

BEFORE THE ACADEMIC FACILITIES REVIEW BOARD

HEARINGS ON APPEALS OF DETERMINATIONS  
OF THE  
STATE OF ARKANSAS  
DIVISION OF PUBLIC SCHOOL ACADEMIC  
FACILITIES AND TRANSPORTATION

**E X H I B I T S**

**ADE EXHIBIT "A"**

To be incorporated by reference to all hearings:  
2012 Master Plan/Partnership Program Guidelines for  
2013-2015 Biennium

**ADE EXHIBIT "B"**

Summary Minutes of Review Board (07/18/13)

**CABOT SCHOOL DISTRICT**

ADE EXHIBIT ONE (1)  
Appeal Letter to ADE from Dr. Thurman re:  
No Suitability Need (06/12/13)

ADE EXHIBIT TWO (2)  
Appeal Letter to ADE from Dr. Thurman re:  
Disapproved Decision (06/17/13)

CABOT EXHIBIT ONE (1)  
Program of Requirements Summary

CABOT EXHIBIT TWO (2)  
Rule 4.03 and 4.03.1

CABOT EXHIBIT THREE (3)  
Floor Plan

CABOT EXHIBIT FOUR (4)  
Photographs of Current Space

(Cont.)

**GENOA CENTRAL SCHOOL DISTRICT**

~~EXHIBIT ONE (1)  
Misc. Letters and Documents~~

**NORTH LITTLE ROCK SCHOOL DISTRICT**

ADE EXHIBIT ONE (1)  
Appeal of Written Determination filed 06/25/13 by  
NLR School District

NLR EXHIBIT ONE (1)  
Strategic Planned Projects

NLR EXHIBIT TWO (2)  
Existing School Suitability Review

NLR EXHIBIT THREE (3)  
Affidavit of Scott Copas

NLR EXHIBIT FOUR (4)  
Affidavit of Chad Davidson

NLR EXHIBIT FIVE (5)  
Affidavit of Brad Kiehl

NLR EXHIBIT SIX (6)  
Affidavit of Aliza Jones

NLR EXHIBIT SEVEN (7)  
Summary of the Argument

**FORREST CITY SCHOOL DISTRICT**

~~ADE EXHIBIT ONE (1)  
Appeal Letter from Supt. Hughes to ADE w/ Attachments  
(06/19/13)~~

~~FORRECT CITY EXHIBIT ONE (1)  
Compilation of Documents and Photographs~~

(Cont.)

**RECEIVED**

**BEFORE THE ACADEMIC FACILITIES REVIEW BOARD ATTORNEYS OFFICE**

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

JUN 25 2013  
DEPARTMENT OF EDUCATION  
GENERAL DIVISION

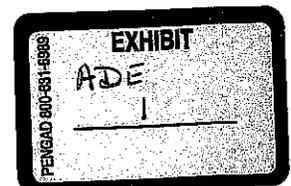
**I. INTRODUCTION/STATEMENT OF ISSUE**

COMES NOW the North Little Rock School District (District), pursuant to Section 6.00 of the Commission for Arkansas Public School Academic Facilities and Transportation Rules Governing Appeals from Determinations of the Arkansas Division of Public School Academic Facilities and Transportation (Appeals Rules), and Section 8.00 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 Academic Facilities Review Board (Board) of the written determination of the 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.

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 a prudent and resourceful re-use of that facility by the District.

**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") (attached hereto as 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 planned 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, 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 if Pike View was still suitable and being used for those students? The rule specifically

holds a replacement as 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 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 suitability, 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:

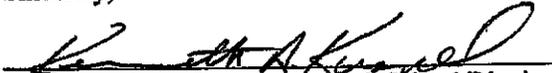
- Pike View's FCI means it is no longer suitable for use as academic facility space; i.e. the state will not participate to upgrade or expand Pike View for continued use as an elementary school;
- The Division has approved the functional replacement of Pike View in participating with the District in 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.

#### IV. CONCLUSION

Wherefore, based upon the above, the District respectfully requests that the Academic Facilities Review Board 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 6.06 of the Appeals Rules, respectfully reserves the right to request a hearing in front of the Academic Facilities Review Board on this appeal.

Sincerely,

  
Superintendent, North Little Rock School District

Executed this 25<sup>th</sup> day of June, 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	Pre-K-5	3	53,719	53,719	473	624	
Balsboro								
Balsboro Park	NEW	Pre-K-5	3	53,719	53,719	473	500	
Chickadee	Reconfiguration	K-5	3	43,251	43,251	473	624	
Glennview	NEW	Pre-K-5	3	53,719	53,719	473	523	
Indian Hills	Renov/Add	K-5	3	4,930	60,681	624	624	
Lakewood	NEW	K-5	3	53,719	53,719	473	624	
Lynch Park								
Maplewood Park	NEW	Pre-K-5	3	53,719	53,719	473	500	
North Heights Park Hill								
Plum View	Request to take out of service - Public Row Park Campus							
Rehoboth								
Sewanh Street	Renov/Add	Pre-K-5	3	12,385	71,965	473	473	
<b>Totals</b>				<b>336,345</b>	<b>598,287</b>	<b>4408</b>	<b>4992</b>	<b>-22.0</b>
<b>Secondary Schools</b>								
Lakewood Middle	NEW MS	Re: East	Re: East	Re: East	Re: East	Re: East	Re: East	
Poplar Street Middle								
Ridge Road Middle Charter	NEW MS	K-5	3	3,200	65,063	473	500	-10
Rose City Middle	Alternative	6-12					150	
<b>Totals</b>								
<b>Argenta Academy</b>								
<b>High Schools</b>								
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
<b>Totals</b>								
<b>GRAND TOTAL:</b>				<b>939,298</b>	<b>1,271,541</b>	<b>9,508</b>	<b>11084</b>	<b>-50.0</b>

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:	1914-8002-701,707,709,702,700					
Project:	5 NEW E.S.					
Review Date:	12/10/2012	No change from 5/12 evaluation				
Area Manager:	MURRAY L. BRITON					
EXISTING SCHOOL NAME	SQUARE FEET	GRADE LEVELS	FCH	REPLACEMENT/ DEMOLITION JUSTIFIED?	EXCESS SF FROM POR SUITABILITY	COMMENTS
OLD AMBOY ES	36300	K-5	119	YES	0	
OLD BOONE PARK ES	47054	K-5	54.3	NO	47054	
OLD GLENVIEW ES	28759	K-5	65.1	YES	0	
OLD LAKEWOOD ES	20499	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	50698	K-5	46.1	NO	50698	
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)	36582	K-5	53	NO	36582	
SEVENTH STREET ES	54166	K-5			0	
INDIAN HILLS ES	68553	K-5			0	
CRESTWOOD ES	68428	K-5			0	
RIDGEROAD	81708	K-5	47.95		28016	MS TO ES
<b>TOTAL</b>					<b>227104</b>	
TOTAL REQUIRED SF OF NEW SCHOOL CAMPUS (from new school summary POR)	268585					
TOTAL EXCESS SF OF EXISTING SCHOOLS	227104					
NET FUNDED SF OF NEW SCHOOL CAMPUS	41481					
8,256.26 AVAILABLE PER SCHOOL BASED ON 4.61% EXCLUDES INDIAN HILLS, GLENVIEW, SEVENTH STREET ADDITIONS						

