines
5. Bonded Debt Assistance Appeal Hearings
  - A. Calico Rock (rescinded hearing request on 12/13/05)
  - B. Brinkley
  - C. Harrison (rescinded hearing request on 12/16/05)
  - D. South Conway County
  - E. Rogers (will not appear at hearing due to favorable consultant review)
6. Overview of Academic Facilities Program Milestone and Division Activities

MINUTES OF  
COMMISSION ON PUBLIC SCHOOL ACADEMIC  
FACILITIES AND TRANSPORTATION

Date: December 19, 2005

Place: ADE Auditorium, Little Rock, AR

Attendees: Dr. Ken James, Director, Arkansas Department of Education  
Richard Weiss, Director, Arkansas Department of Finance and Administration  
Mac Dodson, President, Arkansas Development Authority

Call to Order/Roll Call. Dr. Ken James called the eighth meeting of the Commission on Public School Academic Facilities and Transportation to order. All Commission members were present.

1. Approval of November 30 and December 12, 2005 Commission Meeting Minutes. Dr. James stated that the minutes were received in time for review and asked for questions or a motion. **Mr. Weiss moved to approve the minutes. Mr. Dodson seconded the motion. The minutes of November 30 and December 12, 2005 as submitted were approved unanimously.**
2. Consultant Contracts. Dr. James welcomed Doug Eaton to his first official meeting. Mr. Eaton then proceeded with the three contract items.
  - A. *DeJong & Associates, Inc. (Contract Extension)* – to be extended through June 2006. DeJong is currently performing the ten-year enrollment projections for the school districts for the Master Plans. The contract extension will allow DeJong to make facility manual revisions as needed and provide ten-year enrollment projections for next fall to be used by the districts in submitting Master Plans in February 2007. This is beyond the capability of the Division and it is requested that the portion of the original DeJong contract be extended. Mr. Floyd reviewed this with the Attorney General and it was agreed this could be done this way and the method proposed for the professional consultant contract is in accordance with state procurement regulations.
  - B. *Magellan K12, Inc. (New Contract)*. Permission is requested to proceed with a sole source contract with Magellan K12. The exact format of the contract is not known but will be negotiated and state procurement guidance will be followed as the contract is drawn up. Magellan supports all facilities data the Division currently has and without the contract the Division may not have access to facilities data and it would be difficult to complete the requested tasks on the time schedule. Also Magellan provides necessary services with respect to retrieving data for new and various required reports. Magellan is the sole source to provide the necessary support and maintenance of facilities data and as mentioned before, the Attorney General has reviewed and approved the contract. Permission is requested to proceed with the sole source contract with Magellan under guidance of state procurement.
  - C. *Summit Consulting Services, LLC (New Contract)*. Permission is requested to proceed with a sole-source contract with Summit Consulting. This will be a new contract and allow the Division to contract directly with Mr. Fischer and Summit to perform necessary tasks associated with the Master Plan. The proposed objectives and scopes are outlined and are the things that will be made part of the contract in the proposed contract amount.

Included are the proposals for Magellan, the proposal for Summit and the sole source letters to Mr. Giddis. If the proposed work requested is not scheduled it will be very difficult to implement the Partnership Program by July 2006. Magellan and Summit are the sole sources available to provide these tasks due to familiarity and participation in the Arkansas facilities program over the past two years.

Mr. Eaton asked for questions. Mr. Weiss stated he had no questions on DeJong but asked if the next two were new contracts as sole source and how the dollar amounts were determined. Mr. Eaton said the dollar amounts were included in the proposals submitted by Magellan and Summit and Mr. Weiss asked how we know that those are reasonable amounts. Mr. Eaton said the supporting documentation on the surface seems reasonable but the door is still open to negotiate the amount. Mr. Weiss stated that what is being asked for is the authority to negotiate. Mr. Eaton responded yes negotiate the contracts, draft the final contracts and get the contracts into the hands of Magellan and Summit. It is very important that this be done as dates for the next year are coming up awfully fast, especially the ones dealing with the partnership program, and Summit and Magellan need to be on board so deadlines can be met. In response to a question from Mr. Dodson regarding Summit, Mr. Eaton stated that a letter has been submitted to Mr. Gettis and a meeting was held on Friday with an attorney who is going to guide us through the process. Mr. Dodson asked if approval was not granted would the division come back before the Commission. Mr. Eaton said yes but felt confident approval would be granted because Magellan and Summit are the only ones available and had been part of the original facilities study. Dr. James recommended that the Commission consider the contracts separately in terms of a motion.

