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**DEPARTMENT OF EDUCATION
GENERAL DIVISION**

**BEFORE THE COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC
FACILITIES AND TRANSPORTATION**

**APPEAL OF WRITTEN DETERMINATION OF THE DIVISION OF PUBLIC SCHOOL
ACADEMIC FACILITIES AND TRANSPORTATION CONCERNING PARTNERSHIP
PROGRAMS OF THE NORTH LITTLE ROCK SCHOOL DISTRICT**

I. INTRODUCTION/STATEMENT OF ISSUE

COMES NOW the North Little Rock School District (District), pursuant to Section 7.00 of the Commission for Arkansas Public School Academic Facilities and Transportation Rules Governing the Academic Facilities Partnership Program (Partnership Rules), and submits this appeal to the Commission for Arkansas Public School Academic Facilities and Transportation (Commission) of the written determination of the Arkansas Division of Public School Academic Facilities and Transportation (Division), only as to that part of the Partnership Project submission concerning the construction of five (5) new elementary schools and the inclusion of the Pike View School space in its suitability analysis in that part of the Partnership Project analysis. The District appeals from the denial of its timely appeal by the Academic Facilities Review Board (Board) of the written determination of the Division of Public School Academic Facilities and Transportation, as evidenced by the Board's order dated August 16, 2013, following its August 8, 2013 hearing before the Board.

Specifically, the District contends that the Division acted outside the legal authority vested in it by improperly including the square footage contained in the Pike View School building in its suitability review of the elementary school projects based on Arkansas law and regulations governing the Partnership Program. In the alternative, based upon Section 4.03 of the Partnership Rules, the Pike View facility should be excluded from the space calculation as prudent and resourceful.

II. REGULATORY ANALYSIS OF THE FACTS

On or about March 1, 2012, the District submitted its Master Plan and requests for state partnership assistance to the Division for a comprehensive unique, single, district-wide project. In its "Master Plan Narrative" (Tab 6 "Master Plan Narrative Summary") (see attached Exhibit "1"), the District set forth its "Strategic Plan Reconfiguration 2012." Prior to this project, the District was

comprised of one (1) Pre-K only campus, thirteen (13) elementary schools, one (1) sixth-grade campus, three (3) middle schools (with one containing an ALE program), one (1) high school campus (Grades 9-10), one (1) high school campus (Grades 11-12), and one (1) alternative school (Grades 9-12). This Partnership Project represented a district wide reconfiguration which would result in the District having one (1) Pre-K center, nine (9) elementary schools, one (1) middle school, one (1) high school, and one (1) alternative school. This plan will cause eight (8) schools to be closed, one (1) K-5 elementary school to be converted to a Pre-K (Pike View), the current alternative school (Argenta Academy) to be closed, and one (1) middle school (Rose City), to be converted into an alternative school (Grades 6-12). In summary, the number of campuses is to decrease from twenty-one (21) campuses to thirteen (13) campuses.

Specifically, Pike View would exclusively house Pre-K students. Section 3.08 of the Partnership Rules states that “the configuration or reconfiguration is determined by the school district.” The Pre-K students would be coming to Pike View from the Redwood school, while students previously at Pike View would attend either a new elementary facility on a school campus for which the Division has determined the District has no other currently existing appropriate school facilities (new Lakewood Elementary School) (See Section 3.32.2 of the Partnership Rules) or an academic facility built on an existing campus with existing educational facilities (Crestwood Elementary School) (See Section 3.32.1 of the Partnership Rules).

The reconfiguration plan submitted by the District to the Division was applicable to the entire District. The plan requires the closure of Belwood, Lynch Drive, North Heights, Park Hill, and Pike View Elementary Schools; Redwood Pre-K; Poplar Street Middle School; and Argenta Academy. Redwood’s Facility Condition Index (FCI), as contained in the District’s Master Plan submission was 92% (or .92). Redwood is an approximately fifty (50) year old structure. The closure of Redwood will necessitate the District’s replacement of Pike View’s “academic facility space” with Pre-K space to accommodate the former Redwood students. All of the District’s elementary campuses with FCIs above .65 have been authorized by the Division to be replaced or demolished except for Pike View, whose space

the Division has chosen to count against the District. The Division agrees that Pike View has a FCI of .65 or higher.

a.) Suitability Analysis per Section 3.32.2 of the Partnership Rules:

Section 3.32.2 of the Partnership Rules is applicable when the Division is conducting a suitability analysis for the purpose of legally determining the prudent and resourceful use of the state's financial resources, and the district in question is proposing to build a new academic facility on a school campus for which the Division determines there are no other currently existing appropriate school facilities.

