

ARKANSAS DEPARTMENT OF EDUCATION
RULES AND REGULATIONS GOVERNING ETHICAL GUIDELINES AND
PROHIBITIONS FOR EDUCATIONAL ADMINISTRATORS, EMPLOYEES,
BOARD MEMBERS AND OTHER PARTIES

~~March 2014~~ _____

1.00 REGULATORY AUTHORITY

- 1.01 These rules and regulations shall be known as the Arkansas Department of Education Rules Governing Ethical Guidelines and Prohibitions for Educational Administrators, Employees, Board Members and other parties.
- 1.02 These rules are enacted pursuant to the Arkansas State Board of Education's authority under Ark. Code Ann. §§ 6-11-105, 6-24-101 et seq., ~~and 25-15-201 et seq.~~ and Act 846 of 2015.

2.00 PURPOSE

- 2.01 The purpose of these rules is to set forth certain ethical guidelines and prohibitions for educational administrators, employees, board members and other parties which involve contracts, transactions or agreements with Arkansas public school districts, charter schools, educational cooperatives or any publicly supported entity having supervision over public educational entities excluding institutions of higher education.

3.00 DEFINITIONS

Unless otherwise specifically stated herein, the term:

- 3.01 "Administrator" means any superintendent, assistant superintendent or his/her equivalent, open-enrollment public charter school director, school district treasurer, business manager, or other individual responsible for entity-wide purchasing. *The determining factor for being considered an "administrator" for the purposes of these regulations is the actual or implied authority of an individual to make purchases on behalf of the entire organization. This definition excludes many building principals (whose purchasing authority is often limited to their own school), but could include athletic directors or others. Classified employees serving in food services, business/accounting or other capacities may also be considered "administrators" when they exercise autonomous system-wide purchasing authority.*
- 3.02 "Board" means local school boards or other governing bodies of public educational entities;
- 3.03 "Board Member" means any board member, director, or other member of a

governing body of a public educational entity;

- 3.04 “Board of Education” means the State Board of Education;
- 3.05 “Commissioner” means the Commissioner of the Arkansas Department of Education or his or her designee.
- 3.06 “Commodities” means all supplies, goods, material, equipment, computers, software, machinery, facilities, personal property, and services, other than personal and professional services, purchased for or on behalf of a public educational entity;
- 3.07 “Compensation or other benefits” means any monetary or non-monetary gain including without limitation, salary, fringe benefits, gratuities and bonuses received by owners, officers, directors, trustees, partners, managerial employees, or other executive level employees.
- 3.07.1 The definition does not include compensation or other benefits received by the following individuals:
- 3.07.1.1 Non-managerial or non-executive level employees
- 3.07.1.2 Clerical or other similar hourly compensated employees
- 3.07.1.3 Individuals who own ~~less than a five percent (5%)~~ five percent (5%) or less interest in a company or entity; and
- 3.07.1.4 Individuals who own stock or other equity holdings in any publicly held company.
- 3.08 “Contract” means any transaction or agreement for the purchase, lease, transfer, or use of real property or personal property and personal or professional services, including but not limited to, motor vehicles, equipment, commodities, materials, services, computers or other electronics, construction, capital improvements, deposits, and investments;
- 3.09 “Contract disclosure form” means the form herein incorporated and attached to these rules as Appendix Form B;
- 3.10 “Day” means a working day in which the Arkansas Department of Education is open to transact official governmental business;
- 3.11 “Department” means the Arkansas Department of Education;

- 3.12 “Directly” or “directly interested” means receiving compensation or other benefits personally or to an individual’s household from the person, business, or entity contracting with the public educational entity;
- 3.13 “Emergency purchase” means purchases mandated by unforeseen and unavoidable circumstances in which human life, health, or public property is in immediate jeopardy; and the expenditure is necessary to preserve life, health, or public property;
- 3.14 “Employee” means a full-time employee or part-time employee of a public educational entity;
- 3.15 “Employment contract” means an agreement or contract between an employer and an employee in which the terms and conditions of the employment are provided.
- 3.16 “Family” or “family members” means:
- 3.16.1 An individual’s spouse;
 - 3.16.2 Children of the individual or the children of the individual’s spouse;
 - 3.16.3 The spouse of a child of the individual or the spouse of a child of the individual’s spouse;
 - 3.16.4 Parents of the individual or parents of the individual’s spouse;
 - 3.16.5 Brothers and sisters of the individual or brothers and sisters of the individual’s spouse;
 - 3.16.6 Anyone living or residing in the same residence or household with the individual or in the same residence or household with the individual’s spouse; or
 - 3.16.7 Anyone acting or serving as an agent of the individual or as an agent of the individual’s spouse.
- 3.17 “Financial interest” in a business or other entity means:
- 3.17.1 Ownership of more than a five percent (5%) interest;
 - 3.17.2 Holding a position as officer, director, trustee, partner, or other top level management; or