Exhibit

JUL 25 2013

BEFORE THE ACADEMIC FACILITIES REVIEW BOARD

*In the Matter of the Appeal of the North Little Rock School District  
Proposed Partnership Project Numbers 1314-6002-700, 701, 702, 703, 704*

DEPARTMENT OF EDUCATION  
GENERAL DIVISION

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**RESPONSE OF THE ARKANSAS DIVISION OF PUBLIC SCHOOL ACADEMIC  
FACILITIES AND TRANSPORTATION**

The Division of Public School Academic Facilities and Transportation (“Division”) respectfully requests that the Academic Facilities Review Board deny the appeal of the North Little Rock School District and accept the determination of the Division for the following reasons.

**I. SUMMARY OF ARGUMENT**

The sole issue in this appeal is whether the Division acted outside of the authority vested in it by the law and Partnership Rules by including the space at the North Little Rock School District’s Pike View Elementary School when conducting a suitability analysis for the construction of five new elementary school buildings.

In its Appeal, the North Little Rock School District contends that the Division should not have included the space at Pike View Elementary as available elementary education space in the suitability analysis conducted under section 3.32.2 of the Partnership Rules. The District reasons that although Pike View Elementary served K-5 students through the 2012-2013 school year, the District plans to move those students to a newly constructed facility and replace the K-5 students with pre-K students. The District alleges that because pre-K buildings are not “academic facilit[ies]” under the Partnership Rules (and thus not eligible for Partnership funding), the space that the District plans to use for pre-K students should not be counted as available space.

The problem with this argument is that Pike View Elementary has space to serve K-5 students (as it did through the 2012-2013 school year), and the District’s desire to move the K-5

students out and replace them with pre-K students does not change that fact. In an October 2011 meeting (prior to the District's submission of its project application), the Division told the District that the Pike View Elementary space *would be counted* in the suitability analysis because the space was available for K-5 students, even though the District wanted to re-purpose it for pre-K use. The District's desire to change the nature of this building to a non-"academic facility" that is not eligible for Partnership funding does not change the fact that the space is available for elementary education, and the Partnership Rules therefore require the Pike View Elementary space to be included in the suitability analysis. Any other conclusion would circumvent the Partnership Rules' suitability process. Under the District's logic, a school district that wanted to construct new buildings with state financial participation under the Partnership Program would need only re-purpose one or more of its buildings to a non-academic use and then seek Partnership money for the new construction. This would effectively result in the Partnership Program funding non-academic facilities, which violates the law and Rules.

The District also erroneously argues that because the Facility Condition Index ("FCI") of Pike View Elementary is greater than 65% (i.e., to renovate the building would cost more than 65% of the replacement cost) and Section 4.03 of the Partnership Rules thus could authorize its demolition, that space should not be counted in the suitability analysis. The problem with this argument is that the District does not want to (and has not asked to) demolish the building. Rather, it wants to replace the K-5 students served in the building with pre-K students. At bottom, the Pike View Elementary space *remains available* to house K-5 students; consequently, that space must be counted in the suitability analysis. Furthermore, there are many academic facilities in use in the state where the FCI is above 65% and nothing in the law or Rules requires

the demolition of such an academic facility. And there is nothing that exempts the space of such a facility from being included in a suitability calculation.

The North Little Rock School District has requested a hearing.

## **II. STATEMENT OF FACTS**

The North Little Rock School District submitted an application to the 2013-2015 Academic Facilities Partnership Program involving a district-wide project, which included the construction of five new elementary school (K-5) buildings. As part of its overall plan, the District sought to move K-5 students from its Pike View Elementary School to one of the newly-constructed facilities, and use Pike View to serve pre-K students who previously were housed at another District building. In performing the suitability calculation as required by the Partnership Rules, the Division included the space at Pike View Elementary as space available for K-5 education. The sole issue in the present appeal is whether the Division acted outside of the authority vested in it by the law and Partnership rules by including the Pike View space in the suitability calculation.

Partnership Program funding is available only for a school district's "academic facilities." *See e.g., Ark. Code Ann. § 6-20-2507 et seq.* The Partnership Rules provide that "[b]uildings or spaces . . . used for pre-kindergarten education shall not be considered academic facilities for purposes of these Rules." *See Commission for Arkansas Public School Academic Facilities and Transportation Rules Governing the Academic Facilities Partnership Program dated July 2012 ("Partnership Rules"), Rule 3.01.3.* Stated differently, school district buildings used for pre-K programs are not eligible for Partnership Program funding.

“Suitability” is defined and governed by the Partnership Rules. As the District recognizes, the Rule governing suitability in this matter is set forth at 3.32.2.<sup>1</sup> See District Appeal Brief at 4 (“the District contends that the proper suitability analysis . . . falls under Section 3.32.2). That Section provides in relevant part:

3.32.2 On a New School Campus:

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 . . . the Division shall compare the total gross square footage required by the POR<sup>[2]</sup> 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 that additional space required in the POR *not currently available in the school district for the appropriate student population in their final grade reconfiguration.*

Partnership Rules, Section 3.32.2 (bold in original, other emphasis added).

In performing the suitability analysis, the Division used the POR to compute the required total space for one new elementary school. Because the District proposed to build five, the Division then multiplied that number by five to determine the total required new space for the five schools. In calculating the existing K-5 educational space available in the school district, the Division included that at Pike View Elementary School, *which was housing (and continued to house through the 2012-13 school year) K-5 students.* In a meeting between the Division and

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<sup>1</sup> Because both the District and Division agree that suitability in this matter is governed by Rule 3.32.2, the District’s Rule 3.32.1 suitability argument is superfluous and will not be addressed in this Response.

<sup>2</sup> The “POR,” or Program of Requirements, is defined by Section 3.21 of the Partnership Rules as: [t]he requirements that each new construction project . . . is required to adhere to as the established minimum adequate components, and total square footage required in a school construction project.