DeJong & Associates, Inc. Mr. Weiss requested clarification that the contract did not have to go back before the review committee for approval of the contract extension and that the amount of the extension was the amount originally agreed upon. After consulting with Scott Smith, Dr. James said that was his understanding. Mr. Weiss said that being the case he recommended approval of the DeJong & Associates contract. Mr. Dodson seconded the motion and with no further questions the motion passed unanimously.

Magellan K-12, Inc. Permission is requested to enter into sole source contract negotiations. Mr. Weiss stated as long as the office of State Purchasing and State Procurement is involved and the Commission has a chance to see the contract that is put out, he moved to approve. Dr. James stated that was his understanding. The motion was made to approve with the aforementioned caveat. Mr. Dodson seconded the motion and with no further questions the motion passed unanimously.

Summit Consulting Services, LLC. Same situation, permission is requested to enter into sole source contract negotiations. Mr. Dodson made a motion to approve the Summit Consulting Services contract negotiations with the same conditions as previously noted with Magellan. Mr. Weiss seconded the motion and with no further questions the motion passed unanimously.

3. Transitional Academic Facilities Program Status. Mr. Eaton presented a spreadsheet that indicated 109 districts applied for \$2,000,000 worth of projects and indicated this spreadsheet is a working summary sheet to establish priority order. The division will come back in January with the final recommended list. This spreadsheet shows the volume and success of the original request for applications. Mr. Weiss asked if financing had been approved up to a certain amount. Mr. Eaton responded that there was a certain amount of financing available under this program but the projects needed to be prioritized and the validity of the projects determined by district visits. Dr. James said this is an informational report to the Commission on the status of the program. Mr. Eaton said the division should be able to complete this process before the January Commission meeting and allow the Commission to make comments before it is finalized.
4. Academic Facilities Partnership Program Guidelines. Mr. Eaton presented the draft Guidelines and Application Form for the Partnership Program and stated there is a very urgent need to get this into the hands of the districts as early in January as possible. This is a final review but one question needs to be resolved with our attorney and when that is done these guidelines need to be immediately sent to the districts. This has all the information necessary to explain the program and contains the application form. Commission approval is requested to proceed with issuing the Partnership Program Guidelines once the last question with the attorney has been resolved.

Dr. James asked if the final remaining question could be shared with the Commission. Mr. Eaton said it has to do with dates of notification, basically that Act 2206 prescribed May 1 as the notification date to the districts and Act 1426 gave a different date. The original instructions and procedures sent out used the date in Act 2206 (the act the Council reviewed to establish that date). The division used Act 1426 and this was not realized until Friday. Mr. Weiss asked what the two dates were and Mr. Eaton replied May 1 and July 1, which is significant because of the timeline. Master Plans are due on February 1 and the submission date for Partnership projects is March 1. This would only give the division until May 1 to determine the projects to recommend for Partnership. The other act gives the notification date of July 1, which is the starting date of the fiscal year and would provide the division an additional two months to review, prioritize and verify projects to compile a recommended list. It is very important that the date of May 1 or July 1 be determined and once done this is ready to go. Dr. James recognized Scott Smith who said this came up by way of public comments from school districts on the rules and regs that were put out. So work is being done to make sure there is agreement. Dr. James clarified that approval is requested from the Commission to get the guidelines and application to the districts once the deadline date is clarified. Mr. Eaton said it needs to be in the district's hands the first part of January so districts will have time to put projects together and make a submission back to the division. Dr. James asked for a motion to grant permission to get this information out to the school districts in January once the dates are clarified (with the caveat for the motion being the clarification of May 1 versus July 1). **Mr. Weiss made the motion to grant permission to get the Partnership Program Guidelines and Application Form out to the districts in January once the dates are clarified (May 1 versus July 1).** Mr. Dodson seconded the motion and with no further discussion the motion passed unanimously.