- 3.17.3 Being an employee, agent, independent contractor, or having any other arrangement in which the individual's compensation is based in whole or in part on transactions with the public educational entity.
- 3.17.4 "Financial interest" does not include:
- 3.17.4.1 The ownership of stock or other equity holdings in any publicly held company; or
 - 3.17.4.2 Clerical or other similar hourly compensated employees.
- 3.18 "Gratuity" means a payment, loan, subscription, advance, deposit of money, travel, services or anything having a present market value of one hundred dollars (\$100) or more unless consideration of substantially equal or greater value is received;
- 3.19 "Indirectly" or "indirectly interested" means that a family member, business, or other entity in which the individual or family member has a financial interest will receive compensation or benefits;
- 3.20 "Initially employed" means:
- 3.20.1 Employed in either an interim or permanent position for the first time or following a severance in employment with the school district; or
 - 3.20.2 A change in the terms and conditions of any existing contract, excluding:
 - 3.20.2.1 Any renewal of a teacher contract under Ark. Code Ann. § 6-17-1506;
 - 3.20.2.2 Renewal of a noncertified employee's contract that is required by law; or
 - 3.20.2.3 Movement of an employee on the salary schedule that does not require board action.
- 3.21 "Public educational entity" means Arkansas public school districts, charter schools, education service cooperatives, or any publicly-supported entity having supervision over public educational entities. "Public educational entity" does not include institutions of higher education.
- 3.22 "Unusual and limited circumstances" means, without limitation, those circumstances that are uncommon, rare and restricted.

3.22.1 For the purposes of employment contracts, unusual and limited circumstances may include without limitation, a shortage of qualified candidates.

3.22.2 For contracts and transactions other than employment contracts, unusual and limited circumstances may include without limitation: the selected vendor being the only vendor within a reasonable distance offering the required services; or the selected vendor offering the lowest bid for prices or services as compared to two (2) or more other bidders.

3.23 “Written resolution” means the form herein incorporated and attached to these rules and regulations as Appendix Form C.

4.00 COMPLIANCE WITH OTHER LAWS AND RULES

4.01 Nothing in these rules alters or diminishes other statutory or regulatory requirements regarding purchasing, contracting, bidding, disposition of property, or other transactions with public educational entities.

4.02 Nothing in these rules alters or diminishes the professional and/or ethical obligations of licensed personnel.

5.00 GENERAL PROHIBITION

5.01 No board member, administrator, or employee shall knowingly use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or others.

5.02 While serving as a board member, administrator, or employee, an individual shall not accept employment, contract, or engage in any public or professional activity that a reasonable person would expect might require or induce him or her to disclose any information acquired by the member by reason of his or her official position that is declared by law or regulation to be confidential.

5.03 No board member, administrator, or employee shall knowingly disclose any confidential information gained by reason of his or her position, nor shall the member knowingly otherwise use such information for his or her personal gain or benefit.

5.04 Nothing in these rules prohibits board members, administrators, or employees of public educational entities from donating services or property to a public educational entity.

6.00 GENERAL ETHICAL STANDARDS FOR NON-EMPLOYEES

Any effort by a nonemployee to influence a public educational entity board member, administrator, or employee to breach the standards of ethical conduct stated in these rules and Ark. Code Ann. § 6-24-101 et seq. is a breach of ethical standards punishable under the criminal penalties set forth in Ark. Code Ann. § 6-24-101 et seq.

7.00 RESTRICTIONS ON EMPLOYMENT OF PRESENT AND FORMER ADMINISTRATORS

7.01 Unless written approval is granted by the Commissioner it is a breach of ethical standards for an administrator to be or become the employee, agent, or independent contractor of any party contracting with the public educational entity the administrators serve. The Commissioner's approval letter shall be filed with and maintained by the public educational entity employing the administrator.

7.02 Unless written approval is granted by the Commissioner it is a breach of ethical standards for administrators to engage in selling or attempting to sell commodities or services to the public educational entity they served or were employed by for one (1) year following the date employment or service ceased.

8.00 GRATUITIES AND KICKBACKS

8.01 It is a breach of the ethical standards for any person to offer, give, or agree to give any board member, administrator, or employee a gratuity or an offer of employment in connection with any contract or transaction of a public educational entity.

8.02 It is a breach of the ethical standards for any board member, administrator, or employee to solicit, demand, accept, or agree to accept from another person or entity a gratuity or an offer of employment in connection with any contract or transaction of a public educational entity.

8.03 It is a breach of the ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a person or an entity as an inducement for the award of a contract or transaction with a public educational entity.

9.00 EMERGENCY PURCHASES

9.01 Any emergency purchases or contracts with a public educational entity shall be exempt from the prohibitions of these rules.

9.02 Emergency purchases shall only be used for the preservation of life, health or public property, and shall not be used to substantially improve the condition of an

asset of the public educational entity, the board member, administrator or employee of the public educational entity prior to the emergency.

- 9.03 Each public educational entity shall maintain records and copies of all documentation relating to and supporting a determination that the transactions qualify as emergency purchases.
- 9.04 Any person using emergency purchases to avoid the intent of these rules shall be guilty of violating these rules and shall be subject to the penalties provided for in these rules and in Ark. Code Ann. § 6-24-101 et seq.