The effect of the reconfiguration as to Pike View will cause some of the students who formerly attended the school when it was a K-5 campus to be redirected to a new elementary facility on a school campus for which the Division has determined contains no other currently existing appropriate facilities (new Lakewood Elementary School) (See Partnership Rules, Section 3.32.2). The former Pike View elementary space is thus being **replaced** from use as an "academic facility" (i.e., K-12) space with another elementary school, and is being **reconfigured** to non-academic facility space as a Pre-K (See Partnership Rules, Sections 3.01 and 3.01.3). As a result, the Division was required to conduct its suitability analysis for most of the new elementary schools (Amboy, Boone Park, Glenview, Lakewood and Meadow Park) pursuant to Section 3.32.2, as the District is proposing to build new academic facilities on school campuses for which the Division has determined that there are no other currently existing appropriate school facilities.

Section 3.32.2 requires, in pertinent part, as follows:

When a school district is proposing to build a new academic facility on a school campus for which the Division determines there are no other currently existing appropriate school facilities or the district is currently seeking a separate LEA number for the new academic facility, the Division shall compare the total gross square footage required by the POR for the proposed facility for the appropriate student grade population to that currently existing total gross square footage available in the **district** for the appropriate student grade population in their final grade configuration less the gross square footage to be demolished as part of the proposed project. The Division shall also include other campuses and grades affected by grade **reconfigurations** as part of the project. After making the comparison the school will only be deemed to not be suitable and thus eligible for state financial participation on a proposed facility project for the additional space required in the POR not currently available in the school district for the appropriate student population in their final grade **reconfiguration**.

Additionally, Section 3.08 of the Partnership Rules states that “the configuration or reconfiguration is determined by the school district.”

b.) Suitability Analysis per Section 3.32.1 of the Partnership Rules:

While the District contends that the proper suitability analysis for the Division to use in this setting falls under Section 3.32.2 of the Partnership Rules, to the extent that the suitability analysis process under Section 3.32.1 would be applicable to this unique, district-wide reconfiguration, the District would also receive a favorable suitability analysis as to Pike View, as is shown next.

Section 3.32.1 of the Partnership Rules is applicable when the Division is conducting a suitability analysis for the purpose of legally determining the prudent and resourceful use of the state’s financial resources, and the district in question is proposing to build an academic facility on an existing campus with existing educational facilities. The effect of the reconfiguration as to Pike View will cause some of the students who formerly attended the school when it was a K-5 campus to be redirected to an academic facility built on an existing campus with existing educational facilities (Crestwood Elementary School). The former Pike View elementary space is thus being **replaced** from use as an “academic facility” (i.e., K-12) space with another elementary school, and is being reconfigured to non-academic facility space (See Partnership Rules, Sections 3.01 and 3.01.3). As a result, the Division was required to conduct its suitability analysis for Crestwood Elementary School pursuant to Section 3.32.1, as the District is proposing to build an academic facility on an existing campus with existing educational facilities. This Section requires, in pertinent part, that the Division shall compare the appropriate existing total gross square footage space of the existing facility on the campus to the total gross square footage space requirements of the POR for the proposed new school facility based on the projected student enrollment by grade level. After making the comparison, the school will only be deemed to not be suitable and thus eligible for state financial participation on a proposed facility project for the additional gross square footage space required in the POR not currently available on the school campus or on other campuses affected by grade reconfigurations as part of the project.

