



# Closing a School Building: **THE NEXT STEPS**

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**C**losing a school building can be a difficult decision for a school board, but sometimes a necessary one. Often a critical factor in making such a decision is ensuring that taxpayer dollars are spent wisely. After the decision is made, however, it is also critical to know that some additional steps must be taken before the board

may consider selling or exchanging the building.

Veteran board members likely know that, since 2011, school boards have had to make vacant classroom buildings available to charter schools.<sup>1</sup> The passage of this law required school

corporations to notify the Indiana Department of Education of the closing of the classroom building and then mandated the creation of a list of school buildings that charter schools could either lease or purchase from school corporations for \$1. Buildings had to remain on the list for a period of two years, and school boards were prohibited from selling the buildings before the expiration of the two-year period.

This past legislative session, the General Assembly amended the law by reducing the time period for which vacant classroom buildings have to stay on the “charter school building list,” but also imposed some additional requirements for school boards to meet before they can sell or exchange the buildings.<sup>2</sup> These changes went into effect immediately upon passage of the bill.

It is important to understand that the buildings that must be made available to charter schools for lease or purchase are limited

to buildings that are vacant or unused and were previously used for classroom instruction. Additionally, the statute does not apply to a school building that is vacated in order to renovate the building for future use by the school corporation or is being demolished in order to build a new school building on the same site as the demolished building.<sup>3</sup> Absent either of these two circumstances, before a school board may sell or exchange a vacant building that was used for classroom instruction, the school board must take certain steps.

First, within 10 days of making a decision to close, no longer use, or no longer occupy a building that had been used for classroom instruction, the governing body must notify the Department of Education of the decision and the date that the building will be closed and vacated. The Department of Education, within 5 days of receiving notice from a school corporation, must then give written notice to each charter school authorizer and statewide organizations representing charter schools of the availability of the vacated building. If a charter school is interested in leasing or purchasing the building, the charter school must submit a preliminary request to lease or purchase to the Department within 30 days of receiving the notice. The school corporation must allow the charter school to inspect the school building and is required to advise the charter school of estimated operating expenses and the general condition of the building.

If a charter school is interested in leasing or purchasing the vacated school building, the charter school must give notice to the school corporation of its interest, when it expects to begin providing classroom instruction (a date that cannot exceed 2 years from the date the building is vacated), and a resolution adopted by the board of the charter school that the building will meet the charter school's needs and can be operated within the budget of the charter school.

Assuming all of these steps have been taken, the school corporation must then lease the school building to the charter school for \$1 each year that the charter school uses the building for classroom instruction, or sell the building to the charter school for \$1. If the building is leased to the charter school, the charter school is responsible for such costs as utilities, maintenance, insurance, repairs, and remodeling during the term of the lease. If the school building is sold to the charter school, and the charter school thereafter sells or transfers the building to a third party, the charter school must transfer a specified amount back to the school corporation.<sup>4</sup>

Alternatively, if the Department of Education does not receive any notice of interest from a charter school within 30 days, the

Department must inform the school corporation of such. At this point, it may be possible for an accredited nonpublic school or a postsecondary educational institution to purchase the building. If the vacated building is 200,000 square feet or less, either of these two schools could purchase the school building based on its appraised value or an amount agreed to by both parties. In cases where the square footage of the vacant school building is greater than 200,000 square feet, before any proposal to purchase and redevelop the school building and adjacent property is accepted by the school board, any charter school within one mile of the property must be notified and provided the opportunity to lease adequate facilities on the site at 50% or less than the current market rate for the property or any other rate agreed to by the parties.

Only after all of these requirements have been met may a school board then sell or exchange a school building that has been closed. While school corporations have benefitted from the reduction of time in which vacated school buildings must remain available to interested charter schools, the new statutory process is challenging to navigate and provides opportunities for additional educational entities to purchase the buildings. Additionally, in an effort to ensure that school boards abide by this process, the General Assembly added language stating that proceeds from any sale of a vacant building that is not in compliance with this new process must be submitted to the State Board of Education in order to provide grants under the charter school and innovation grant program established under IC 20-24-13.

This law that restricts a school board's authority to determine when and to whom to sell a vacant school building has been controversial since its passage in 2005. Some have questioned whether this is fair to the taxpayers that paid for the school building. One school corporation has decided to challenge the constitutionality of the law and has filed a lawsuit in state court alleging that the statute constitutes a taking without just compensation in violation of Article I, Sec. 21 of the Indiana Constitution and the Takings Clause of the Fifth Amendment of the U.S Constitution. The litigation avenue will likely consume several months, so school boards will need to be sure they still follow the law as it is currently written. 🐼

#### REFERENCES

- 1 P.L. 91-2011, SEC. 27
- 2 P.L. 270-2019, SEC. 13
- 3 The law also does not apply to an emergency manager of a distressed school corporation of the governing body of the School City of East Chicago for the Carrie Gosch Elementary School.
- 4 IC 20-26-71-5 states the amount transferred is calculated based on any gain minus the adjusted basis.