District held prior to the District's application for Partnership Program funding for the 2013-15 cycle, the Division told the District that the Pike View Elementary space *would be counted* in the suitability analysis because the space was available for K-5 students, regardless of whether the District wanted instead to use it to house pre-K students.

### **III. APPLICABLE LAW AND ADMINISTRATIVE RULES**

#### **A. Academic Facilities Partnership Program**

The statutory authority for the Academic Facilities Partnership Program is found at Ark. Code Ann. § 6-20-2507, which vests with the Division the authority to make Partnership Program funding decisions. The Commission promulgated rules and regulations necessary to administer this program pursuant to the authority vested in it by Ark. Code Ann. § 6-20-2512. *See* Commission for Arkansas Public School Academic Facilities and Transportation Rules Governing the Academic Facilities Partnership Program dated July 2012 ("Partnership Rules"). The matter presently before this Board involves the appeal of the North Little Rock School District from a determination made by the Division regarding the inclusion of space at the District's Pike View Elementary School as space available to the District's K-5 student population when conducting a suitability analysis under Section 3.32.2 of the Partnership Rules. *See* Ark. Code Ann. 6-20-2513 (provides for school district appeal to this Board).

#### **B. Academic Facilities Review Board**

The Academic Facilities Review Board was created by Ark. Code Ann. § 6-20-2516 to hear appeals filed by school districts Partnership Program funding determinations made by the Division. Pursuant to the authority vested in this Board by Ark. Code Ann. § 6-20-2516, this Board, along with the Commission, established procedures for conducting hearings and appeals.

Those procedures are set forth in the Commission for Arkansas Public School Academic Facilities and Transportation Rules Governing Appeals from Determinations of the Arkansas Division of Public School Academic Facilities and Transportation dated June 2012 (“Appeal Rules”).

#### **IV. STANDARD OF REVIEW AND BURDEN OF PROOF**

Pursuant to Section 2.03 of the Appeal Rules, the appealing school district has the “burden of proving that the Division’s written determination is not supported by substantial evidence or is outside the legal authority vested in the Division.” The Appeal Rules define “substantial evidence” as follows:

‘substantial evidence’ means relevant evidence that a reasonable mind might accept to support a conclusion. Substantial evidence is not based upon speculation and conjecture. A review of substantial evidence is not based upon whether the facts would have supported a contrary finding by the Division, but whether the facts supported the finding made by the Division.

Appeal Rules, Section 2.04. In this matter, the North Little Rock School District alleges the Division acted outside of its legal authority by including the Pike View Elementary space in its suitability calculation, offering two alternate theories. *See* Appeal Brief at 1. The District has failed to meet its burden in either case.

#### **V. ARGUMENT**

To meet its burden, the District must prove that the law and Rules require the Division to allow a school district to convert a Partnership Program eligible academic facility to a non-academic use and not have that conversion count against the district’s projects in the determination of suitability. Because the law and Rules contain no such mandate, the District failed to meet its burden of proving that the Division acted outside the scope of its legal authority

in counting the space at the Pike View Elementary School in the suitability analysis. To the contrary, the Division acted consistently with the suitability Rules by including as available K-5 space the Pike View Elementary School building. At bottom, the District has space at Pike View Elementary that it can use (and *did* use during the 2012-13 school year) to serve its K-5 students, and the District's desire to serve pre-K students in that building does not change the fact that the space is there for K-5 education.

Also, if the District's logic were followed, it would mean that a school district could reconfigure all of its facilities to pre-K or some other non-academic use and then require the state to participate financially to build all new facilities without suitability reductions since there would be no academic facilities to reduce the suitability requirement for the replacement facilities. The net result would be that the Partnership Program would fund pre-K facilities, which the law and Rules prohibit. This same reasoning refutes any District suggestion that Rule 3.08 gives a school district some absolute authority to re-configure school buildings in any way it deems fit (including converting them to a non-academic purpose) yet remain eligible for Partnership funding. *See e.g.* District Appeal Brief at 2.

The District's "FCI"/"prudent and resourceful use of state funds" argument based on Rule 4.03 (*see* District Appeal Brief at 5) likewise must fail. In fact, the FCI (or "Facility Condition Index," *see* Rule 3.13) is irrelevant to this project. The FCI is one of the resources or guides for the Division to approve or deny a District's request to replace/demolish a facility rather than renovate the facility per section 4.03 of the Rules. In general, when the FCI is above 65%, the Division agrees that the facility may be demolished and replaced. The North Little Rock School District made no request, however, to demolish or replace the Pike View campus since the District's plan was to re-purpose the campus to serve pre-K students. If Pike View

Elementary currently is suitable for the education of pre-K students, the District could continue to use it to educate K-5 students. There are many academic facilities currently in use in the state where the FCI is above 65%, and nothing in the law or Rules requires the demolition of such an academic facility. Nor is the space of these facilities excepted from the suitability analysis.

Because the Division's decision was wholly within the authority vested in it by the law and Partnership Rules, the Division's appeal must fail.

#### **VI. CONCLUSION**

For the foregoing reasons, the Division respectfully requests that the Board deny the appeal of the North Little Rock School District and uphold the determination of the Division.

