

2016: SB16

MEMORANDUM TO: Senior Business Officials
Managers of Planning
Secretaries/Treasurers of School Authorities

FROM: Grant Osborn
Director
Capital Policy and Programs Branch

DATE: May 19, 2016

SUBJECT: Amendments to Ontario Regulation 444/98 - Disposition
of Surplus Real Property

Further to memorandum **2016:B9**, *Ministry of Education Initiatives to Support Community Hubs in Schools*, dated May 6, 2016, I am writing to provide you with details regarding amendments to Ontario Regulation 444/98 - *Disposition of Surplus Real Property* (O. Reg. 444/98). This memorandum outlines the implications of these amendments for school board surplus property disposition.

These amendments improve opportunities for public entities to participate in the process that school boards undertake when selling or leasing surplus schools and thereby support the Government's Community Hubs initiative.

Highlights

- The Ministry is implementing amendments to Ontario Regulation 444/98 to address the recommendations in the report entitled *Community Hubs in Ontario: A Strategic Framework and Action Plan* ("Action Plan") related to the Short Term Strategy for School Property. All of the amendments will become effective as of September 1, 2016, with the exception of clarifying the entities that can lease surplus school space prior to circulation, which is effective upon filing.
- Boards are strongly encouraged not to circulate notifications of surplus property disposition after June 1, 2016 and before September 1, 2016.
- The amendments to Ontario Regulation 444/98 can be found on e-laws at www.ontario.ca/laws.

Impetus for Change

As noted in memorandum **2016:B9**, the province is moving forward in implementing the recommendations provided in the Action Plan to remove barriers and provide supports to bring services together to better serve Ontarians. The Action Plan included three recommendations that had implications for O. Reg. 444/98:

- Extend the 90-day circulation period of surplus school board property to 180 days;
- Build a broader and more complete realty circulation list; and
- Introduce a limited exemption to the requirement that properties be sold at Fair Market Value (FMV), while ensuring that school boards would be made “whole”.

In Fall 2015, the Ministry engaged with stakeholders in a review of O. Reg. 444/98 relating to the first two of these recommendations, as well as other potential reforms identified by the Ministry. The limited exemption to FMV was outside the scope of the Ministry’s review, but it is an issue that is being considered on a government-wide basis involving a broad range of public assets.

The Ministry’s review was built upon the earlier examination of potential reforms undertaken by the Ministry’s Capital Advisory Committee, which consists of representatives from 15 school boards. Stakeholder reviews with the education sector were held with CODE, COSBO, OASBO, and school boards with relatively high volumes of transactions involving surplus properties. Additionally, the Ministry engaged with child care organizations, parent groups, municipal and service-delivery associations, the non-profit sector, post-secondary organizations, and indigenous organizations. The Ministry also engaged with various ministries within the government and also invited broad public comment to the Regulation through a posting on Ontario’s Regulatory Registry.

Amendments

The following amendments have now been made to O. Reg. 444/98:

1. Extending the current surplus school circulation period from 90 days to 180 days, providing listed public entities with 90 days to express interest in the property and an additional 90 days to submit an offer;
2. Expanding the list of public entities to receive notification of surplus school property disposition;
3. Requiring all board-to-board sales to be at fair market value;
4. Introducing a maximum rate a school board can charge for leasing a school to another board;
5. Providing a school board with a leasehold interest in a surplus school property being circulated to have the highest priority ranking of all listed entities; and

6. Ensuring that private education providers are not eligible to lease surplus property unless the property has first been circulated to listed public entities.

Please note that amendments 1 to 5 will come into effect as of September 1, 2016, while amendment 6 is now effective.

Each amendment is presented in more detail below.

1. Extension of Circulation Timelines

School boards and listed entities receiving notification of surplus property disposition will have 90 days to submit an expression of interest (EOI), following which those school boards and entities that submitted an EOI will have an additional 90 days to submit an offer.

EOIs must be in writing and signed by a person representing the entity with the appropriate authority to do so. In addition, EOIs must include the property description and the name of the organization expressing interest, as well as the name of any referring organization. Certain listed entities have the opportunity to refer notifications of surplus property disposition to organizations within their purview. If two or more of these organizations make offers, their priority may be determined by the listed entity that referred the notification. If, however, the listed entity chooses not to determine priority, then the school board disposing of the surplus property should prioritize the offer with the highest price. More detail are provided in section 2.