10.00 SCHOOL BOARDS

- 10.01 **General Prohibition:** Except as otherwise provided, it is a breach of the ethical standards for a board member to contract with the public educational entity the member serves if the board member has knowledge that he or she is directly or indirectly interested in the contract.
- 10.02 **Employment of Family Members:** A board member's family member may not be initially employed by the public educational entity the member serves during the member's tenure of service on the local board for compensation in excess of five thousand dollars (\$5,000) unless the Commissioner issues a letter of exemption and approves the employment contract based on unusual and limited circumstances.
- 10.02.1 The determination of unusual and limited circumstances shall be at the sole discretion of the Commissioner as further defined by these rules.
- 10.02.2 A family member of a school board member who was employed by the public educational entity during the school year immediately preceding the election of the board member may continue employment with the public educational entity under the same terms and conditions of the previously executed contract and any renewal of the contract under Ark. Code Ann. § 6-17-1506.
- 10.02.3 Subject to the local board's written policy, a qualified family member of a board member may be employed as a substitute teacher, substitute cafeteria worker, or substitute bus driver for a period of time not to exceed a total of thirty (30) days per fiscal year for the public educational entity served by the board member.
- 10.02.4 No employment contract that is prohibited under this section is valid or enforceable by any party to the employment contract until approved in writing by the Commissioner.

10.02.5 The Commissioner's approval of an employment contract may include restrictions and limitations that are by this section incorporated as terms or conditions of the contract.

10.02.6 Excluding any renewal of a contract under Ark. Code Ann. § 6-17-1506, any change in the terms and conditions of an employment contract, a promotion, or a change in employment status for a family member of a school board member employed by a public educational entity that will result in an increase in compensation of more than two thousand five hundred dollars (\$2,500) must be approved in writing by the Commissioner before any change in the terms or conditions of the employment contract or promotion or changes in employment status are effective, valid, or enforceable.

10.03 Exceptions:

10.03.1 Board Approval: In unusual or limited circumstances, a public educational entity's board may approve a contract, but not an employment contract, between the public educational entity and the board member or the member's family if the board determines that the contract is in the best interest of the public educational entity.

10.03.1.1 In unusual or limited circumstances, a public educational entity's board may approve an employment contract as provided in this section.

10.03.1.2 The approval by the public educational entity's board shall be documented by written resolution (Form C) after fully disclosing the reasons justifying the contract or employment contract in an open meeting. Such disclosure should include without limitation the contract disclosure form (Form B). The resolution shall state the unusual and limited circumstances necessitating the contract or employment contract and shall document the restrictions and limitations of the contract or employment contract.

10.03.1.3 If any proposed contract or employment contract is with a family member of a board member or a board member directly or indirectly interested in the proposed contract or employment contract, then the board member shall leave the meeting until the

voting on the issue is concluded, and the absent member shall not be counted as having voted.

- 10.03.2 Independent Approval: If it appears the total transactions or contracts with the board member or a family member for a fiscal year total, or will total, ~~five~~ ten thousand dollars (~~\$5,000~~\$10,000) or more, the superintendent or other chief administrator of the public educational entity shall forward the written resolution (Form C) along with all relevant data, including Form B, to the Commissioner for independent review and approval.
- 10.03.2.1 The written resolution and other relevant data shall be sent by certified mail, return receipt requested, or other method approved by the State Board of Education to assure that adequate notice has been received by the Department of Education and to provide a record for the school district board of directors sending the request for approval.
- 10.03.2.2 Upon review of the submitted data for any contract, including an employment contract, the Commissioner, within twenty (20) days of receipt of the resolution and other relevant data, shall approve or disapprove in writing the board's request.
- 10.03.2.3 The Commissioner may request additional information or testimony before ruling on a request. If additional data are needed for a proper determination, the Commissioner shall approve or disapprove the contract within twenty (20) days of receipt of the additional requested data.
- 10.03.2.4 If the Commissioner does not respond to the public educational entity within the twenty-day period or request additional time or data for proper review of the contract, the contract shall be deemed to be approved by the Commissioner.
- 10.03.2.5 If approved, the Commissioner shall issue an approval letter stating all the relevant facts and circumstances considered and any restrictions or limitations pertaining to the approval. The Commissioner may grant the approval for a particular transaction or contract, a series of related transactions or contracts, or employment contracts.

However, the approval shall not be granted for a period greater than two (2) complete and consecutive fiscal years, excluding employment contracts.

10.03.2.6 No contract subject to the Commissioner's review and approval shall be valid or enforceable until an approval letter has been issued by the Commissioner or the Commissioner fails to respond to the public educational entity within the time periods specified in this section.

10.04 Records: The Department of Education and the public educational entity shall maintain, under their respective record retention policies, a record and copy of all documentation relating to transactions or contracts with board members or members of their families.

10.05 Providing False or Incomplete Information: Any board member or other person knowingly furnishing false information or knowingly not fully disclosing relevant information necessary for a proper determination by the public educational entity or the Commissioner shall be guilty of violating the provisions of these rules and Ark. Code Ann. § 6-24-101 et seq.