5. Bonded Debt Assistance Appeal Hearings. Scott Smith distributed copies of the rules and regs and noted that pages 7 and 8 dealt with the appeals process. He reminded the Commission that the State provided bonded debt assistance but withheld a 10% reduction across the Board. If a district wished to try and retrieve any of that 10% reduction, a written appeal would have to be submitted to the division no later than 4:30 p.m. on October 31, 2005. This appeal would provide required information to show that the 10% that was reduced in fact dealt with academic facilities and the district was entitled to bonded debt of that 10% that was withheld. That is what is before you today. The division by

way of consultants hired to review these appeals will present its findings and school districts will have an opportunity to present comments. The procedures to conduct the appeal hearings are that each party beginning with the school district will have five minutes to present an opening statement, 10 minutes to present a case and five minutes for closing comments. The school district must convince the Commission by a fair and convincing standard to show that it is entitled to the full 10% or any portion thereof. If convinced, the Commission can sustain the appeal and submit a written statement to the Department of Education indicating what portion of the payment the district should be entitled to of the 10% that has been withheld.

Mr. Smith introduced Bob Coleman to make a presentation for the division. Mr. Coleman stated that the consultants who reviewed the school district applications were present and would be glad to try to answer any questions the Commission might have.

- A. *Calico Rock (rescinded hearing request on 12/13/05)*. Mr. Coleman said he talked to the Calico Rock superintendent last week and thought Calico Rock would appeal but after further review the district decided not to appeal. In the course of the review a small error in calculation was found that resulted in the district getting a little bit less than what the final numbers were. The recommendation was made that Calico Rock receive that amount.
- B. *Brinkley*. Additional information was requested, as certain documents needed to be reviewed in order to make a determination. Dr. Burge made a good faith effort to provide that information and had requested that the district's fiscal agent deliver it to the division, but the information was never received. Dr. Burge brought the information in this morning and the consultants met at that time and determined that Brinkley School District qualifies for the request.
- C. *Harrison (rescinded hearing request on 12/16/05)*. Harrison's application was filed late and the application was not presented for review. It is my understanding that Harrison has rescinded a request for additional review.
- D. *South Conway County*. This district failed to meet the required deadline and the application was not presented for review. The consultants reviewed the application this morning and some additional information would be required in order to make a determination, but based on the what was reviewed South Conway would probably qualify for some portion.
- E. *Rogers (will not appear at hearing due to favorable consultant review)*. Mr. Coleman reviewed this application. There was a large number of bond issues and a calculation error was made. Rogers' outstanding debt was about \$84 million and \$8.4 million was inadvertently used. Mr. Coleman reported he had called the school district, apologized and notified them that a correction would be made.

Mr. Coleman said if the Commission approves, Brinkley would qualify for the full 10%. Dr. James asked if Brinkley met the deadline. Mr. Coleman responded yes but more information was requested and there had been a mix up in the information being provided. Scott Smith said the remaining district is South Conway County and the district did not meet the deadline required under 5.02 of the rules (appeal must be filed by October 31, 2005 by 4:30 p.m.) but the superintendent is here and wishes to address the Commission. Mr. Coleman said the districts did an exceptional job dealing with information that for the most part they were totally unfamiliar with. Most superintendents never look at the internal documents of a bond issue and a lot of unfamiliar items were requested. The districts worked with us very well and the entire division staff as well as department personnel were tremendous in helping us and providing what we asked for.

Dr. James asked for the districts to present. Mr. Smith said the only district to present was South Conway County and the superintendent has been asked to come forward and address the Commission. As Exhibit A, Mr. Smith provided a copy of the South Conway County application received on November 2, 2005.