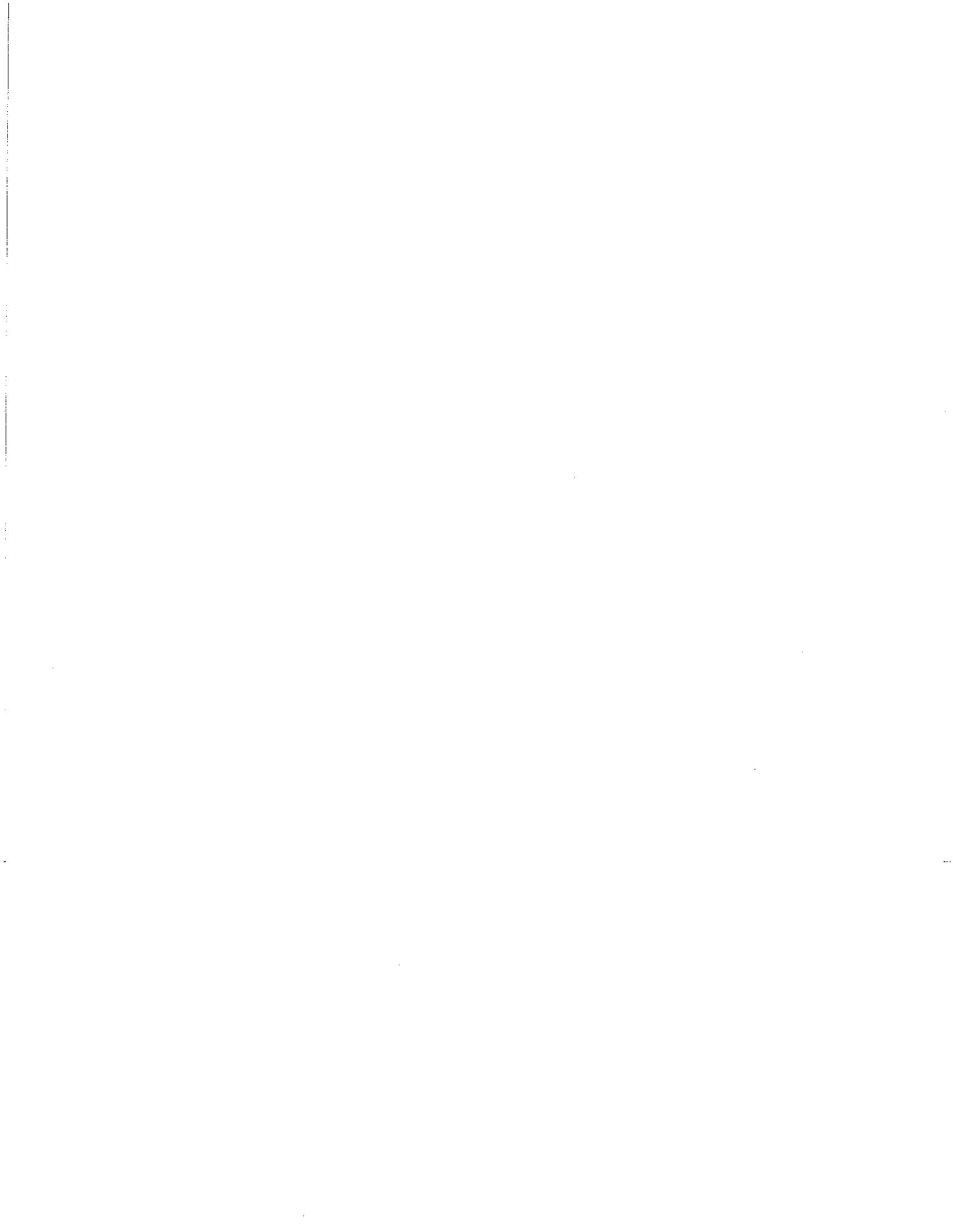
Respectfully submitted,

 7/25/2013

Dr. Charles C. Stein, PE, CFP

Director

Arkansas Division of Public School Academic  
Facilities and Transportation



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 School	Facility Action	Facility Function	Classrms Per Grade	POR Sq Footage	Total GSF	New Capacity	2019-20 Enrollment	Excess Rooms	
Antony	NEW	PreK-5	3	53,719	66,562	473	624		
Brookwood									
Central Park	NEW	PreK-5	3	53,719	67,612	473	500		
Chapelwood	Replacement	K-5	3	49,234	61,700	473	624		
Cherrywood	NEW	PreK-5	3	53,719	67,612	473	525		
East Hill	Renov/Add	K-5	3	4,590	60,681	624	624		
Eastwood	NEW	K-5	3	53,719	64,482	473	624		
Franklin									
Greenwood Park	NEW	PreK-5	3	53,719	67,612	473	500		
North Heights									
East Hill									
Flora Vista	Subject to take out of Service - Main West Post Center								
Richwood									
Seventh Street	Renov/Add	PreK-5	3	2,336	71,365	473	473		
<b>Totals</b>				<b>336,345</b>	<b>598,287</b>	<b>4408</b>	<b>4992</b>	<b>-22.0</b>	
<b>Middle Schools</b>									
Lakewood Middle	NEW MS	Re: East	Re: East	Re: East	Re: East	Re: East	Re: East		
Poplar Street Middle									
Ridge Road Middle Charter	NEW ES	K-5	3	3,200	68,063	473	500	-1.0	
Rose City Middle	Alternative	6-12						150	
<b>Totals</b>									
<b>Argenta Academy</b>									
<b>High Schools</b>									
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	
<b>Totals</b>									
<b>GRAND TOTAL:</b>				<b>939,298</b>	<b>1,271,541</b>	<b>9,508</b>	<b>11084</b>	<b>-50.0</b>	