10.06 School board members should also be mindful of the requirements of Ark. Code Ann. § 6-13-616, which prohibits school board members from being employed by the school district they serve.

11.00 ADMINISTRATORS

11.01 Except as otherwise provided, it is a breach of the ethical standards for an administrator to contract with the public educational entity employing him or her if the administrator has knowledge that he or she is directly or indirectly interested in the contract.

11.02 Except as otherwise provided, it is a breach of the ethical standards for an administrator to contract with any public educational entity if the administrator has knowledge that he or she is directly interested in the contract.

11.03 Family Members as Employees: These rules do not prohibit an administrator's family members from being employed by the public educational entity the administrator serves or any other public educational entity. However, a member of an administrator's immediate family or former spouse may not be initially employed as a disbursing officer of the public educational entity where the administrator is employed unless the public educational entity receives written

approval from the Commissioner. Before issuing written approval or denial, the Commissioner shall request the Division of Legislative Audit to review the internal controls, including the segregation of duties, present at the public educational entity. The Division of Legislative Audit shall report its findings to the Commissioner.

11.04 Exceptions:

- 11.04.1 In unusual and limited circumstances and only with prior written approval from the Commissioner, an administrator may contract with a public educational entity other than the public educational entity employing him or her.
- 11.04.2 In unusual and limited circumstances and only with prior written approval from the Commissioner, an administrator's family members may contract with a public educational entity employing the administrator.
- 11.04.3 An administrator seeking to contract with other public educational entities, or an administrator's family member seeking to contract with the public educational entity employing the administrator, shall first present the request, with all relevant facts and circumstances justifying approval, to the board currently employing the administrator at an open meeting. Such request should include without limitation the contract disclosure form (Form B).
- 11.04.4 After reviewing the request in an open meeting, the board may, by written resolution (Form C), approve the contract subject to approval by the Commissioner. A copy of the approval resolution (Form C) and all relevant data, including Form B, shall be forwarded by the board president to the Commissioner.
- 11.04.4.1 The written resolution and other relevant data shall be sent by certified mail, return receipt requested, or other method approved by the State Board of Education to assure that adequate notice has been received by the Department of Education and to provide a record for the school district board of directors sending the request for approval.
- 11.04.4.2 Upon review of the submitted data, the Commissioner shall, within twenty (20) days of receipt of the resolution and other relevant data,

approve or disapprove in writing the board's request.

11.04.4.3 The Commissioner may request additional information or testimony before ruling on a request. If additional data is needed for a proper determination, the Commissioner shall approve or disapprove the contract within twenty (20) days of receipt of the additional requested data.

11.04.4.4 If the Commissioner does not respond to the public educational entity within the twenty-day period or request additional time or data for a proper review of the contract, the contract shall be deemed to be approved by the Commissioner.

11.04.4.5 If approved, the approval letter shall state all relevant facts and circumstances considered in the approval and shall state any restrictions or limitations of the approval. The Commissioner may grant an approval for a particular transaction or a series of related transactions. No approval shall be granted for a period greater than two (2) complete and consecutive fiscal years.

11.04.5 The Department of Education and the public educational entity shall maintain, under their respective record retention policies, a record and copy of all documentation relating to an exemption from the provisions of these rules.

11.04.6 A contract subject to this section is not valid until the Commissioner:

11.04.6.1 Approves the contract; or

11.04.6.2 Fails to respond to the public educational entity within the time periods specified in this section.

11.05 Providing False or Incomplete Information: Any administrator knowingly furnishing false information or knowingly not disclosing relevant information necessary for a proper determination by the public educational entity or the Commissioner shall be guilty of violating the provisions of these rules and Ark. Code Ann. § 6-24-101 et seq.

11.06 "Contract" defined: For the purposes of this section only, "contract" does not
ADE 209-12

apply to employment contracts issued to an administrator of a public educational entity for administrative or other duties such as, but not limited to, teaching, bus driving, or sponsorship of clubs or activities.

- 11.07 Compensation for Officiating Athletic Events: Nothing in this section prohibits administrators from receiving compensation for officiating school-sponsored athletic activities with any public education entity.
- 11.08 Compensation for Conducting Seminars: Nothing in this section prohibits administrators from receiving compensation for conducting seminars for, or making presentations to, public educational entities other than the public educational entity employing them.

12.00 EMPLOYEES

- 12.01 Except as otherwise provided, it is a breach of the ethical standards for an employee to contract with the public educational entity employing him or her if the employee has knowledge that he or she is directly interested in the contract.

12.02 Exceptions

- 12.02.1 Approval by Board: In unusual and limited circumstances, a public educational entity's board may approve a contract between the public educational entity and the employee if the board determines that the contract is in the best interest of the public educational entity.

- 12.02.1.1 The approval by the public educational entity's board shall be documented by written resolution (Form C) after fully disclosing the reasons justifying the contract in an open meeting. Such disclosure should include without limitation the contract disclosure form (Form B). The resolution shall state the unusual circumstances necessitating the contract and shall document the restrictions and limitations of the contract.