c.) Suitability Analysis - Conclusion: The Division was required to conduct a suitability analysis pursuant to either 3.32.1 or 3.32.2 of the Partnership Rules because the District was conducting a district-wide Partnership project with a systemic reconfiguration in which it was replacing Pike View (as well as other elementary schools) and redirecting those students into both new academic facilities on campuses which the Division had determined contained no other currently existing appropriate facilities (i.e., the existing facilities had FCIs of greater than .65), and academic facilities on existing campuses with existing educational facilities. Under neither scenario should the Division count the Pike View space against the District. Pike View has been submitted for reconfiguration as a Pre-K, which is specifically excluded from the definition of an academic facility and as such may not be counted in the academic facility space available to the District for the project in the final reconfiguration of grades for the project.

d.) FCI of .65 or Higher Analysis: In the alternative, even if the Division does count the Pike View space against the suitability needs of the District as academic facility space, the Pike View space should still not be considered as excess suitability after applying a prudent and resourceful analysis. Section 4.03 of the Partnership Rules requires that when a facility's FCI is proven to be greater than .65 the district must show the renovation or **replacement** of the facility represents a prudent and resourceful expenditure of state funds to be considered a project. In conducting any analysis of a specific project under a facilities master plan, it is important to understand and consider the specific replacements, renovations, and new construction projects as part of a single, systemic overhaul. This consideration raises two points. First, the District's use of the Pike View facility for Pre-K is a prudent and resourceful use because the other options (donating the property, selling the aged building, or demolishing the campus) are wasteful and inefficient when compared to its needed use as a replacement Pre-K for the children leaving the Redwood facility. Second, the Division has essentially already declared the project as prudent and resourceful through its approval of the Crestwood and Lakewood Elementary projects which will be accepting the students leaving Pike View. The approval of the projects at these elementary schools begs the question: why would the Division declare the expansion of capacity at these elementary schools to accept the Pike View students worthy of state financial participation if Pike View was still

suitable for use by those students? The rule specifically provides that a replacement is one route toward proving a usage is prudent and resourceful. The term “**replacement**” is not defined by rule. According to Black’s Law Dictionary replacement means “to supplant with substitute or equivalent.” Furthermore, at no place in the Partnership Rules are districts limited in the method or manner in which a facility may be replaced. As to Pike View, the District is replacing the former Pike View (FCI \geq .65) academic facility with other academic facilities in the District by reconfiguring Pike View as a Pre-K non-academic facility (Section 3.01.3 of the Partnership Rules) and assigning its students to other elementary schools.

III. ARGUMENT

The District, in support of its stated position, submits the following points:

1) Though Section 3.01.3 states that facilities **used** for pre-kindergarten education shall not be considered academic facilities, numerous references in 3.32.1, 3.32.2, and other areas, specifically state that the existing total gross square footage available in the district (suitability) is to be viewed in light of their “final grade reconfiguration.” The language of the Rule indicates that suitability will be assessed according to the grade configuration and available district space at the completion of the project. This means that the Pike View facility should have been considered a Pre-K facility when the Division assessed suitability, because that is its proposed repurposing and how it will exist in the “final grade reconfiguration.” As a Pre-K facility, it would not qualify under the Rule as an academic facility. Therefore, the exclusion of the Pike View space cannot reasonably be denied by the Division on the basis of not being a lack of suitable space and thus is a prudent and resourceful use of the state’s financial resources;

2) Even if the Division determines that there is no lack of suitability, as Pike View along with several of the other former elementary schools have an FCI of higher than .65, the Division has approved the demolition or replacement of the other elementary schools, even including the old Glenview Elementary School (FCI of .631) and Belwood Elementary School (FCI of .639), which have FCI’s under .65 (See Division’s New School Project Suitability Review, attached hereto as Exhibit “2”). Pike View

has been replaced per Section 4.03 of the Partnership Rules and as such has proven a prudent and resourceful use as required by the Partnership Rules. Section 4.03 is an exception to the portions of the Partnership Rules governing suitability. An appropriate definition of “replacement”, which is not defined in the Partnership Rules, has been provided above and clearly covers the actions taken by the District as to Pike View; and