Mr. Douglas Adams, Superintendent, South Conway School District introduced himself and acknowledged that the school district failed to meet the deadline indicated in Rule 5.02 and for that he took full responsibility. Mr. Adams asked the Commission to look at the merits of the data submitted to the consultants and that if the consultants reviewed it again it was his hope and confidence that the decision would be reversed. He reiterated that Mr. Coleman had said to the Commission that since the deadline was missed the application was not reviewed. Mr. Adams said as he looked at the law and the rules he saw a procedural flaw or an infirmity - missing the deadline, which would be cured by allowing South Conway County to appeal today. In terms of the substantive portion, as Mr. Coleman had said some additional information was indicated, Mr. Adams shared with the Commission what South Conway County used the bonded debt for during the last thirty years covering the most recent projects in 2003 to the oldest in 1975. The 2003 projects included a 15,000 s.f. fine arts facility, the anticipated completion of a 50,000 s.f. addition to the high school,

commencement of work on North Side Elementary and preliminary drawings for Reynolds Elementary. The 1994 projects were to build and equip classrooms and offices, remodel and equip existing school facilities and pave a road to the facility. In 1992 the district acquired land to construct and equip a new middle school facility and administration complex (not a superintendent's office, actually the office area that houses the principal, assistant principal, parent center, secretaries, teachers' workroom and nurse's office - used for academic purposes). The superintendent's office is a converted-1957 home economics building. The district also had additions and improvements to other existing school facilities. There was a gym space that was a non-competition gym that has carpet and no bleachers to roll out or pull out - it was and is now used for P.E. The 1988 project was used to erect and equip classrooms: Reynolds Elementary - 12 classrooms; Northside Elementary - 10 classrooms; Morrilton Junior High - four classrooms; and Morrilton High School - 6 classrooms. Additions and improvements were also made to existing school facilities. The 1980 project was construction of an auditorium. None of the funds were used to renovate or build nonacademic facilities and all the bonded debt was attributed to the direct support of academic facilities. In 1975 a middle school was constructed and equipped. However, some funds were used to build a field house and a football field. So thirty years ago some funds were used, but since then all the bonded debt was used for the direct support of academic facilities. As stated before I acknowledge and take full responsibility for failure to meet the deadline of October 31, 2005 and do not offer any excuse for that. However, in terms of the merits of this appeal, I ask that you take a look at how the bonded debt was used over the last 30 years, except for 1975 - for the direct support of academic facilities. And it will continue to be used in that regard as work is still going on at North Side Elementary and Reynolds Elementary is yet to be completed. Mr. Adams asked if the Commission had any questions.

Mr. Dodson asked if all the bond issues are paid off. Mr. Adams responded that in some instances some of the old debt gets refunded and refinanced with new debt and could not say with absolute certainty that the 1975 debt, the portion used for the field house, had been paid off.

Mr. Weiss asked Scott Smith if he agreed or disagreed with Mr. Adams' statement in his presentation that it was his opinion that this appeal process was opened up to cure South Conway's failure to timely submit the information. Mr. Smith said he would not agree as Section 5.02 clearly states a deadline by which Section 5.05 rules that the Commission shall review all properly submitted appeals. By his own admission Mr. Adams failed to submit the appeal on time. However, 6.20.2503 says if a school district can demonstrate to the satisfaction of the Commission that all or a portion of the 10% reduction in scheduled debt payment can be attributed to academic facilities, the Commission shall reverse all or a portion of the 10%. The timeline was established in the rule and regulation to create a procedure so this could be turned around fairly quickly and we had to adopt an emergency rule to the timeline we are in. Somewhere in the neighborhood of 120 districts submitted their appeals on time. At this late date we are bumping up against a January 6 deadline of trying to get this information to the department to get the payments out. The timeline was created under the rule. The statute clearly gives us the authority to establish the rule. The only permissible, possible concession I can see is in 5.06 of the rule that in submitting their appeal an appealing party under 5.06 is allowed to provide any other relevant information they think the Commission should take into consideration in making this determination. Arguably you could look at 6.20.2503 as a mandate on you that if a district can convince you that could override the procedural aspect. However, I would note the division has not reviewed this information and so all you would be able to go from is what the district has submitted to you.