O. Reg. 444/98 does not stipulate the contents of an offer; however, it is common and best practice for the disposing board and the interested entity to commission their own appraisals in order to determine the FMV of the surplus property.

2. Expanded List of Public Entities

This amendment expands and reprioritizes the current list of public entities to receive notification of surplus school board property disposition.

The Ministry is developing an online look-up tool to assist boards to identify some of the new public entities to which notifications of surplus property disposition should be circulated. The Ministry will share information about this tool with school boards when it becomes available.

Starting September 1, 2016, disposing boards will be required to circulate notification of surplus property disposition simultaneously to the following **prioritized** list of public entities before the property can be disposed of on the open market.

New public entities that are being added to the circulation list are noted in **bold** below.

i. Coterminous School Boards:

- The disposing board shall forward the notice of disposition of surplus property to the coterminous school boards with jurisdiction in the area where the property is located.

ii. Section 23 Agencies:

- The disposing board shall forward the notice of disposition of surplus property to those agencies with which it has agreements to provide accommodation in which section 23 programming is delivered and that are located within the jurisdiction of the lower-tier municipality (or equivalent) in which the property to be disposed of is located.
- Under section 23 of the Ministry's Grants for Student Needs (GSN) regulation, boards are given funding to support education programs for school-aged children and youth in Government-approved care and/or treatment, custody and correctional facilities.
- To assist with this process, the Ministry encourages information about these amendments to O. Reg. 444/98 and instances involving surplus property disposition notices to be provided to Care and/or Treatment, Custody and Correctional (CTCC) leads at boards. This will allow CTCC leads to share this information with agencies that partner with the board to provide CTCC programs. These facilities will not be notified of these changes separately.
- Each section 23 agency will have the same priority. If offers are made by more than one section 23 agency, the section 23 agency offering the higher price has priority.

iii. District Social Services Administration Boards (DSSABs) or Consolidated Municipal Service Managers (CMSMs):

- The disposing board shall forward the notice of disposition of surplus property to the DSSAB or the municipality that is the CMSM for the area in which the property to be disposed of is located. In the amended regulation, DSSABs and CMSMs are referred to as Service System Managers.
- Ten DSSABs are present in northern Ontario and 37 CMSMs are present in southern Ontario. CMSMs cannot be identified separately from their host municipality, of which 30 are upper-tier municipalities and 7 are lower-tier municipalities. In cases where the disposing board must circulate a surplus property to a CMSM, notification must be sent to the relevant municipality. Please refer to Appendix 1 for a list of all Service System Managers to whom circulation notices must be sent. All other municipalities are captured among the lists of lower-tier municipalities or upper-tier municipalities, as described in sections x and xi below.
- A municipality that is a CMSM may refer notifications to any of its local boards, which will be deemed to have the same priority as the referring municipality. If two or more local boards make offers, their priority may be determined by the referring municipality. If the referring municipality chooses not to determine priority, then the school board disposing of the surplus property is to prioritize the offer with the highest price.

iv. *Colleges:*

- The disposing board shall forward the notice of disposition of surplus property to the college for the area in which the property is located as defined by Ontario Regulation 36/03 and in O. Reg. 444/98.

v. *Universities:*

- The disposing board shall forward the notice of disposition of surplus property to the university named in the updated Schedule 1 of the Regulation whose head office is nearest to the property to be disposed of.

vi. ***Children's Mental Health Lead Agencies:***

- The disposing board shall forward the notice of disposition of surplus property to the children's mental health lead agency that operates in the designated service area in which the property to be disposed of is located. Please see Appendix 1 for details.
- The Ministry of Children and Youth Services (MCYS) has identified children's mental health lead agencies in 31 of the 33 designated service areas in Ontario. No lead agencies for the service areas of Cochrane/Timiskaming and Niagara have been identified by MCYS. For service areas without an identified children's mental health lead agency, MCYS will forward notices of surplus property disposition circulated to the Crown in Right of Ontario to children's mental health agencies in those service areas.
- Children's mental health lead agencies may refer notifications to approved organizations that operate children's mental health centres in the designated service area in which the property to be disposed of is located. These organizations will be deemed to have the same priority as the referring agency. If two or more organizations make offers, their priority may be determined by the referring agency. If the referring agency chooses not to determine priority, then the school board disposing of the surplus property is to prioritize the offer with the highest price.