3) “Prudent and resourceful use of resources” should not be used solely as a measure or excuse to disallow a project, but rather as a determination of whether the proposed project makes reasonable and customary use of space in order to qualify a project as defined by law and regulation. Pike View is a part of the unique, district-wide project, which demonstrates that the project is “prudent and resourceful.” Rather than simply sell or repurpose Pike View, as the Division is allowing the District to do with the Amboy, Belwood and North Heights Elementary Schools, which are listed as schools to “close” in the District’s Master Plan Narrative, it is being replaced/repurposed for other district needs. This is a far more prudent and resourceful use of the space. As evidenced in the Division’s agreement, if the project is submitted in the future with Pike View being used as Pre-K space, then the space would not be counted against the District for a project related to that campus. This narrow, time-limited application of the Partnership Rules to only future projects, as opposed to current submissions, is not prudent and resourceful. Every project is inherently a future project until it is implemented, whether that occurs in one year or five years. This fact is emphasized in Section 3.14, in defining the facilities master plan, which requires a 6 year strategy and enrollment projections reaching 10 years into the future. Instead, the District has shown a far more prudent and resourceful use of the space which complies with state law and regulations governing this Partnership Project and thus qualifies as prudent and resourceful. The Pike View project is a prudent and resourceful use of state resources, including but not limited to the following ways:

- Pike View’s FCI means it is no longer suitable for use as academic facility space; i.e. the state will not participate to upgrade or expand Pike View for continued use as an elementary school;

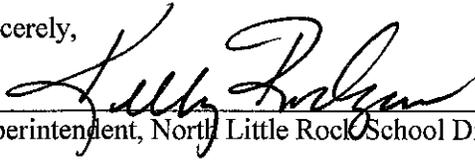
- The Division has approved the functional replacement of Pike View in participating with the District in the Lakewood and Crestwood projects; and
 - The District has listed the reconfiguration of Pike View from a Pre-K-5 facility to a strictly Pre-K facility on its Master Plan, indicating that the District will pay the total costs of the renovation.
- 4) The Division's actions were arbitrary and capricious insofar as the Division acted contrary to the clear evidence in this matter as to how the Partnership Rules should work concerning Pike View. This is evidenced by the deviation from the plain meaning of the Partnership Rules described above. In addition, the approval of the Crestwood and Lakewood portions of the District's Master Plan, which calls for students at Pike View to leave Pike View for Crestwood and Lakewood, clearly imply and establish that Pike View is *not* suitable space for these children. The Division's decision to the contrary treats one half of that proposition differently from the other half, which is arbitrary and capricious. Pike View's repurposed use for Pre-K children does not permit the Division to count Pike View as suitable space according to the Partnership Rules under any reasonable interpretation. It is ironic and illogical that the District should in effect be punished for repurposing Pike View to house Pre-K in a manner that saves money.

IV. CONCLUSION

Wherefore, based upon the above, the District respectfully requests that the Commission find that the Division was in error when it included the square footage of the Pike View campus in its suitability analysis for the five (5) new elementary schools or in the alternative that the Division was in error when it did not consider Pike View as a prudent and resourceful use of space pursuant to Section 4.03; and make a final determination to grant the relief requested as to its Pike View campus, by increasing the number of square feet eligible for state financial participation from 41,481 square feet for each of the five (5) new elementary schools to 80,063 square feet per school, at the amount commensurate with the project cost amount and the District's wealth index and award the District appropriate funding accordingly.

The District, pursuant to Section 7.01 of the Appeals Rules, requests a hearing in front of the Commission on this appeal, and reserves the right to submit further evidence at the hearing.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kelly Rodman". The signature is written in black ink and is positioned above a horizontal line.

Superintendent, North Little Rock School District

Executed this 19th day of September, 2013.

Task 4 Complete a strategic plan using data gathered from study.

Strategic Planned Projects

After the study was conducted and the North Little Rock School District Board of Education voted to adopt the 5 yr Strategic Plan listed below. The plan consists of eight K-5 elementary campuses. There is one new middle school campus and one high school campus. There are also seven school closings, one K-5 converting over to a Pre-K and one alternative school. See chart below for detailed reconfiguration of district. See Appendix A & B for Committed and Planned projects.

