

**ARKANSAS DEPARTMENT OF EDUCATION
PROPOSED EMERGENCY RULES GOVERNING APPEALS INVOLVING
STUDENT RESIDENCY DISPUTES BETWEEN SCHOOL DISTRICTS**

1.00 PURPOSE

- 1.01 The purpose of these rules is to establish a procedure by which school districts may appeal to the Arkansas Department of Education from a determination made by another school district concerning a student's correct school district of residence.

2.00 AUTHORITY

- 2.01 These rules are promulgated pursuant to Ark. Code Ann. §§ 6-11-105, 6-18-202 (as amended by Act 1310 of 2009), and 25-15-201 et seq.

3.00 PRELIMINARY INVESTIGATION BY SCHOOL DISTRICTS

- 3.01 Prior to appealing any matter concerning a student's correct school district of residence to the Arkansas Department of Education, the school districts shall complete the following process as outlined in Ark. Code Ann. § 6-18-202(e):

- 3.01.1 The superintendent of a school district that determines that a student who resides within its boundaries is unlawfully attending another school district (hereinafter "appealing district") shall send written notification to the superintendent of the other school district (hereinafter "responding district") that the student is unlawfully attending the responding school district.
- 3.01.2 The written notification from the appealing district's superintendent shall include a reasonable description of the location of the residence, including a street address if available, and other information that enables the responding school district to determine whether the student is a resident of the appealing or responding school district.
- 3.01.3 Upon receipt of the appealing district superintendent's notification, the responding school district's superintendent shall immediately investigate and determine which school district the student is required to attend.
- 3.01.4 The responding school district's superintendent shall conduct the investigation within ten (10) business days after receiving the written notice from the appealing district's superintendent.

3.01.5 The responding school district's superintendent may extend the investigation ten (10) business days in a case that involves five (5) or more students by submitting written notice within the first ten (10) business days of the investigation to the appealing school district's superintendent.

3.01.6 The responding school district's superintendent shall make a determination as to which school district the student is required to attend and send a written report to the appealing school district's superintendent, in writing, of the findings of the investigation and the documentation supporting his or her determination.

3.02 A student who is determined to be unlawfully attending a school not within the student's resident district shall be immediately barred from attending the nonresident school district.

4.00 RIGHT OF APPEAL

4.01 The appealing school district's superintendent may, within five (5) days after receiving the written report of the responding district's superintendent, appeal to the Arkansas Department of Education the decision of the responding district's superintendent.

4.02 The appeal shall be made by filing a written notice of appeal with the General Counsel's Office of the Arkansas Department of Education.

4.03 The written notice of appeal shall include a list of the names of students that the appealing school district alleges are unlawfully attending the responding district and a copy of the written report completed by the responding district.

4.04 The written notice of appeal shall also include all documentation indicating that the appealing school district followed all preliminary procedures as outlined in Ark. Code Ann. § 6-18-202(e) and Section 3.00 above.

5.00 BRIEFING SCHEDULE

5.01 Once a notice of appeal is received by the General Counsel's office, a hearing officer will be appointed to investigate the facts surrounding the appeal and conduct a hearing.

5.02 The General Counsel's office will notify each school district of a briefing schedule to be followed by both districts, as well as the date of the hearing.

- 5.03 The appealing school district, in its brief, shall provide a detailed explanation as to why the student in question is unlawfully attending the responding district.
- 5.04 The responding school district, in its brief, shall provide a detailed explanation as to why the student in question is entitled to attend its school district.
- 5.05 Each school district's brief shall be limited to ten (10) pages, excluding any exhibits that may be attached.
- 5.06 The hearing officer may, only for good cause shown and upon written request of either district, allow either district to submit a brief of up to twenty (20) pages, excluding any exhibits that may be attached.
- 5.07 The hearing officer may compel disclosure of additional information from both school districts in his or her duties.
- 5.08 The briefs of both districts shall become a part of the official record of the proceedings.

6.00 HEARING PROCEDURES

- 6.01 The hearing officer will conduct the hearing in the following manner:
 - 6.01.1 The hearing officer will give an opening statement to describe the nature of the proceedings for the record. This statement will include the date, time, and location of the hearing and an identification of the parties present.
 - 6.01.2 A representative from each school district will have the opportunity to present an opening statement of no longer than five (5) minutes, beginning with the appealing school district.
 - 6.01.3 A representative from each school district will be allowed one (1) hour to present their cases, beginning with the appealing school district. The hearing officer may, only for good cause shown and upon request of either district, allow either district additional time to present their cases.
 - 6.01.4 A representative from each school district will be allowed ten (10) minutes to present a closing argument, beginning with the appealing school district.

6.01.5 The hearing officer may ask questions of any party or witness at any time throughout the proceedings. The hearing officer may also request exhibits or call witnesses at his or her discretion.

6.02 The hearing will be recorded by a certified court reporter. Every witness giving oral testimony must be sworn under oath by the court reporter and will be subject to direct examination, cross examination, and questioning by the hearing officer.

6.03 As noted in Section 5.08 above, the briefs of both districts shall become a part of the official record of the proceedings. Additional documents or exhibits offered during the hearing will be included in the official record of the proceedings if those documents are relevant to the matter in dispute and not cumulative.

6.04 For purposes of the record, documents offered during the hearing by the appealing district shall be clearly marked in sequential, numeric order (e.g., 1, 2, 3).

6.05 For purposes of the record, documents offered during the hearing by the responding district shall be clearly marked in sequential, alphabetic letters (e.g. A, B, C).

6.06 The responding school district shall have the burden of proof in proving that the student is entitled to attend its school district.

6.07 The hearing officer may announce his or her decision immediately after hearing all arguments and evidence or may take the matter under advisement.

6.08 Within ten (10) business days after the hearing, the hearing officer shall issue a final order including findings of fact and conclusions of law. The superintendents of both school districts will be served either personally or by mail with a copy of the order.

7.00 CIRCUIT COURT APPEAL

7.01 Either school district may appeal from the hearing officer's final order to the circuit court of the county where the school district that is appealing the order is located.

7.02 The circuit court shall affirm the order of the hearing officer if it is supported by substantial evidence.

8.00 EMERGENCY CLAUSE

- 8.01 WHEREAS, these Rules are critical to the Arkansas public educational system in that without these Rules Arkansas public school districts would lack a procedure by which school districts may appeal to the Arkansas Department of Education from a determination made by another school district concerning a student's correct school district of residence.

Therefore, without these Rules, The Arkansas Department of Education would be impeded in its ability to entertain appeals from school districts as required by Act 1310 of 2009, thus directly impacting the education of children in Arkansas school districts, which may impact the fiscal welfare, and peril of certain students. As a result, the Arkansas State Board of Education hereby determines that imminent peril to the schools and school districts of this state, as articulated above, will exist if these Rules are not promulgated on an emergency basis. Therefore, pursuant to Ark. Code Ann. § 25-15-204, these Rules are to immediately take effect upon passage by the Arkansas State Board of Education.