- 12.02.1.2 Any board member directly or indirectly interested in the proposed contract shall leave the meeting until the voting on the issue is concluded, and the absent member shall not be counted as having voted.

- 12.02.2 Independent Approval: If it appears that the total transactions with

an employee for a fiscal year total, or will total, ~~five~~ ten thousand dollars (~~\$5,000~~\$10,000) or more, the superintendent or other chief administrator of the public educational entity shall forward the written resolution (Form C) along with all relevant data, including Form B, to the Commissioner for independent review and approval.

12.02.2.1 The written resolution and other relevant data shall be sent by certified mail, return receipt requested, or other method approved by the State Board of Education to assure that adequate notice has been received by the Department of Education and to provide a record for the school district board of directors sending the request for approval.

12.02.2.2 Upon review of the submitted data, the Commissioner shall, within twenty (20) days of receipt of the resolution and other relevant data, approve or disapprove in writing the board's request.

12.02.2.3 The Commissioner may request additional information or testimony before ruling on a request. If additional data is needed for a proper determination, the Commissioner shall approve or disapprove the contract within twenty (20) days of receipt of the additional requested data.

12.02.2.4 If the Commissioner does not respond to the public educational entity within the twenty-day period or request additional time or data for a proper review of the contract, the contract shall be deemed to be approved by the Commissioner.

12.02.2.5 If approved, the Commissioner shall issue an approval letter stating all relevant facts and circumstances considered and any restrictions or limitations pertaining to the approval. The Commissioner may grant the approval for a particular transaction or series of related transactions. However, approval shall not be granted for a period greater than two (2) complete and consecutive fiscal years.

- 12.02.2.6 No contract subject to the Commissioner's review and approval shall be valid or enforceable until an approval letter has been issued by the Commissioner or the Commissioner fails to respond to the public educational entity within the time periods specified in this section.
- 12.03 Documentation: The Department of Education and the public educational entity shall maintain, under their respective record retention policies, a record and copy of all documentation relating to transactions with employees.
- 12.04 Providing False or Incomplete Information: Any employee or other person knowingly furnishing false information or knowingly not fully disclosing relevant information necessary for a proper determination by the public educational entity or the Commissioner shall be guilty of violating the provisions of these rules and of Ark. Code Ann. § 6-24-101 et seq.
- 12.05 "Contract" defined: For the purposes of this section only, the term "contract" does not apply to employment contracts issued to public educational entity employees or other transactions for the performance of teaching or other related duties such as, but not limited to, bus driving, sponsorship of clubs or activities, tutoring, summer school duties, or working at school sponsored events.
- 12.06 Technology Employees: All transactions involving the purchase, lease, acquisition, or other use of computers, software, copies, or other electronic devices from family members of an employee responsible for establishing specifications or approving purchases of such equipment shall be approved according to the requirements of this section regarding the purchase from an employee with a direct interest in the transaction.

13.00 REIMBURSEMENT OF EXPENSES

Nothing in these rules prevents board members, administrators, or employees from being reimbursed by the appropriate public educational entity for necessary and documented travel or other job-related expenses in accordance with law and school district policy.

14.00 EDUCATIONAL AWARDS, RECOGNITIONS, GRANTS AND GIFTS

Nothing in these rules prohibits administrators or employees of public educational entities from receiving monetary or other awards, grants, or benefits from entities generally recognized as providing benefits based upon exceptional skills or exemplary contributions to education.

15.00 REGISTRATION, TRAVEL, CONVENTIONS AND SEMINARS

- 15.01 Board members, administrators and employees of a public educational entity are prohibited from receiving any payment or reimbursement from a vendor for any registration, travel, lodging, food, entertainment or other expenses not directly associated with an educational interest or business interest of the public educational entity.
- 15.02 Board members, administrators and employees of a public educational entity are prohibited from receiving any trip or attending any convention or seminar which is paid for by a vendor when the purpose for the trip or attendance at the convention or seminar is not directly associated to an educational interest or business interest of the public educational entity.
- 15.03 Board members, administrators and employees of a public educational entity are prohibited from receiving any gift or award from any public educational entity except as allowed for by Arkansas law.
- 15.04 All public educational entities shall maintain a record and copy for at least three (3) years of all documentation relating to payments or reimbursements made by a vendor on behalf of a board member, administrator or employee for travel, lodging, food, registration, entertainment, or other expenses when the payments or reimbursements total \$300.00 or more per fiscal year per individual board member, administrator, or employee.
- 15.05 Any board member, administrator or employee of a public educational entity that violates any provisions of these rules may be subject to the penalties and sanctions provided for in Section 17.00 of the rules.

16.00 FILING STATEMENT OF FINANCIAL INTEREST

- 16.01 Every board member, public and charter school superintendent, or executive director of a public school or educational cooperative shall timely file a financial statement of interest as required by Ark. Code Ann. § 21-8-701 et seq. The financial statement of interest and instructions for completing and filing the financial statement of interest can be found on the website of the Arkansas Ethics Commission: <http://www.arkansasethics.com/>.
- 16.02 Any person required to file a financial statement of interest as required under Arkansas law who fails to file said financial statement of interest shall be in violation of the provisions of these rules and regulations and may be subject to the sanctions and penalties provided for in Section 17.00 of these rules.

