

**Readopt with amendments Ed 323, eff 5-20-21 (Document #13207), to read as follows:**

PART Ed 323 CHARTER SCHOOL LEASE AID

Ed 323.01 Purpose. The purpose of Ed 323 is to implement the provisions of RSA 198:15-hh, relative to providing annual grants to meet the costs of leasing permanent space in buildings for chartered public schools authorized under RSA 194-B:3-a.

Ed 323.02 Definitions. Except where the context makes another meaning clear, the following words shall have the meaning indicated when used in Ed 323:

(a) "Chartered public school (charter school)" means "chartered public school" as defined in RSA 194-B:1, IV, and as approved pursuant to RSA 194-B:3-a;

(b) "Department" means the New Hampshire department of education;

(c) "Lease" means an agreement to lease permanent space in a building or buildings;

(d) "Leased facility" means permanent space in a building or buildings as described in the lease; and

(e) "Lease aid" means the annual grant for a lease under RSA 198:15-hh, I.

Ed 323.03 Lease Agreements.

(a) Pursuant to RSA 198:15-hh, a lease shall be:

(1) Approved by the charter school board of trustees; and

(2) Initially for a term of 10 years or less to be eligible to receive lease aid.

(b) A lease shall continue until its term expires, and the sale of the property by the owner or a declaration of bankruptcy by the owner shall not terminate the agreement entered into with the charter school.

(c) The lease shall state the parties responsible for the following:

(1) Carrying out maintenance;

(2) The procedures for carrying out such maintenance; and

(3) The cost of and payment for completing:

a. Maintenance of the facility;

b. Custodial services;

- c. Refuse removal;
- d. Snow removal; and
- e. Grounds maintenance.

(d) Costs for utilities, heat, and the items listed in (c) above shall not be eligible for reimbursement. If utility costs are included in the monthly or annual lease payment, the property owner shall separate those costs from the rental costs on the invoice submitted to the charter school.

(e) Costs for space beyond what is required for the operation of the charter school shall not be eligible for reimbursement. If space is leased beyond what is necessary for the operation of the charter school, the property owner shall separate those costs on the invoice submitted to the charter school.

(f) The lease shall include the necessary provisions to allow for the duties identified in Ed 323.05 to be met.

(g) The lease shall include the following provisions:

(1) Early termination of the lease by the charter school in the event the building is no longer required to meet the needs of the charter school;

(2) Early termination by the charter school in the event the property owner fails to fulfill the terms of the lease; and

(3) The requirement that the property owner gives notice of at least 60 days prior to early termination of the lease by the property owner.

Ed 323.04 Legal Review of Lease.

(a) The lease shall be reviewed, at the charter school's expense, by the charter school's attorney licensed in New Hampshire who shall be knowledgeable in contract law pertaining to such lease agreements.

(b) The review shall ensure alignment with the requirements outlined in Ed 323.03.

(c) The review shall be for the purpose of compliance with factual law and shall contain no factual errors.

(d) The review shall confirm compliance with contract law including no omissions, and that the lease has been amended as necessary.

Ed 323.05 Duties of Applicant.

(a) In order for the charter school to be eligible for lease aid, the charter school shall comply with the provisions outlined in (b) below.

(b) The charter school shall:

- (1) Complete all local, state, and federal required water testing, including taking measures to limit exposure to lead in drinking water as outlined in RSA 485:17-a;
- (2) Ensure the property owner allows testing for air quality, mold, lead, asbestos, or any other hazardous materials or conditions at the expense of the charter school;
- (3) Ensure any deficiencies identified by such testing will be promptly corrected, and testing shall be allowed prior to occupancy of the property and at any time during such occupancy;
- (4) Pursuant to 40 CFR §763.93 and Env-A 1810.17, develop an asbestos management plan for the leased property and shall be subject to the requirements of the Asbestos Hazard Emergency Response Act (AHERA) regulations 15 USC §2641-2656; and
- (5) Ensure property and liability insurance is maintained to fully compensate for loss or damage to property or any other costs associated with an event resulting from negligence by the owner or the owner's agents or employees.