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

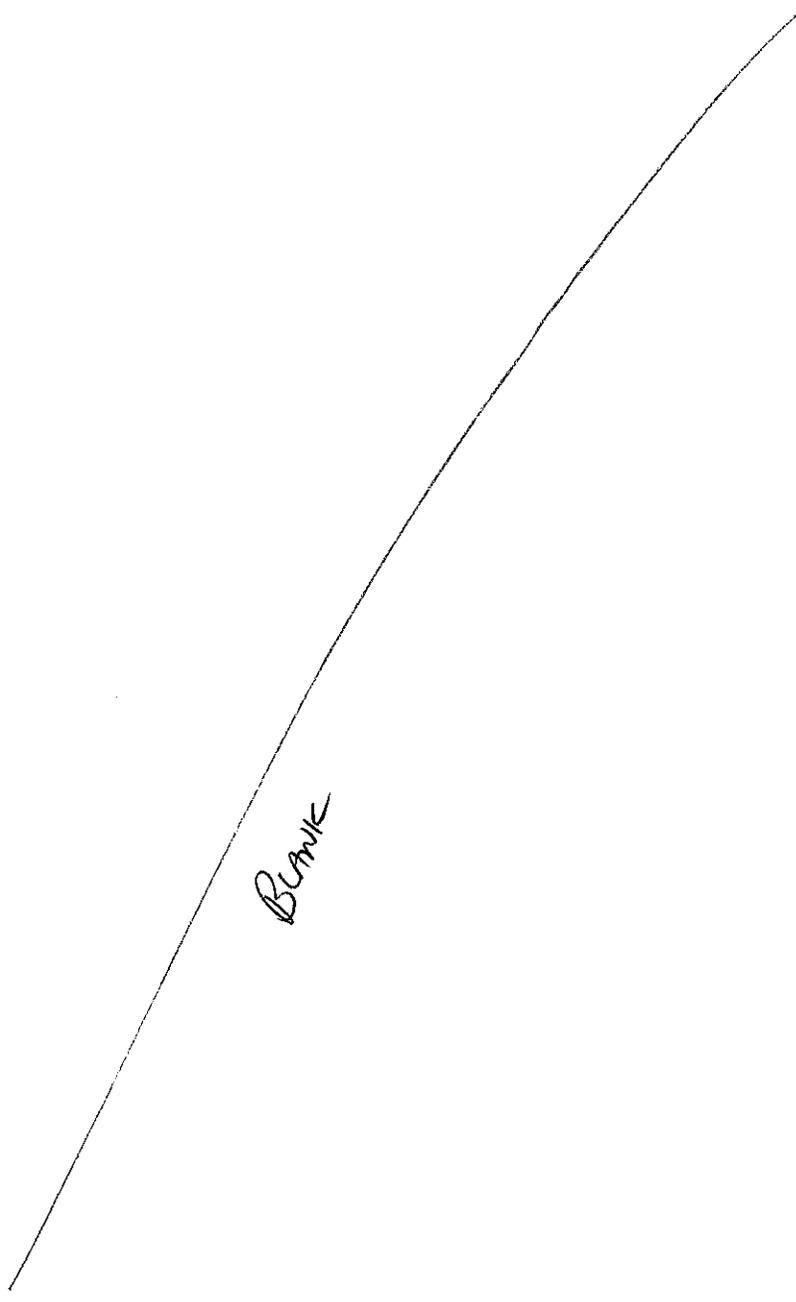


Exhibit  
1

EXISTING SCHOOL SUITABILITY REVIEW

NEW SCHOOL PROJECT SUITABILITY REVIEW						
District:	N. LITTLE ROCK					
School:	5 NEW E.S.					
Project Number:	1314-8002-701,707,703,702,700					268585
Project:	5 NEW E.S.					
Review Date:	12/18/2012	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 ANBOY ES	35300	K-5	113	YES	0	
OLD BOONE PARK ES	47064	K-5	54.3	NO	-47064	
OLD GLENVIEW ES	26789	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	83.9	YES	0	
OLD LYNCH DRIVE ES	50898	K-5	48.1	NO	-50898	
OLD NORTH HEIGHTS	42219	K-5	50	YES	0	
OLD PARK HILL (SELL?)	33225	K-5	31.0	NO	-33225	MAY SELL
OLD PIKE VIEW (REPURPOSE)	36592	K-5		NO	-36592	
SEVENTH STREET ES	54160	K-5			0	
INDIAN HILLS ES	88553	K-5			0	
CRESTWOOD ES	63426	K-5			0	
RIDGECOURT	91700	K-5	47.95		-29015	MS TO ES
<b>TOTAL</b>					<b>227104</b>	
TOTAL REQUIRED SF OF NEW SCHOOL CAMPUS (from new school summary POR)	268585					
TOTAL EXCESS SF OF EXISTING SCHOOLS	227104					
NET FUNDED SF OF NEW SCHOOL CAMPUS	41481					
	8,296.20	41481 SF AVAILABLE FOR FIVE NEW SCHOOLS EXCLUDES RIDGECOURT AND SEVENTH STREET ADDITIONS AVAILABLE PER SCHOOL BASED ON 41481				

Exhibit



BANK

**BEFORE THE ACADEMIC FACILITIES REVIEW BOARD**

*In the Matter of the Appeal of the North Little Rock School District  
Proposed Partnership Project Numbers 1314-6002-700, 701, 702, 703, 707*

---

**AFFIDAVIT OF SCOTT COPAS**

I, SCOTT COPAS, being duly sworn, depose and state:

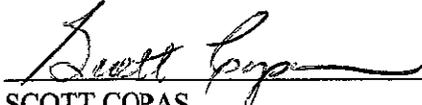
1. I am over the age of eighteen (18) years.
2. I am currently the Chief Operating Officer and Executive Vice President of Baldwin Shell, a general contractor and construction management company.
3. I have worked with Baldwin Shell for 37 years.
4. I was appointed to chair the Task Force to the Joint Committee on Educational Facilities (Task Force), formed by Act 1181 of 2003.
5. I assisted in the drafting of all of the Acts concerning Arkansas educational facilities, including Acts on maintenance, funding, and standards.
6. I also assisted in the drafting of the initial Partnership Rules (Rules) and regulations.
7. I am also ex officio to the advisory committee that reviews the Rules before they are enacted.
8. I wrote the short term and long term plans for the Task Force and created the makeup of the Task Force.
9. We were tasked with addressing eight (8) mandates in response to the Lakeview case.
10. The Task Force was to recommend what constitutes an adequate educational facility under Mandate number two (2).
11. The Division was created under Mandate Number eight (8).
12. The Division acts and creates rules because of the findings of that Task Force.
13. In my opinion, North Little Rock School District (NLRSD, the District) has prepared one of the finest Master Plans to ultimately provide adequate educational facilities to all of the children in their district that I've ever seen.
14. They've made hard decisions to abandon buildings with low FCIs and the suitability analysis indicates that they have been properly penalized for that decision, however, because these buildings are not suitable for providing the educational and facility adequacy that the District is trying to achieve and because the prudent use of taxpayer funds called for a complete reorganization of the District from 21 to 13 campuses, it was the appropriate decision.
15. One of the intentions of the Task Force was for school districts to look at their operations and reorganize their districts to allow more money to be spent on maintaining facility adequacy and preventative maintenance instead of maintenance of inadequate buildings.
16. The educational standards of the state of Arkansas can only work if there are adequate facilities and equipment.
17. The single most troubling issue that the Task Force dealt with was suitability standards being applied to declining districts.
18. Suppose a district has multiple buildings with fairly low FCIs, but a declining enrollment. The most prudent action for the district would be to consolidate the students into one building.
19. That district should not have the existing available space counted against it due to an FCI index. If it is in the district's best interest to move the students into a single new or renovated building



that meets all the facility and educational adequacy standards and reduces the operational costs of the District then that is the prudent use of taxpayer money.

20. I believe that NLRSD is consolidating their campuses for the purpose of being prudent with the money the state and the citizens of North Little Rock have given them for the education of children. I believe this case is no different from the example I gave.
21. This program was intended to give incentives for whole school districts to meet the goals of providing adequate educational facilities.
22. Allowing an inadequate building to be applied against the District when the District is attempting to meet the goals of the law is inappropriate. It was never the intention of the law or the Task Force to punish such a district.
23. If I thought NLRSD was repurposing in an attempt to gain more funding from the state, I would have told the District that action was inappropriate, but I do not believe the District acted inappropriately here.
24. I am proud of how the Division has operated, and because I was involved in the writing of the Rules and Regulations and understand the intent I understand that the Division must make decisions that are not always popular.
25. Other than the initial funding from the State to the Division, the funding to the Division has been inadequate to meet the goals intended by the Task Force to provide all adequate and equitable school facilities within a period of twelve (12) years.
26. I understand that the Division has the same responsibility of determining the prudent spending of Partnership Funds.
27. I agree with the methods of determination as set forth in the Rules and guidelines, however some rules don't necessarily work with others.
28. Just as I mentioned in the example I gave of declining schools, NLRSD has gone far beyond what I have seen from other school districts to determine the long term operational adequacy standards for the children of North Little Rock.
29. The determination that Pike View is an adequate facility with an FCI of 65+, in my opinion, is totally inappropriate.
30. The above statements are true and correct to the best of my knowledge.