Strategic Plan Reconfiguration 2012								
Elementary Schools	Facility Action	Facility Function	Classrms Per Grade	POR Sq Footage	Total GSF	New Capacity	2019-20 Enrollment	Excess Rooms
Amboy	NEW	PreK-5	3	53,719	66,562	473	624	
Befwood	Close							
Boone Park	NEW	PreK-5	3	53,719	67,612	473	500	
Crestwood	Replacement	K-5	3	43,294	65,700	473	624	
Glenview	NEW	PreK-5	3	53,719	67,612	473	523	
Indian Hills	Renov/Add	K-5	3	8,930	60,681	624	624	
Lakewood	NEW	K-5	3	53,719	64,482	473	624	
Lynch Drive	Close							
Meadow Park	NEW	PreK-5	3	53,719	67,612	473	500	
North Heights	Close							
Park Hill	Close							
Pike View	Request to take out of Service - Make New PreK Center							
Redwood	Close							
Seventh Street	Renov/Add	PreK-5	3	12,386	71,963	473	473	
Totals				336,345	598,287	4408	4992	-22.0
Secondary Schools								
Lakewood Middle	NEW MS	Re: East	Re: East	Re: East	Re: East	Re: East	Re: East	
Poplar Street Middle	Close							
Ridge Road Middle Charter	NEWES	K-5	3	3,200	68,063	473	500	-1.0
Rose City Middle	Alternative	6-12					150	
Totals								
Argenta Academy	Close							
High Schools								
NLR High School East	NEW MS	6-8		183,013	192,995	2,100	2582	-16.0
NLR High School West	NEW HS	6-8		419,940	480,259	3,000	3360	-12.0
Totals								
GRAND TOTAL:				939,298	1,271,541	9,508	11084	-50.0

Note: [Appendix A (Committed Projects List)]
 [Appendix B (Future Partnership Projects)]

Exhibit

EXISTING SCHOOL SUITABILITY REVIEW

NEW SCHOOL PROJECT SUITABILITY REVIEW							
District:	N. LITTLE ROCK						
School:	5 NEW E.S.						
Project Number:	1314-6002-701,707,703,702,700						
Project:	5 NEW E.S.						
Review Date:	12/10/2012	No change from 5/12 evaluation					
Area Manager:	MURRAY L BRITTON						
EXISTING SCHOOL NAME	SQUARE FEET	GRADE LEVELS	FCI	REPLACEMENT/ DEMOLITION JUSTIFIED?	EXCESS SF FROM POR SUITABILITY	COMMENTS	
OLD AMBOY ES	35300	K-5	113	YES	0		
OLD BOONE PARK ES	47064	K-5	54.3	NO	47064		
OLD GLENVIEW ES	28789	K-5	63.1	YES	0		
OLD LAKEWOOD ES	30469	K-5	113.6	YES	0		
OLD MEADOW PARK ES	29319	K-5	53	NO	29319		
OLD BELWOOD ES	17254	K-5	63.9	YES	0		
OLD LYNCH DRIVE ES	50898	K-5	48.1	NO	50898		
OLD NORTH HEIGHTS	42219	K-5	80	YES	0		
OLD PARK HILL (SELL?)	33225	K-5	31.6	NO	33225	MAY SELL	
OLD PIKE VIEW (REPURPOSE)	38582	K-5		NO	38582		
SEVENTH STREET ES	54166	K-5			0		
INDIAN HILLS ES	68553	K-5			0		
CRESTWOOD ES	53426	K-5			0		
RIDGEROAD	81706	K-5	47.95		28016	MS TO ES	
TOTAL					227104		
TOTAL REQUIRED SF OF NEW SCHOOL CAMPUS (from new school summary POR)	268585	53717 X 5 NEW SCHOOLS					268585
TOTAL EXCESS SF OF EXISTING SCHOOLS	227104	total excess					
NET FUNDED SF OF NEW SCHOOL CAMPUS	41481	41481 SF AVAILABLE FOR EACH OF 5 NEW SCHOOLS EXCLUDES: INDIAN HILLS, CRESTWOOD, SEVENTH STREET ADDITIONS					
	8,296.20	AVAILABLE PER SCHOOL BASED ON 41481					

Approved Demo
35300
28789
30469
17254
42219
164031