Ed 323.06 Lease Aid Application. In order for the charter school to be eligible for lease aid, the charter school shall comply with the provisions of this section, as follows:

(a) By January 1, charter schools shall submit to the department the following:

- (1) A copy of the proposed lease agreement that meets the requirements in Ed 323.03;
- (2) The amount of the lease eligible for lease aid;
- (3) An explanation of why the lease is necessary;
- (4) A site plan of the building and surrounding property;
- (5) A description of the surrounding area that includes the specific types of residential, commercial, and industrial activities that take place on the property and on all abutting properties;
- (6) Indication if the leased facility is on municipal or well water and, if applicable, the public water system identification number issued by the department of environmental services;
- (7) Anticipated k-12 enrollment as of September 1 of school year aid request;
- (8) An assurance statement that the charter school shall comply with duties identified in Ed 323.05;

(9) An assurance statement that the lease aid request only includes costs for space that is required for the operation of the charter school;

(10) A statement that the charter school is aware that per Ed 321.13, all public school construction or reconstruction projects are required to have a review completed by the state fire marshal's office; and

(11) A statement that the charter school is aware of the additional submittal requirements and deadline in (b) below;

(b) By September 1, or prior to occupancy, whichever comes first, the charter school shall submit the following:

(1) A statement that indicates that the leased facility meets the state building code under RSA 155-A signed by:

- a. The local code enforcement official;
- b. A licensed engineer;
- c. A licensed architect; or
- d. Another qualified professional;

(2) A statement that indicates that the leased facility meets the state fire code under RSA 153:1, VI-a and Saf-Fmo 300, as amended by the state board of fire control and ratified by the general court pursuant to RSA 153:5 signed by:

- a. The local code enforcement official;
- b. The fire chief;
- c. A licensed engineer; or
- d. Another qualified professional;

(3) A statement that indicates that the leased facility meets the New Hampshire code for barrier-free design under Abfd 300, signed by:

- a. The local code enforcement official;
- b. A licensed engineer;

c. A licensed architect; or

d. Another qualified professional;

(4) If food service operations are to take place in the leased facility, proof of approval from the bureau of food protection at department of health and human services, as provided in He-P 2304;

(5) A certification by the charter school's attorney to the department that the lease meets the requirements in Ed 323.03 and the lease has been reviewed, approved, and signed; and

(6) A copy of the property and liability insurance that meets Ed 323.05(b)(6); and

(c) If the items in (b) above are not submitted in the time frame required, the charter school shall forfeit lease aid for the fiscal year which they applied for.

Ed 323.07 Review and Approval Process.

(a) For initial approval, the charter school shall apply for lease aid by submitting an application as outlined in Ed 323.06.

(b) By September 1 of each year, the charter school may request to renew lease aid if no substantive changes have been made to the lease previously approved by the department through (a) above, and the following items have been submitted to the department:

(1) Assurance statement that the charter school is still operating under the same lease approved by the department through (a) above, or submit an updated lease agreement certified by the charter school's attorney to the department that the lease meets the requirements in Ed 323.03 and the lease has been reviewed, approved, and signed;

(2) Updated amount of the lease eligible for lease aid, if applicable; and

(3) An updated copy of the property and liability insurance that meets Ed 323.05(b)(6), if applicable.

(c) If substantive changes have been made to the lease, the charter school may reapply for lease aid by submitting an application per Ed 323.06.

(d) Upon review and approval of the items identified in (a) or (b) above, the department shall notify the charter school of their eligibility of lease aid.

Ed 323.08 Payments.

(a) The amount of lease aid shall be in accordance with RSA 198:15-hh. If the lease appropriation is insufficient, the appropriation grant payments shall be prorated equally among all eligible charter schools.

(b) If the items identified in Ed 323.07 (a) or (b) are not submitted in the time frame required, the charter school shall forfeit lease aid for the fiscal year which they applied for.

(c) Lease aid grant payments shall be made annually in November of each fiscal year and shall only be made if the charter school has students enrolled on opening day.

(d) The charter school shall be responsible for all costs incurred through the lease. Lease aid shall be considered a reimbursement of a portion of rental costs as authorized by RSA 198:15-hh, provided that sufficient funds are appropriated by the legislature and made available to the department.

(e) Lease aid shall be terminated if the leased space is no longer being used for the purposes proposed under the approval of lease aid.

Ed 323.09 Eligibility.

(a) The initial building costs of modifying the building to meet the requirements of the educational program shall be eligible for lease aid if the charter school is required to pay those costs by the terms of the lease.

(b) The following shall not be eligible for lease aid:

- (1) Costs for space beyond what is required for the operation of the charter school;
- (2) Costs for utilities, heat, and the activities in Ed 323.03 (c);
- (3) Costs for repairs for damages to the facility regardless of cause;
- (4) Any deposits of funds that the charter school is required to provide to the property owner that are subsequently returned to the charter school;
- (5) Costs for the use of portable or modular classroom space; and
- (6) Costs to make permanent upgrades or renovations to the leased space.

**Appendix I**

<b>Rule</b>	<b>Specific Statute Rules Implement</b>
Ed 323	RSA 198:15-hh