vii. ***Local Health Integration Networks:***

- The disposing board shall forward the notice of disposition of surplus property to the local health integration network (LHIN) that is designated for the area in which the surplus property is located. Please see Appendix 1 for details.
- A LHIN may refer notifications to organizations whose services it supports or coordinates. These organizations will be deemed to have the same priority as the referring LHIN. If two or more organizations make offers, their priority may be determined by the referring LHIN. If the referring LHIN chooses not to determine priority, then the school board disposing of the surplus property is to prioritize the offer with the highest price.

viii. Public Health Boards:

- The disposing board shall forward the notice of disposition of surplus property to the public health board that is designated for the area in which the surplus property is located. Please see Appendix 1 for details.

ix. The Crown in Right of Ontario:

- The disposing board shall forward the notice of disposition of surplus property to the Crown in Right of Ontario. Notifications of disposition of surplus properties issued to the Crown in Right of Ontario should be sent to Infrastructure Ontario (IO). IO then posts surplus property disposition notifications it receives from school boards on its Realty Circulation Publication website. Please refer to memorandum **2015:SB28**, *Infrastructure Ontario's Realty Circulation Publication Website*, dated October 1, 2015, for details.
- The Crown in Right of Ontario may refer notifications to any of its agencies, boards or commissions. These agencies, boards or commissions will be deemed to have the same priority as the Crown in Right of Ontario.

x. Lower-tier municipalities:

- The disposing board shall forward the notice of disposition of surplus property to the lower-tier municipality for the area in which the surplus property is located.
- The municipality's priority will be determined by whether it also serves as the CMSM for its jurisdiction.
- A municipality may refer notifications to any of its local boards, which will be deemed to have the same priority as the referring municipality. If two or more local boards make offers, their priority may be determined by the referring municipality. If the referring municipality chooses not to determine priority, then the school board disposing of the surplus property is to prioritize the offer with the highest price.

xi. Upper-tier municipalities:

- The disposing board shall forward the notice of disposition of surplus property to the upper-tier municipality for the area in which the surplus property is located.
- The municipality's priority will be determined by its CMSM status.
- A municipality may refer notifications to any of its local boards, which will be deemed to have the same priority as the referring municipality. If two or more local boards make offers, their priority may be determined by the referring municipality. If the referring municipality chooses not to determine priority, then the school board disposing of the surplus property is to prioritize the offer with the highest price.

xii. Local service boards:

- The disposing board shall forward the notice of disposition of surplus property to the local service board for the area in which the surplus property is located.

xiii. First Nation and Métis Organizations:

- The disposing board shall forward the notice of disposition of surplus property to the following seven First Nations & Métis Organizations (FNMOs) regardless of where the surplus property is located:
 - Métis Nation of Ontario Secretariat (MNO)
 - Chiefs of Ontario (COO)
 - Ontario Federation of Ontario Indigenous Friendship Centres (OFIFC)
 - The following four Provincial Territorial Organizations (PTOs):
 - Association Of Iroquois And Allied Indians;
 - Nishnawbe Aski Nation;
 - Grand Council Treaty #3; and
 - Union of Ontario Indians.
- Each FNMO has the same priority. However, if offers are made by more than one FNMO, the FNMO offering the higher price is to have priority.
- FNMOs may refer notifications to any of their members and to an independent First Nation, which will be deemed to have the same priority as the referring FNMO. If two or more members or independent First Nations make offers, the member or independent First Nation offering the higher price has priority.

xiv. The Crown in Right of Canada:

- The disposing board shall forward the notice of disposition of surplus property to the Government of Canada (the Crown in Right of Canada).
- The Crown in right of Canada may continue to refer notifications to any of its agencies, boards or commissions. These agencies, boards or commissions will be deemed to have the same priority as the Crown in Right of Canada.

Online Look-up Tool

The Ministry is currently developing an online look-up tool to assist school boards to identify contact information for the following listed entities: District Social Services Administration Boards (DSSABs) or Consolidated Municipal Service Managers (CMSMs), Children's Mental Health Lead Agencies, Local Health Integration Networks

and Public Health Boards. School boards will be able to generate contact information for these entities by identifying the location of the property to be disposed of.