Mr. Dodson asked if Mr. Smith was saying that the Commission can or cannot waive the procedural rule. Mr. Smith said he would stand on the rule and would recommend that the rule stands valid. It established a timeline by which appeals can be submitted. All of the 120 plus districts submitted an appeal on time so my recommendation is that the timeline rule is valid. Mr. Dodson asked if the rule were waived would this open the door for others. Mr. Smith said that was a question he didn't know the answer to, but it was a very valid point. He did not know if that would be an issue but it might come up. The timeline was established for a valid reason. By law we are required to make this determination to get these payments out to the districts. That is the purpose of the timeline and all other districts have honored that.

Mr. Weiss asked Mr. Adams what would be the practical effect on the school district if the appeal were denied. Mr. Adams responded that there would be significant financial impact. In terms of the calculation it is in the \$20,000 to \$25,000 per year range. Need to date this a little bit, whether there is an opportunity to come back in a year from now because it says it is going to be evaluated each year. Where Scott and I may disagree is also in 5.07. It does not say anything about the initial appeal being perfected by meeting the procedural deadline of October 31. It does say to the extent that a school district can prove to the Commission that more than 90% of the outstanding debt was utilized to directly support academic facilities. I believe that information has been presented to the Commission and would be made available to Bob Coleman and the consultants if the Commission shall reverse, and shall to me is a mandatory action. It is not may or could or should, it says shall. There is a procedural and substantive issue here. Procedural is the one I acknowledge - that the district missed that deadline for which I take responsibility. Substantively, the bonded

debt is being used to support academic facilities. The rules under 5.07 support that position and the statute itself, 6.20.2503, supports that position. 5.07 is one of the rules changed in the Commissioner's Memo from early October to later October that benefited districts. In terms of financial impact it serves to take away from the district for failing to meet that deadline. It doesn't necessarily take away from the facilities funding as South Conway County has been receiving that amount before. So in essence if the Commission denies this today it will take that money away from the district. It serves to be punitive to the students for my failure or the failure of a staff member to meet that deadline. So my request is to not exalt form over substance but focus on substance.

Mr. Smith stated he would advise Commission members that under Arkansas case law the Commission has broad interpretative powers of your own rules and regs. These rules do not say what happens if you fail to submit on time. The rules do say what the clearly established timeline for submitting appeals is and that the Commission will review or shall review only those properly submitted appeals. The point he fails to mention is that 5.07 does not say what happens if an appeal is not submitted on time and whether or not you think 5.07 can be interpreted as broadly as he wishes to interpret it, ultimately that is your interpretative authority under Arkansas case law. Also my understanding from Mr. Coleman is that only one other district filed their appeal late. So there is only one other district and that district has withdrawn their appeal today. Mr. Smith said he didn't know if the appeal was withdrawn on that fact alone, but thought it was.

As a follow-up to Mr. Smith, Mr. Adams said that where it talks about the properly submitted appeal to him it was the first level, October 31, and that the appeal today is not referenced in the particular rule that Mr. Smith is citing. There are two appeals. Am I mistaken. Mr. Smith said he would disagree, there is one appeal. The division reviewed it first and they came to the Commission with their recommendation. If a district wishes to challenge that recommendation, it is all the same appeal. If the district wishes to challenge the division's recommendation, they can request a hearing before you today. It is all based off the same substantive appeal.

Dr. James asked Mr. Adams if he wished to say anything else. Mr. Adams said he wanted to come back to the point that the bonded debt is being used to directly support academic facilities. He took responsibility for the failure to meet the October 31 deadline and would hate to see the district punished for that procedural flaw which he believed was being cured today by this opportunity to appeal. By considering 6.20.2503 and 5.07 and by clear and convincing evidence, and perhaps some additional information that might need to be submitted, the Commission shall have the opportunity to overturn the initial decision.