**FURTHER AFFIANT SAYETH NOT.**

  
SCOTT COPAS

8-7-13  
DATE

**VERIFICATION**

STATE OF ARKANSAS     )  
SS                             )  
COUNTY OF PULASKI    )

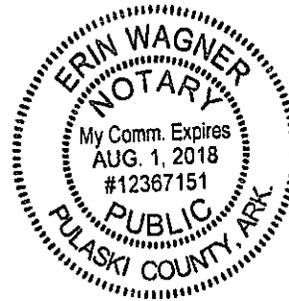
On this day, personally appeared SCOTT COPAS, known to me to be the person whose name is subscribed to within this instrument, and executed the same for the purposes contained therein. In witness whereof, I hereunto set my hand and seal.

SUBSCRIBED AND SWORN BEFORE ME, a notary public, on this 7th day of August, 2013.



\_\_\_\_\_  
Notary Public

My Commission Expires: August 1, 2018.



**BEFORE THE ACADEMIC FACILITIES REVIEW BOARD**

*In the Matter of the Appeal of the North Little Rock School District  
Proposed Partnership Project Numbers 1314-6002-700, 701, 702, 703, 707*

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**AFFIDAVIT OF CHAD DAVIDSON**

I, CHAD DAVIDSON, being duly sworn, depose and state:

1. I am over the age of eighteen (18) years.
2. I am a facilities coordinator for public school districts.
3. I've done this work for 6 years and one month.
4. Before I worked as a facilities coordinator, I was an area manager with the Arkansas Division of Public School Facilities and Transportation from their inception, for approximately two years.
5. Before that, I was a contract employee with the state through the facilities assessment taskforce of 2004.
6. I've worked with approximately 45 districts as a facilities coordinator.
7. I became involved with this particular matter when I was requested to provide a review and thoughts based on my experience as a facilities coordinator.
8. I was not involved in the Application process or with this matter until July 31, 2013.
9. Because I was not involved in the Application process, I am not familiar with North Little Rock School District's (NLRSD) application and Master Plan (Plan).
10. Today is the first time I've viewed the data.
11. I have read the Partnership Rules (Rules).
12. Rules 3.01.3, 3.32.2, 4.03, and 3.08 are part of the same set of Partnership Rules and in my experience, the Rules are read together as a whole.
13. Specifically, I read Rules 3.08 and 3.32.2 together and consider these Rules linked for purposes of use in regard to the "final grade configuration."
14. The Rules clearly reflect that these sections of the rule are very much linked and are in line with showing that the appeal of this decision is relevant.
15. The Division's brief referenced the Facilities Condition Index (FCI) and stated that FCI was irrelevant. This seems to be contradictory to the fact that FCI was used as justification for replacement and demolition, which were justified at multiple campuses in the Division's original decision.
16. FCI is relevant in this case.
17. The Division has used FCI as its justification for approving square footage.
18. The Rules provide for replacement.
19. Replacement in the Rules does not mean demolition.
20. The Rules do not state that demolition must occur before replacement may take place.
21. In my work, I have seen districts use replacement without also using demolition.



22. Replacement in this case is a desirable option because it appears to make the most efficient use of space in the District's plan to provide education to their students.
23. In reviewing the strategic plan for reconfiguration for NLRSD, this appears to be a very streamlined and efficient method and is a prudent and resourceful use of both NLRSD's funds and the state's funds.
24. Rule 3.08 states that configuration and reconfiguration is determined by the school district and is laid out in NLRSD's plan.
25. From my reading of the Division's original decision on NLRSD's application, the Division appears to have approved elements of the reconfiguration plan of the District.
26. Without full approval of all of the pieces of this plan, the plan does not appear to work.
27. It seems to me as though the Division is attempting to determine the configuration or reconfiguration of this District against Rule 3.08 by only approving portions of this project.
28. With reconfiguration in mind, removing the Pike View campus and reconfiguring it to a Pre-K space, it appears that replacement space has been allocated for the K-5 students which would have been coming from Pike View with additional space at Lakewood and Crestwood to account for those students.
29. The Division, according to the Rules, does not count Pre-K space as suitable space. When the Division counted Pike View as suitable space, even though the Plan stated the intended reconfigured use of Pre-K space, the Division's intention was unclear.
30. I do not understand why the Division approved the additional space at Lakewood and Crestwood if Pike View remained suitable space.
31. The above statements are true and correct to the best of my knowledge.

**FURTHER AFFIANT SAYETH NOT.**



CHAD DAVIDSON

August 1, 2013

DATE

VERIFICATION

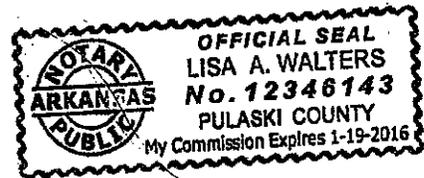
STATE OF ARKANSAS )  
SS )  
COUNTY OF PULASKI )

On this day, personally appeared CHAD DAVIDSON, known to me to be the person whose name is subscribed to within this instrument, and executed the same for the purposes contained therein. In witness whereof, I hereunto set my hand and seal.

SUBSCRIBED AND SWORN BEFORE ME, a notary public, on this 1<sup>st</sup> day of August, 2013.

Lisa A. Walters  
Notary Public

My Commission Expires: 1-19-2016



**BEFORE THE ACADEMIC FACILITIES REVIEW BOARD**

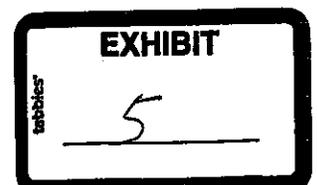
*In the Matter of the Appeal of the North Little Rock School District  
Proposed Partnership Project Numbers 1314-6002-700, 701, 702, 703, 707*

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**AFFIDAVIT OF BRAD KIEHL**

I, BRAD KIEHL, being duly sworn, depose and state:

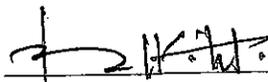
1. I am over the age of eighteen (18) years.
2. I am Principal of the DLR Group and an educational facilities planner.
3. I have been doing educational programming and facilities planning for fifteen (15) years.
4. I have worked with Bentonville, Fayetteville, Conway, and North Little Rock School Districts.
5. I have worked in five (5) other states in educational programming and facilities planning at the Pre-K through 12 level, in addition to Arkansas.
6. I am a certified educational facility planner recognized by the Council of Educational Facilities Planners International (CEFPI).
7. I am familiar with the Partnership Rules (Rules).
8. My firm is the master architect having oversight for the programming and planning of North Little Rock School District's (NLRSD) Master Plan.
9. My role is as the Project Manager/Architect for the projects resulting from NLRSD's strategic plan.
10. In my role as Educational Planner / Project Manager, I have an excellent understanding and knowledge of NLRSD's Master Plan (Plan).
11. I have been consistently involved with this Plan at every stage from the beginning of the project to the present date.
12. In the formation of the Plan the two goals were educational performance improvement and fiscal efficiency and responsibility improvement.
13. NLRSD's priorities were driven by the needs of the students, staff, and community.
14. The community was very involved in the process and NLRSD relied upon communication with the community in every step of the process. As a result, the Plan has the full approval of the community.
15. In planning this project, we had 23 collaborative meetings with the community, with over 714 people in attendance. We also conducted a staff survey, a phone survey, and a parent survey.
16. I believe this Plan represents a prudent and resourceful use of state funds.
17. Since the partnership funding was put in place, NLRSD has had need of funding every year.
18. NLRSD wanted to break the cycle of asking for funding every year for a number of fixes and instead create a full scale plan for whole district improvement.



19. By moving to a comprehensive Plan, the district was able to project a savings of \$8.3 million per year in operational savings.
20. In lieu of continuing to ask for Partnership participation every year, the comprehensive Plan allowed NLRSD to ask for assistance once. NLRSD would then not anticipate a need to ask for assistance year after year to maintain its facilities.
21. The community and NLRSD thought the Plan was good for the district and the state because it allowed the state to provide assistance once and thereafter focus on other districts' needs.
22. In my experience in educational facilities planning, this Plan is top three in the nation. I do not know of another district in which a board and district have taken on reconfiguring their facilities and educational programs to the magnitude of NLRSD's comprehensive Plan.
23. If Pike View's square footage is held against NLRSD, it will create financial challenges which will extend the time frame of the strategic Plan.
24. NLRSD will continue to move forward with this community supported Plan in the future to complete it.
25. Counting Pike View's square footage against NLRSD will require NLRSD to reallocate funding away from the intended uses in the Plan for other schools and will force the district to use funding in ways it had not planned or anticipated, causing an extended time frame in the Master Plan.
26. The Facilities Condition Index (FCI) was a benchmark to determine whether the state felt participation in a project was a prudent use of state funds.
27. The FCI is not irrelevant. It helps us establish a benchmark, along with other measures we use, to determine the feasibility of renovating or replacing campus projects.
28. We rely on the FCI along with other characteristics when we evaluate districts, so the FCI may create challenges for the district.
29. It is my opinion that the Division does find the FCI relevant and useful. The Division conducted its own walk-through of campuses to determine FCIs.
30. The FCI is relevant in the Pike View project because it helped NLRSD gauge the magnitude of improvements necessary to move Pre-K students there and to determine which buildings continue to be used as a facility.
31. If Pike View had scored an FCI of .80, the district might have determined that it was better to demolish that building, but given the FCI of .66, the district relied on the FCI in deciding to keep Pike View as a Pre-K in its comprehensive Plan. Likewise, the FCI was instrumental in NLRSD's decision that Pike View was no longer suitable and educationally adequate for use as a K-5.
32. My understanding of the Partnership Rules, as to updating FCI, is that the district has an opportunity during their Master Plan efforts to reassess and re-evaluate using assessments done at the district's cost.

33. The NLRSD Board elected to have my firm look at the 2004 assessment and either validate it or provide new information as to the status of their facilities.
34. The FCI determined by DLR group for Pike View was .66.
35. The above statements are true and correct to the best of my knowledge.

**FURTHER AFFIANT SAYETH NOT.**

  
\_\_\_\_\_  
BRAD KIEHL

  
\_\_\_\_\_  
DATE

VERIFICATION

STATE OF ARKANSAS    )  
SS                            )  
COUNTY OF PULASKI    )

On this day, personally appeared BRAD KIEHL, known to me to be the person whose name is subscribed to within this instrument, and executed the same for the purposes contained therein. In witness whereof, I hereunto set my hand and seal.

SUBSCRIBED AND SWORN BEFORE ME, a notary public, on this 7th day of August, 2013.



\_\_\_\_\_  
Notary Public

My Commission Expires: August 1, 2018



**BEFORE THE ACADEMIC FACILITIES REVIEW BOARD**

*In the Matter of the Appeal of the North Little Rock School District  
Proposed Partnership Project Numbers 1314-6002-700, 701, 702, 703, 707*

---

**AFFIDAVIT OF ALIZA JONES**

I, ALIZA JONES, being duly sworn, depose and state:

1. I am over the age of eighteen (18) years.
2. From 2003 to 2005, I was part of the Legislative Task Force to the Joint Education Committee (Task Force) as a Project Manager.
3. In 2005, I became the planning manager for 75 districts until 2007.
4. In 2007, I became for a consortium of 19 districts doing facilities master planning and various types of maintenance and custodial review.
5. I have held a Registered Educational Facilities Planner certification since 2010.
6. It is my understanding that the FCI has always been a contributing factor in whether projects were approved.
7. If a building had an FCI higher than .65, it became not prudent to fund more improvements. In this way, the FCI is relevant.
8. In the past, districts have been able to hire a firm or professional to do an independent review for the Division's consideration.
9. In moving Pre-K students to Pike View from Redwood, North Little Rock School District (NLRSD) repurposed Pike View at the district's own expense.
10. I do not believe this is any different than repurposing a gym as storage in that this is removing an academic space and making it nonacademic space.
11. NLRSD is eliminating several schools and attempting to move all of their students into better educational facilities.
12. Reconfiguration of a district is at the district's discretion. The Pike View project is part of a district reconfiguration, in my opinion.
13. Because NLRSD is using district funding, in my view the district is free according to the Rules to reconfigure the building as a Pre-K without that square footage being counted against the district.
14. The district should not be penalized for the Pike View square footage because it is a Pre-K in its final grade configuration and Pre-K is nonacademic space.
15. By including Pike View's square footage as suitable space for K-5 students, the Division interferes with NLRSD's ability to reconfigure the district at its discretion.
16. When NLRSD indicated that Pike View would be a Pre-K in its Master Plan (Plan), it became used as a Pre-K and should have been noted as a Pre-K for purposes of calculating available space.
17. Master Plans are for the future of the district. The moment of the usage begins when it is put into the Master Plan.