More information regarding this online tool will be provided separately.

3. Board-to-Board Sales at Fair Market Value

This amendment requires all board-to-board sales of surplus property to be at FMV. The FMV should be based on the property continuing to be used as a school. As a result, there will no longer be a requirement for boards to sell surplus school buildings to coterminous boards at the lesser of FMV and the replacement value of the school based on its student capacity.

4. Maximum Lease Rate to be Charged to Other Boards

A school board that leases surplus school buildings to another board must do so at up to a maximum lease rate which recovers costs that are directly associated with leasing space only. That is, the lessor board shall not subsidize nor profit from the lessee board.

The maximum lease rate a school board can charge another board for leasing a school building shall be calculated using the Ministry's operating and renewal funding benchmarks included in the Ministry's School Facility Operations and Renewal Allocation for the year, or years, over which the lease extends. Boards should calculate maximum lease rates by multiplying the operating cost benchmark and the relevant weighted average renewal cost benchmark (based on the weighted age of the school building), as determined in the Grants for Student Needs, by the gross floor area of leased space. See Appendix 2 for an example of how to calculate the maximum lease rate.

As a result of these changes, school boards should not be charging another board for any costs above the maximum rate. As well, if the lessee board is required to provide maintenance, repair or cover utility costs through the lease, the lease rate should be adjusted downwards in proportion to the service cost the lessee board is providing.

5. Highest Priority Ranking for School Boards with a Leasehold Interest in a Surplus School Property

Under certain circumstances the school board prioritization rankings are modified to reflect a board's leasehold interest in a property. If a school board is leasing a property from another school board for student accommodation purposes at the time the property is circulated with the intent to dispose of that property, or if the board had leased the property in the previous school year, the lessee board will have top priority ranking.

6. Restricting Private Education Providers from Leasing Surplus Properties

To address a potential inconsistency in section 1.0.1 of O. Reg. 444/98 that could have allowed private education providers to lease surplus space in schools prior to circulation, an amendment was made to ensure that only the following entities are eligible to lease space in surplus schools:

- Licenced child care providers;
- Providers of family support services (this includes publicly-funded early years programs); and
- Providers of children's recreation programs.

Post-Circulation Process

Once circulation has been completed, the following steps in the property disposition process should be followed, where applicable:

- If an offer is received, parties have 30 days to negotiate on price. If there are competing offers, the selling board must first negotiate with the top priority entity prior to negotiating with the next top priority entity.
- If agreement on price is reached, parties proceed to negotiate other sale conditions.
- If no agreement on price is reached, the purchasing party can request arbitration. This request must be within the 30-day negotiation period.
- If the purchasing party does not request arbitration and both parties still disagree, the selling board can either:
 - extend the negotiation period; or
 - consider the next priority offer (if applicable); or
 - seek acknowledgment from the ministry to proceed to the open market.
- The disposing school board may dispose of the property on the open market after first providing evidence to the Minister of Education that due process has been followed, that is, if:
 - no expressions of interest were received during the initial 90 day period; or
 - no offers were received during the second 90 day period; or
 - no offers could be agreed upon.

Circulation of Surplus Properties between June 1, 2016 and September 1, 2016

The Ministry will be working with school boards and new listed entities in order to prepare them to implement the reforms. Therefore, boards are strongly encouraged not to circulate notifications of surplus property disposition after June 1, 2016 and before September 1, 2016, unless this would inhibit their capacity to manage their properties responsibly. All circulation processes should follow the current requirements of O. Reg. 444/98 until the amendments come into effect on September 1, 2016.

Future Possible Reforms

As highlighted in memorandum **2015:SB28**, the ministry's long term goal is for school boards to post notifications about surplus property dispositions only once on a designated website. Public entities would then be responsible for monitoring this website for available properties, rather than school boards being responsible for notifying individual entities separately when disposing of these properties. The ministry has begun work with other ministries to develop such a 'one-window' approach to public realty circulation.

Ministry Contacts

The Ministry cannot provide legal advice or interpret the regulation, however, if you have questions or require additional information, please contact Mathew Thomas, Manager, Capital Policy and Programs Branch, at (416) 326-9920 or Mathew.P.Thomas@ontario.ca, or Yvonne Rollins, Senior Policy Analyst, Capital Policy and Programs Branch, at (416) 326-9932 or Yvonne.Rollins@ontario.ca.