17.00 ADMINISTRATIVE SANCTIONS AND PENALTIES

- 17.01 The Department of Education may review alleged violations of these rules and of Ark. Code Ann. § 6-24-101 et seq. If the Department of Education reviews the allegations and the Commissioner determines that there is adequate evidence of a violation, the Commissioner may refer the allegations to the State Board of Education for review. If a licensed educator is alleged to have violated these rules or Ark. Code Ann. § 6-24-101 et seq., the Commissioner may refer the allegation(s) against the licensed educator to the Professional Licensure Standards Board in lieu of following the procedures listed below.
- 17.02 Upon the State Board's approval to review the alleged violation and after reasonable notice in writing to all parties, the State Board may schedule a hearing to determine whether an administrator or employee has knowingly violated the provisions of these rules or Ark Code Ann. § 6-24-101 et seq. At the State Board hearing, a member of the Arkansas Department of Education or a member of the Professional Licensure Standards Board staff, as appropriate, shall present the allegations against the administrator or employee.
- 17.03 A hearing by the State Board shall be subject to the following procedures:
- 17.03.1 Each party will have the opportunity to present an opening statement of no longer than five (5) minutes, beginning with the representative of the Arkansas Department of Education or the Professional Licensure Standards Board. The Chairperson of the State Board may, only for good cause shown and upon the request of either party, allow either party additional time to present their opening statements.
- 17.03.2 Each party will be given thirty (30) minutes to present their cases, beginning with the representative of the Arkansas Department of Education or the Professional Licensure Standards Board. The Chairperson of the State Board may, only for good cause shown and upon the request of either party, allow either party additional time to present their cases.
- 17.03.3 Every witness giving oral testimony must be sworn under oath by the court reporter and shall be subject to direct examination, cross examination, and questioning by the State Board.
- 17.03.4 For the purposes of the record, documents offered during the hearing by the Arkansas Department of Education or the Professional Licensure Standards Board shall be clearly marked in sequential, numeric order (e.g. 1, 2, 3).

- 17.03.5 For the purposes of the record, documents offered during the hearing by the administrator or employee shall be clearly marked in sequential, alphabetic letters (e.g. A, B, C).
- 17.03.6 The Arkansas Department of Education or the Professional Licensure Standards Board shall have the burden of proving the basis for the violation by a preponderance of the evidence.
- 17.04 After presentation of all evidence, if the State Board determines that the administrator or employee knowingly violated the provisions of these rules, the State Board may provide any or all of the following administrative remedies:
- 17.04.1 Issue a letter of reprimand; or
- 17.04.2 Suspend or revoke the administrator's or teacher's Arkansas teaching license for a definite period, or permanently.
- 17.05 After reasonable notice and opportunity for a hearing, a board of a public educational entity may take appropriate administrative remedies against an administrator or employee that has allegedly violated the provisions of these rules. If an administrator or employee of a public educational entity is charged by the prosecuting attorney for a possible violation of this chapter, the public educational entity's board may, after reasonable notice and opportunity for a hearing, place the individual charged on leave, with or without pay, dismiss the individual, or provide any other proper administrative remedy. If the individual is dismissed by the board due to charges being filed for an alleged violation of these rules, any employment contracts with the public educational entity shall be deemed void from the date of the action of the board.

18.00 NOTICE OF POTENTIAL CRIMINAL PENALTIES

- 18.01 Any board member, administrator, employee, or nonemployee who shall knowingly violate the provisions of Ark. Code Ann. § 6-24-101 et seq. shall be guilty of a felony.
- 18.02 Upon pleading guilty or nolo contendere to or being found guilty of violating the provisions of Ark. Code Ann. § 6-24-101 et seq., the court shall order restitution to the public educational entity.
- 18.03 In addition, the court may fine the violator in any sum not to exceed the greater of ten thousand dollars (\$10,000) or double the dollar amounts involved in the transactions, sentence the violator to prison for not more than five (5) years, or impose both a fine and imprisonment.

19.00 REQUEST FOR REVIEW OF TRANSACTIONS

At the request of a board of a public educational entity, the executive administrator at a public educational entity, the Commissioner, or the Legislative Joint Auditing Committee, the appropriate prosecuting attorney shall review contracts or transactions for compliance with the provisions of Ark. Code Ann. § 6-24-101 et seq.

20.00 BOARD POSITION VACANT UPON CONVICTION

If a board member is found guilty of violating the provisions of Ark. Code Ann. § 6-24-101 et seq., the board member shall immediately cease to be a board member, the position is declared vacant, and a replacement shall be named as provided by law.

21.00 ENFORCEMENT OF CRIMINAL SANCTIONS BY THE PROSECUTING ATTORNEY

21.01 It shall be the duty and responsibility of the prosecuting attorneys to supervise compliance with Ark. Code Ann. § 6-24-101 et seq. and prosecute violators.