Dr. James said at this point procedure states the division has five minutes to make closing statements. Mr. Smith said each party has five minutes to make closing remarks and then it is open to the Commissioners for questions. Mr. Coleman said the South Conway County information was not presented to them for review, but that we really need to look at what this might do to the school district not as some procedural thing. In his view the district deserves to get these funds if they qualify. Maybe they missed the deadline for whatever reason, things like that happen I understand that, but I would ask that the Commission give the schools the benefit of the doubt.

Dr. James asked if there were any questions from Commission members. Dr. James asked Scott if there was anything he wanted to say to the Commission members. Scott said no sir. Mr. Weiss stated that he was trying to figure out in his own mind what the effect this would have. Mr. Adams testified that this would be in terms of money available to the district some \$250,000 a year, is that correct? No sir, \$25,000 a year and over 10 years it would be \$250,000. Mr. Weiss asked Mr. Adams if this had been timely filed and approved would South Conway County receive \$25,000 more in state turn back for that purpose? Response was yes sir. Dr. James also said he was hearing that the consultants did not have an opportunity to review what had been submitted. Mr. Dodson said a portion of this was perhaps used for nonacademic activities and if we voted for it we would have to go back and determine how much of it was for non-academic activities. He stated he was also confused about whether the Commission has the authority to do this.

Mr. Smith said what he thought the school district was arguing (if he were to present their argument) that the interpretation of the rule in 5.07 can mean that the Commission has an obligation to consider the appeal even if it is not submitted on time. Clearly the rule states that districts had to submit an appeal by a certain date. The rule does not state what happens if that does not take place. The rule does state that the Commission shall review all properly submitted appeals. And he assumed the district would be arguing that the Commission should interpret this rule broadly enough to allow consideration of their appeal even though they did not make the timeline. So if the Commission has a mindset to do something like that it would be couched in the sense that you are interpreting the rule to allow the consideration of this appeal based on those facts. Otherwise, the division's position has been that the appeal was not properly submitted and as a result the information was not reviewed. If the Commission is interested in interpreting the rule that way my recommendation is that the information be submitted to the consultants for their review and a written report be presented to the Commission this week. And then after the Commission has reviewed

the report, the Commission would need to submit their decision to the Department of Education. Mr. Dodson said his general feeling about form over substance and being entitled to monies is that the Commission does not want to have 50 other school districts come in. With all that has to be done, this would not be practical. If this is a one or two district type thing he would be OK with it and at present there is possibly only one other district. Mr. Smith responded that to the extent the Commission is interested in doing this, there is only one other district out there. And that district would need to be made aware of the Commission's interpretation of the rule and that district's information reviewed if the request was pulled down based on that single fact alone. Dr. James agreed that if this were to happen the same thing would need to be done for the other district.

Mr. Weiss said that some districts have pretty enormous bank balances at the end of the year and if appropriate would like to know the amount of South Conway's carry forward balance. Mr. Smith said the Commission could ask any questions it wished to. Mr. Weiss asked Mr. Adams if he had that information. Mr. Adams said the balance for South Conway County was about \$1.8 million this year and what went into reserves was \$536,000 so an ending balance of \$1.3 million is projected on a budget of \$17.5 million. Dr. James asked for any other questions based on the information received and for the wishes of the group.