Sincerely,

Original signed by:

Grant Osborn
Director, Capital Policy and Programs Branch

cc: Senior Plant Officials
Superintendents of Special Education

Appendix 1: New list of public entities for property circulation

Appendix 2: Maximum lease rate to be charged to other school boards

Appendix 1: List of Public Entities for Property Circulation

District Social Service Administration Boards

Algoma District Services Administration Board	District of Parry Sound
District of Cochrane	District of Rainy River
District of Kenora	District of Sault Ste. Marie
District of Manitoulin-Sudbury	District of Thunder Bay Social Services Administration Board
District of Nipissing	District of Timiskaming

Consolidated Municipal Service Managers

City of Brantford	County of Huron
City of Cornwall	County of Lambton
City of Greater Sudbury	County of Lanark
City of Hamilton	County of Norfolk
City of Kawartha Lakes	County of Northumberland
City of Kingston	County of Oxford
City of London	County of Renfrew
City of Ottawa	County of Simcoe
City of Peterborough	County of Wellington
City of St. Thomas	Municipality of Chatham-Kent
City of Stratford	Prince Edward-Lennox and Addington Social Services
City of Toronto	Regional Municipality of Durham
City of Windsor	Regional Municipality of Halton
Counties (U/C) of Leeds & Grenville	Regional Municipality of Niagara
Counties (U/C) of Prescott & Russell	Regional Municipality of Peel
County of Bruce	Regional Municipality of Waterloo
County of Dufferin	Regional Municipality of York
County of Grey	District of Muskoka
County of Hastings	

Children's Mental Health Lead Agencies	Service Areas
Algoma Family Services	Algoma
Chatham Kent Children's Services	Chatham / Kent
Child and Family Centre/Centre de l'enfant et de la famille/Ngodweaangizwin Aaskaagewin	Greater Sudbury - Manitoulin
Children's Mental Health Programs, Cornwall Community Hospital	Stormont, Dundas and Gelengarry
Children's Mental Health Services (Serving Children, Youth and Families in Hastings and Prince Edward Counties)	Hasting Prince Edward Northumberland
Children's Centre Thunder Bay	Thunder Bay
Children's Mental Health of Leeds and Grenville	Lanark / Leeds & Grenville
CMHA Waterloo Wellington Dufferin Branch	Dufferin / Wellington
East Metro Youth Services	Toronto
FIREFLY (Physical Emotional Developmental and Community Services)	Kenora
Haldimand-Norfolk Resource, Education, and Counselling Help (H-N R.E.A.C.H)	Haldimand - Norfolk
HANDS TheFamilyHelpNetwork.ca (Algonquin Child and Family Services)	Nippissing / Parry Sound / Muskoka
Hotel Dieu Grace Healthcare	Essex
Huron-Perth Centre for Children and Youth	Huron - Perth
Keystone Child, Youth, and Family Services	Grey - Bruce
Kinark Child and Family Services	Haliburton/ Kawartha Lakes/ Peterborough
Kinark Child and Family Services	Durham
Kinark Child and Family Services	York
Lutherwood	Waterloo
Lynwood Charlton Centre	Hamilton
Madame Vanier Children's Services	Middlesex
New Path Youth and Family Counselling Services of Simcoe County	Simcoe
Oxford-Elgin Child and Youth Centre	Elgin / Oxford
Pathways for Children and Youth	Frontenac, Lennox & Addington
Peel Children's Centre	Peel
Reach Out Centre for Kids (R.O.C.K.)	Halton
Renfrew County Youth Services (known as The Phoenix Centre for Children and Families)	Renfrew
St. Clair Child and Youth Services	Lambton
Valoris pour enfants et adultes de Prescott-Russell / Valoris for Children and Adults of Prescott-Russell	Prescott - Russell
Woodview	Brant
Youth Services Bureau	Ottawa

Local Health Integration Networks

Central	North East
Central East	North Simcoe Muskoka
Central West	North West
Champlain	South East
Erie St. Clair	South West
Hamilton Niagara Haldimand Brant	Toronto Central
Mississauga Halton	Waterloo Wellington