21.02 If the prosecuting attorney fails or refuses to enforce this chapter when the facts are known by the prosecuting attorney, or are called to his or her attention, the Attorney General or any citizen of this state may bring mandamus proceedings to compel the prosecuting attorney to perform his or her duties.

21.03 All criminal actions related to alleged violations of this chapter shall be filed in circuit court and shall be subject to the criminal rules and procedures of this state.

22.00 FORM PROCEDURES AND REQUIREMENTS

22.01 For purposes of these rules the following attached Forms A – C are herein incorporated into these rules as Appendix Forms A – C and supporting documents.

22.02 A public educational entity shall use Forms A – C when such form is specifically required by any section of these rules.

22.03 A public educational entity seeking independent review and approval from the Commissioner shall submit a separate contract disclosure form (Form B) and written resolution (Form C) of approval for each contract involving a different party or entity.

NOTIFICATION LETTER

(Date)

Dear Board Members, Administrators and Employees:

A.C.A. § 6-24-101 et seq. requires full open disclosure and approval before a school district board member, administrator or employee may enter into contracts or other transactions with the school district where he/she serves or is employed.

A.C.A. § 6-24-101 et seq. does not apply to reimbursements paid for proper work-related expenses. However, in the case of hiring family members of administrators and/or board members, the district must meet all requirements set forth in A.C.A. § 6-24-101 et seq.

A.C.A. § 6-24-101 et seq. applies when the board member, administrator or school employee is “financially interested” or “directly interested” in the transaction. “Financially interested” means ownership or more than 5% interest; holding a position of officer, director, trustee, partner, or top level management; and/or the employee’s compensation is based in whole or in part on transactions with the public education entity. For board members and administrators, restrictions may also apply to family members. “Directly interested” means receiving compensation or other benefits personally or to an individual’s household from the person, business, or entity contracting with the public educational entity.

Therefore, board members, administrators and employees of this district have an affirmative obligation under A.C.A. § 6-24-101 et seq. to disclose relationships with vendors before the district enters into the contract or before services are performed. Disclosure is to be made to the superintendent of the district. Forms for this purpose will be provided by the district.

All transactions involving the purchase, lease, acquisition, or other use of computers, software, copiers, or other electronic devices from family members of an employee responsible for establishing specifications or approving purchases of such equipment shall be approved according to the requirements of Arkansas law regarding the purchase from an employee with a direct interest in the transaction.

A.C.A. § 6-24-101 et seq. requires proper disclosure and approval of the transaction at an open board meeting. In certain instances, approval by the Commissioner of the Department of Education is required.

Therefore, every district board member, administrator or employee will be required to disclose any potential vendor relationship by completing a disclosure form provided by the district. Failure to fully disclose could result in criminal charges being brought against the board member, administrator or employee. A copy of A.C.A. § 6-24-101 et seq. is available in the central office if you wish to review it. The law may also be viewed at www.arkleg.state.ar.us.

Sincerely,

Superintendent

Please sign below to acknowledge receipt of this notification.

Board Member, Administrator or Employee

Date

MARK-UP

B**CONTRACT DISCLOSURE FORM**

Name of Public Educational Entity: _____

Name of Person Disclosing Transaction: _____

Note: Fully complete this form and return to the administration office. NO TRANSACTION OR SERVICE MAY BE RENDERED UNTIL THIS FORM HAS BEEN COMPLETED AND APPROVED. A.C.A. § 6-24-101 et seq. requires FULL and COMPLETE DISCLOSURE of transactions with public educational entities. KNOWINGLY FAILING to FULLY DISCLOSE pertinent information relating to a transaction could result in criminal charges.

I am a (an) Board Member Administrator Employee

Note: "Board member" means any board member, director, or other member of a governing body of a public educational entity.

"Administrator" means any superintendent or assistant superintendent or his or her equivalent, open-enrollment public charter school director, school district treasurer, business manager, or other individual directly responsible for entity-wide purchasing.

"Employee" means a full-time employee or part-time employee of a public educational entity.

Mailing Address _____ City _____ State _____ Zip _____

Home Telephone: _____ Work Telephone: _____

Nature of transaction subject to disclosure and approval: _____

Estimated dollar amount of transactions with public educational entity for entire school year: _____

Total dollar amount of transactions to date for current fiscal year: _____

Check One:

- I have an interest in the transaction with the public educational entity.
- A family member has an interest in the transaction with the public educational entity.
- Both a family member and I have an interest in the transaction with the public educational entity.

Nature of financial interest: (State how you and/or family members are financially interested in the transaction):

Justification for Approval: (State reason why you believe the transactions are in the best interest of the public educational entity. State the unusual and limited circumstances involved.)

- Check here if Emergency Transaction as defined by A.C.A. § 6-24-101(9) and Ark. Code Ann. § 6-24-109.

PLEASE ATTACH ANY OTHER ADDITIONAL INFORMATION OR DOCUMENTS YOU BELIEVE ARE NECESSARY FOR A FULL, COMPLETE, AND ACCURATE DISCLOSURE OF THE FACTS AND CIRCUMSTANCES OF THE TRANSACTIONS.