**Mr. Dodson said he would make a motion to vote it down, allow the deadline to be waived and allow them to submit information to the staff to determine what percentage, if any, the district is entitled to because it is not known how much is qualified. Dr. James asked if the other district, Harrison, was included in that motion. Mr. Dodson said if the other school district falls in the same category, the treatment should be the same. Mr. Weiss asked if Harrison filed two days late and Dr. Stein replied yes sir. Mr. Smith said as he understood the motion, the Commission is not asking that the rule be waived. But the Commission is interpreting the rule to say that although there is a deadline for submitting an appeal, there is nothing in the rule that prevents the Commission from considering an appeal that comes in late. Dr. James said there was a motion on the floor. Mr. Weiss seconded the motion.**

There was a request from the audience for a public comment. Dr. James responded that a public comment could be allowed and did not see an issue with that, and that the floor was open for discussion. Jodie Mahony said that since the Commission seemed to take the side of South Conway County, he thought someone should say something on the other side. Rules have been made that clearly set out the appeal time and then the appeal time was backed up from early October to the end of October. Properly submitted appeals are appeals that meet the deadline. If the deadline is not met there is no properly submitted appeal. How can an appeal be properly submitted if the deadline is not met? Time after time deadlines are set up, made clear to the school districts, and yet deadlines are not met. It was also mentioned that the Commission does not know how many other school districts are out there. It is not a matter of money, but it is a matter of here is what the rule is, the rule was reasonable and rational. Obviously you don't like the rule as you are acting like the rule was never there, that is what this motion says. Mr. Mahony said if this is opened up he believed the Commission would have an obligation to notify every school district (not just these two) that any school district that missed the deadline or did not submit can do so because this motion says there is no rule. Mr. Mahony said he does not agree that you can say an appeal has to be a properly submitted appeal and then just ignore it. Mr. Weiss asked if it was correct that there was an October 1 deadline and that deadline was waived and then an end of October deadline was set. Mr. Mahony said that was the testimony, that the rule was changed to a later date. Mr. Smith said that rule 5.07 was changed midway through the month of October but it did not talk about the deadline. Mr. Weiss – so the deadline was not changed. Mr. Dodson said if there is a rule that had public comment on it and it was adopted, then the rule could not be changed without going back through that process. If this is a matter of interpretation the Commission may be able to do it, but he was not sure. Mr. Smith said he thought the rule was clear on the timeline and the requirements for submitting the appeal. The South Conway School District has clearly articulated that and by their own admission clearly missed that timeline. Mr. Smith said the only issue he was making response to was South Conway County's argument that there was nothing in the rule that says what happens if you fail to make that appeal. Mr. Smith's response to that was that 5.05 says the Commission shall review all properly submitted appeals and the division's position back to the Commission was a properly submitted appeal is an appeal that has all of the information required in 5.06 and is submitted on a proper timeline. The Commission's authority under Arkansas case law is to interpret your own rules and regulations.

Dr. James said there was a motion and a second on the floor. Mr. Dodson said he didn't want to do anything that would be illegal or violate our own rules. These rules were set up to accomplish our goals and there is no way to do it without rules. Mr. Dodson asked how many districts did not receive the 10%. Mr. Eaton responded that the Commission has been provided a spread sheet that lists all school districts that appealed and the percentages that were given after the reviews. Mr. Dodson wanted to know how many other school districts would possibly take advantage of this. Mr. Smith that the broad answer to that question is anyone who did not submit an appeal. It is up to the districts

to submit appeals, so 252 school districts minus the ones that submitted potentially is the answer to that question. In fact two districts that submitted an appeal were clearly late. A number of districts out there have not submitted an appeal as of today and it would be my assumption that they do not intend to but yet they might raise that issue.

Mr. Eaton said he wanted to mention that guidelines have been discussed and it is apparent that the established mile stone dates are extremely critical. If the dates are waived up front then another date, February 1, is coming up that cannot be moved because it is predicated on what happens on March 1 which is predicated on what decisions are made to get to May 1. It is unfortunate that this is a one-time review process. In this particular case, it is not something that is going to be done next year. But mile stone dates are critical to meet legislative acts.