Public Health Boards

Algoma Public Health	Niagara Region Public Health Department
Brant County Health Unit	Northwestern Health Unit
Chatham-Kent Health Unit	Ottawa Public Health
Durham Region Health Department	Oxford County Public Health
Eastern Ontario Health Unit	Peel Public Health
Elgin St. Thomas Public Health	Perth District Health Unit
Grey Bruce Health Unit	Peterborough County-City Health Unit
Haldimand-Norfolk Health Unit	Porcupine Health Unit
Haliburton Kawartha Pine Ridge District Health Unit	Renfrew County and District Health Unit
Halton Region Public Health	Simcoe Muskoka District Health Unit
Hamilton Public Health	Sudbury & District Health Unit
Hastings Prince Edward Public Health	Thunder Bay District Health Unit
Huron County Health Unit	Timiskaming Health Unit
Kingston, Frontenac and Lennox & Addington Public Health	Toronto Public Health
Lambton Health Unit	Region of Waterloo Public Health
Leeds, Grenville & Lanark District Health Unit	Wellington-Dufferin-Guelph Public Health
Middlesex-London Health Unit	Windsor-Essex County Health Unit
North Bay Parry Sound District Health Unit	York Region Public Health

Appendix 2: Maximum Lease Rate to be Charged to Other School Boards

Example 1: How to calculate the maximum lease rate for an elementary school

$$\text{Maximum elementary lease rate} = \left[\frac{\text{Operating Cost} + \text{Renewal Cost}}{365} \right] \times \text{Number of days leased}$$

Example:

Board leases out 500 m² for 10 months in an elementary school

- Number of calendar days in fiscal year = 365
- Number of calendar days in lease period (September 1st 2015 to June 30th 2016) = 303
- Gross floor area = 500 m²
- Ministry operating benchmark cost = \$85.77 per m²
- Ministry weighted average benchmark elementary school renewal cost for the board = \$11.83 per m²
- Geographic adjustment factor for the board = 1.05

$$\begin{aligned} \text{Operating Cost} &= \text{gross floor area} \times \text{benchmark operating cost} \\ &= 500 \times 85.77 \\ &= \$42,885 \end{aligned}$$

$$\begin{aligned} \text{Renewal Cost} &= \text{gross floor area} \\ &\quad \times \text{lessor's weighted average benchmark elementary school renewal cost} \\ &\quad \times \text{lessor's geographic adjustment factor} \\ &= 500 \times 11.83 \times 1.05 \\ &= \$6,211 \end{aligned}$$

$$\begin{aligned} \text{Maximum elementary lease rate} &= [(\text{Operating Cost} + \text{Renewal Cost})/365] \times 303 \\ &= [(42,885 + 6,211)/365] \times 303 \\ &= \$40,756 \end{aligned}$$

Example 2: How to calculate the maximum lease rate for a secondary school

$$\text{Maximum secondary lease rate} = \left[\frac{\text{Operating Cost} + \text{Renewal Cost}}{365} \right] \times \text{Number of days leased}$$

Example:

Board leases out 500 m² for 10 months in an secondary school

- Number of calendar days in fiscal year = 365
- Number of calendar days in lease period (September 1st 2015 to June 30th 2016) = 303
- Gross floor area = 500 m²
- Ministry operating benchmark cost = \$85.77 per m²
- Ministry weighted average benchmark secondary school renewal cost for the board = \$11.10 per m²
- Geographic adjustment factor for the board = 1.30

Operating Cost = gross floor area x benchmark operating cost

$$\begin{aligned} &= 500 \times 85.77 \\ &= \$42,885 \end{aligned}$$

Renewal Cost = gross floor area

- × lessor's weighted average benchmark secondary school renewal cost
- × lessor's geographic adjustment factor

$$\begin{aligned} &= 500 \times 11.10 \times 1.30 \\ &= \$7,215 \end{aligned}$$

$$\begin{aligned} \text{Maximum secondary lease rate} &= [(\text{Operating Cost} + \text{Renewal Cost})/365] \times 303 \\ &= [(42,885 + 7,215)/365] \times 303 \\ &= \$41,590 \end{aligned}$$

Note that the secondary lease rate applies to combined schools (schools with both elementary and secondary panels)