

<p>Subject:</p> <p><i>Chartered Public School Joint Legislative Oversight Committee & Chartered Public School Use of Unused District Facilities</i></p> <p>Date Issued: October 5, 2023</p>	<p>Legal Reference – HB 536 (2022-2023 Legislative Session)</p> <ul style="list-style-type: none"> • RSA 194-B:21 • RSA 194-B:17, VI • RSA 194:61, III(d)
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*This Technical Advisory continues the New Hampshire Department of Education’s communication regarding new legislation, which was passed during the 2022-2023 legislative session. HB 536 amends various areas of the law all of which pertain to chartered public schools. **This law became effective August 4, 2024.***

During the 2022-2023 legislative session, SB 216 was passed into law which, among other things, amends existing law with respect to the exercise of a right of first refusal by a Chartered Public School to purchase school district facilities.

Chartered Public School Use of Unused District Facilities:

HB 536 amended RSA 194:61 as it pertains to unused school district facilities. Specifically, the statutory change amended the right of first refusal pre-existing conditions that apply when a school district offers an unused facility to a chartered public school for purchase or lease. Notably, the law now provides that if the offering school district has not received an offer to purchase or lease an unused facility from a party, other than an approved chartered public school operating in this state, a chartered public school may initiate, and the school board of the offering school district shall, within 60 days of receiving the offer, engage in, substantive good faith negotiations for the purchase or lease of the unused facility. The negotiation period shall continue for 30 days, or less if an agreement is reached. If no agreement is reached, the Commissioner of the Department of Education is now required to engage an independent mediator who shall gather independent appraisals of the value of the property when the chartered public school made an offer to purchase. The appraised value shall determine a fair market price for the offering chartered public school. In situations when the charter school made an offer to lease the property, the appraisals gathered by the mediator shall determine a fair market lease price for the offering chartered public school.

For purposes of completeness, RSA 194:61 is included here in its entirety:

I. In this subdivision, " unused facility " means a school building owned by a school district which is not used for academic purposes, extracurricular activities, administrative school functions, or sports and for which the school district has no school board approved written plan for future use. In order to comply with this paragraph, such school approved plan shall include academic purposes, extracurricular activities, administrative functions, or sports to be used by the school within 2 years of the plan's approval.

II. On January 1, 2022, and on July 1 every year thereafter, the superintendent of each school district shall report to the department of education each unused facility owned by the school district. The department shall establish and maintain a list of unused facilities owned by each school district and make such list available on the department's website.

III. Pursuant to paragraph I, a school district shall offer an unused facility to a chartered public school for purchase or lease as follows:

(a) If a school district's school board extends an offer to purchase or lease an unused facility to a party, other than an approved chartered public school operating in this state, the contract shall include a provision which makes the purchase or lease subject to the right of first refusal by an approved chartered public school operating in this state.

(b) If the offer to purchase or lease is accepted, the school district selling or leasing the unused facility shall notify the charter school administrator of the department of education who shall notify all approved chartered public schools in this state, as listed on the department of education's website, of the contract to purchase or lease the unused facility. The notice provided to the charter school administrator shall contain clear language that the unused facility is available to any approved chartered public school in this state only, and shall list the offering school district's name and location, the square footage of the unused facility, the contact information of the offering school district's representative, and the expiration date of the right of first refusal which shall be 60 days after the date of the notification to the charter school administrator.

(c) A chartered public school that fails to exercise its right of first refusal shall forfeit such right as it pertains to the specific unused facility and any future right or interest in the specific unused facility.

(d) If the offering school district has not received an offer to purchase or lease an unused facility from a party, other than an approved chartered public school operating in this state, a chartered public school may initiate, and the school board of the offering school district shall, ***within 60 days of receiving the offer***, engage in, ***substantive*** good faith negotiations for the purchase or lease of the unused facility. ***The negotiation period shall continue for 30 days, or less if an agreement is reached. If no agreement is reached, the Commissioner of the Department of Education is now required to engage an independent mediator who shall gather independent appraisals of the value of the property when the chartered public school made an offer to purchase. The appraised value shall determine a fair market price for the offering chartered public school. In situations when the charter school made an offer to lease the property, the appraisals gathered by the mediator shall determine a fair market lease price for the offering chartered public school.***

(e) If 2 or more chartered public schools notify the offering school district indicating an interest in the unused facility to lease or purchase, the offering school district shall make the final selection of the purchaser or lessee.

(f) The criteria used to evaluate parties interested in the purchase or lease of an unused facility shall be public information and shall not be subject to RSA 91-A.

IV. In right of first refusal negotiations with a chartered public school, it shall be the option of the offering school district whether to sell or lease the property under consideration, at fair market value or less, for a term to be agreed upon by the parties. A lease shall include ingress to and egress from the facility, and where a part of a facility is leased, the right to access and use of the common area shared by all tenants and users of the facility. If a chartered public school leases the entire facility, the chartered public school may incur debt to make improvements to the facility, and the school district shall subordinate its interest in the lease to such debt.

V. The chartered public school shall have 6 months after the date of making a written offer to complete the purchase or lease of the unused facility for a price negotiated with the school district.

VI. During the term of a lease, a chartered public school shall be responsible for direct expenses related to the facility or any part of the facility leased, including utilities, insurance, maintenance, property taxes, and repairs.

VII. If a chartered public school plans to sell an unused facility which it has purchased, it shall first offer the facility to the school district from which it was purchased. Such offer shall be governed by the procedures set forth in paragraphs III, IV, and V.

For questions related to this Technical Advisory, please contact:

Diana E. Fenton, Esq.
Chief, Governance Unit
Tel: 603-271-2198
Email: Diana.E.Fenton@doe.nh.gov