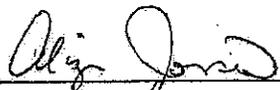
**EXHIBIT**

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18. During my time on the Task Force, one of our intentions was to ensure that funding was provided to the districts for proper maintenance and that funding was given to the most prudent and resourceful use.
19. The determination of whether a project is a prudent and resourceful use of state funds is relevant in prioritizing funding.
20. The NLRSD Plan looks like an incredibly resourceful use of state funds. It intends to eliminate eight (8) campuses and vastly improving efficiency. Eliminating the costs of maintaining these aging buildings is the most prudent and resourceful use of state funds.
21. NLRSD would like to make Pike View a Pre-K, but NLRSD is not asking the state to fund that building. Because it plans to fund the Pre-K from district funds, NLRSD should not be penalized for that space.
22. The above statements are true and correct to the best of my knowledge.

**FURTHER AFFIANT SAYETH NOT.**

  
\_\_\_\_\_  
ALIZA JONES  
8-7-2013  
\_\_\_\_\_  
DATE

**VERIFICATION**

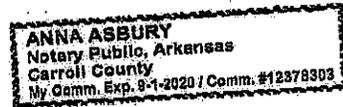
STATE OF ARKANSAS     )  
SS  
COUNTY OF <sup>Carroll aa)</sup> ~~PULASKI~~

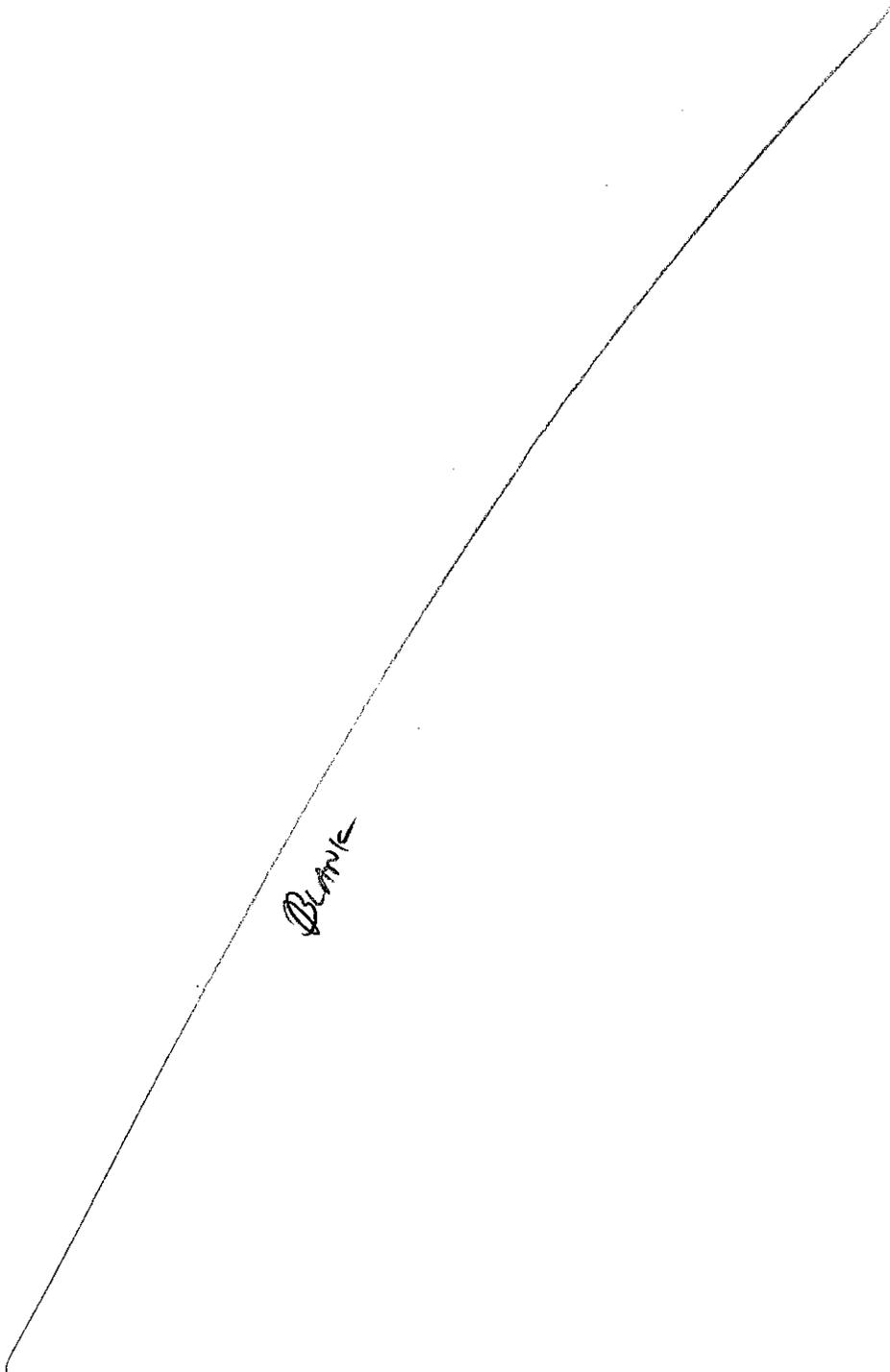
On this day, personally appeared ALIZA JONES, known to me to be the person whose name is subscribed to within this instrument, and executed the same for the purposes contained therein. In witness whereof, I hereunto set my hand and seal.

SUBSCRIBED AND SWORN BEFORE ME, a notary public, on this 7<sup>th</sup> day of August, 2013.

Anna Asbury  
Notary Public

My Commission Expires: 9-1-2020





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# North Little Rock School District

Tripp Walter  
Attorney for NLRSD  
APSRC Staff Attorney



## Summary of the Argument

- Pike View was intended to be reconfigured into a Pre-K facility in their “final grade configuration” as is at the District’s discretion according to 3.08.
- Pre-K facilities do not count as non-academic facilities according to 3.01.3.

## Summary of the Argument

- The suitability analysis should have been done according to the “final grade configuration” as is stated in Rule 3.32.
- The Division acted outside its authority in counting the Pre-K facility, and also through interfering with the reconfiguration of the building.

## Summary of the Argument

- FCI is relevant because when it exceeds .65 the District is afforded options according to rule 4.03.
- Pike View's FCI exceeded .65 FCI.
- Replacement is an option under Rule 4.03, and demolition and replacement of the space on the same location is not required according to a plain language reading of the rule.

## Summary of the Argument

- Replacement and reconfiguration is the most prudent and resourceful use of funds, and is the only good use of the facility.
- The Division approved the Pike View portion through its approval of the Lakewood and Crestwood portions.
- The Division acted contrary to the substantial evidence (including their own implicit approval) in denying the Pike View portion.

# Fall 2011