Dr. James said that procedurally there was a motion and a second on the floor. Mr. Dodson said he wished to withdraw the motion. Dr. James said that procedurally since there was a motion and a second on the floor a vote needed to be taken on that motion. Mr. Weiss said absolutely. Dr. James asked Mr. Smith. Mr. Smith responded that the best way would be to address the motion and the motion would require a vote. **Dr. James said we have a motion on the floor and a second, does everyone understand what the motion is. All those in favor of the motion were asked to say aye. There was no response. All opposed to the motion were asked to say nay/no. The motion failed by a unanimous vote.**

Mr. Adams requested permission to read a rule to the Commission. Mr. Smith said the Commission shall review all properly submitted appeals, consider the division's recommendation and provide a necessary hearing before issuing the Commission's final determination. Mr. Smith said the appeal was not properly submitted because the deadline was missed, then South Conway County should not be here today, somewhere along the line South Conway County should have been told you cannot even go to the Commission because the appeal was not submitted properly. Because we are here I am suggesting to the Commission that the term waiver be used, but South Conway County incurs the infirmity in terms of missing the deadline. Because South Conway County is here to appeal before the Commission, you are reviewing it right now.

Mr. Smith responded that there was only one appeal and he had no control the agenda. One appeal was submitted. There is not an appeal conflict. There is one appeal and it is either valid or not valid. Certainly Mr. Adams has suffered no harm by being here today. He submitted no evidence that this appeal might have been submitted on time, that there was some error with the department or the division, or in fact the appeal was here before the 31<sup>st</sup>. That was his opportunity for due process before you today.

Mr. Coleman asked to say something as a consultant. He said his interpretation of the appeal process was for those districts that disagreed with what was considered as the appropriate amount to be refunded for the 10%, not if someone submitted on the appropriate deadline.

Dr. James said there some other issues before we close but gave Mr. Adams the opportunity to say one more thing. Mr. Adams said he believed in deadlines and apologized to the Commission. He again asked that the Commission not exalt form over substance. This is a procedural issue that is punitive to the students of South Conway County. It is money that the district has previously received so in terms of harm being suffered, the harm to be suffered is to the district. Thank you for your time.

Dr. James said the motion on the floor failed and shall be so recorded. Dr. James asked if there were other appeals. Mr. Smith said that he assumed the Commission would take action on each one of the school districts and it was his understanding that Calico Rock had rescinded its appeal. The Division is recommending that the Brinkley appeal be sustained. The Harrison appeal has been rescinded. The division is recommending that the Rogers' appeal be sustained. Dr. James asked Mr. Eaton for his comments. Mr. Eaton said that Brinkley has been reevaluated and will be sent a notification letter that the appeal for the 10% has been approved. Brinkley met the submittal deadline. Harrison did not meet the deadline and sent us a letter that they withdrew their appeal and we considered the matter closed at that time. Calico Rock sent a letter after a review, withdrew their appeal and we consider that to be closed also. There was an error made on Rogers and Rogers will not appear due to a favorable consultant review. The only action left over was the action with South Conway County. That has been decided so the division recommends approval of the decisions made with regard to the other reviews.

Brinkley – Division recommended that the 10% be approved. **Mr. Weiss made a motion to accept the recommendation made on Brinkley. Mr. Dodson seconded the motion and with no further discussion, the motion was approved.**

Rogers – A calculation error was made and the division recommended that the Rogers' appeal be approved for the full 10%. **Mr. Weiss made a motion to accept the recommendation made on Rogers. Mr. Dodson seconded the motion and with no further discussion, the motion was approved.**

South Conway County – It was recommended that the Commission vote to deny the South Conway County appeal. **Mr. Dodson made a motion to deny the South Conway County appeal. Mr. Weiss seconded the motion and with no further discussion, the motion was approved.** There were no other appeals so the Commission moved on to item 6.

6. Overview of Academic Facilities Program Milestone and Division Activities. Mr. Eaton, at the request of the Commission, outlined various dates and actions associated with those dates and submitted them as an information document. Dr. James asked if there was anything to be highlighted. Mr. Eaton responded that these are the dates that have been established. Dr. James said this timeline had been requested so the Commission could have a clear understanding of dates and actions because this is a very tight fit and it is important that the Commission have this information.

With no further items to come before the Commission, **Mr. Weiss made a motion to adjourn, Mr. Dodson seconded the motion and the motion was approved unanimously.**