SIGNATURE: _____

DATE: _____

FOR OFFICE USE ONLY:

Date completed form received by district: _____

School Official's Signature

Telephone Number

FAX Number

Local Board Action:

APPROVED

DISAPPROVED

Date Presented to Board: _____

Board President's Signature: _____

Required to be presented to the Commissioner of the Department of Education for written approval: YES NO

Written Adopted Resolution Attached: YES NO

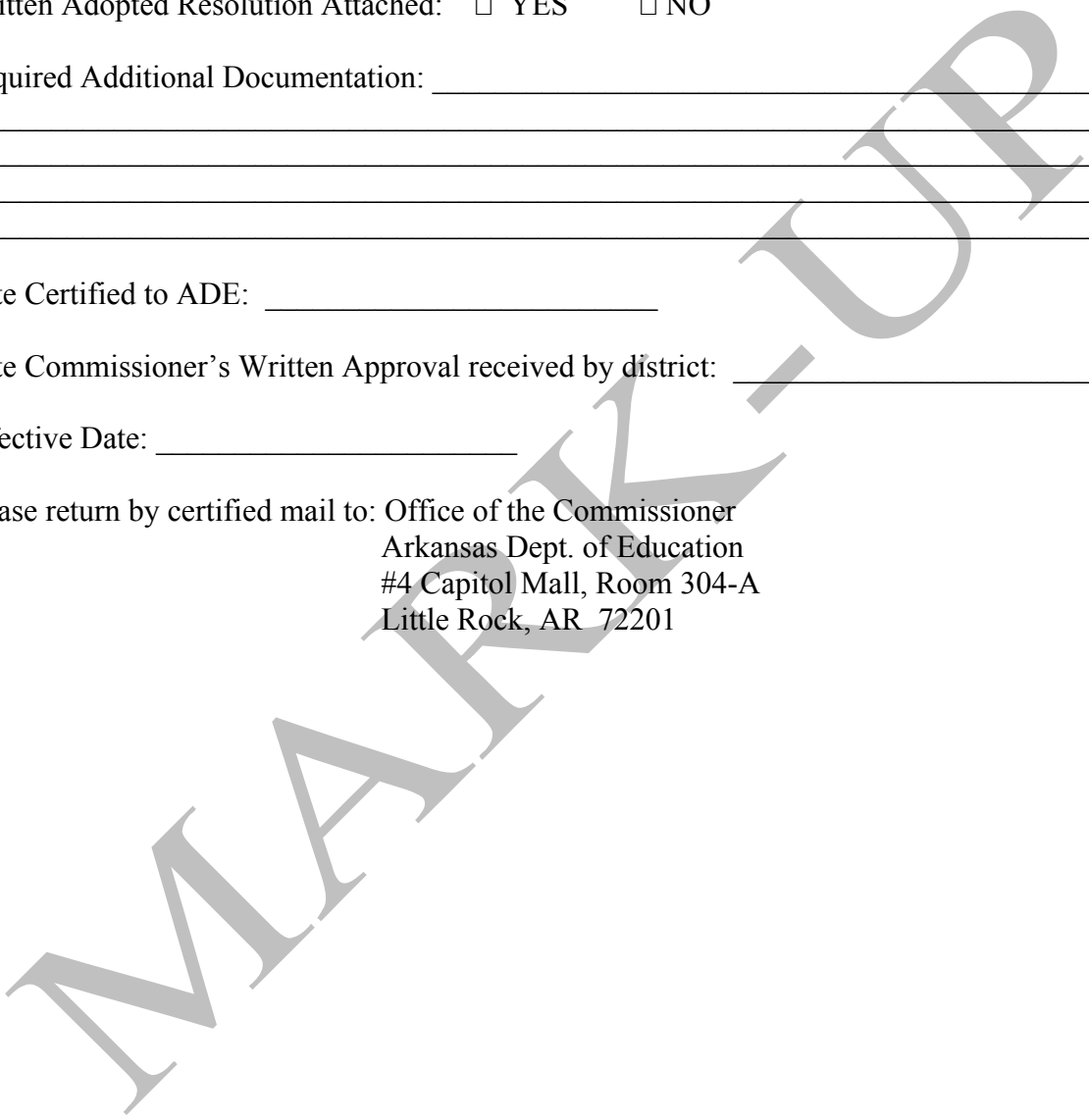
Required Additional Documentation: _____

Date Certified to ADE: _____

Date Commissioner's Written Approval received by district: _____

Effective Date: _____

Please return by certified mail to: Office of the Commissioner
Arkansas Dept. of Education
#4 Capitol Mall, Room 304-A
Little Rock, AR 72201



RESOLUTION
A.C.A. § 6-24-101 et seq.

Whereas the _____ School District Board of Directors met in a (regular/special), open, and properly-called board meeting on (MM/DD/YY), in (location).

Whereas (Number) members were present, a quorum was declared by the chair.

Whereas the Board of Directors received a recommendation to adopt a resolution to enter into a contract with _____

Full disclosure of all relationships and interest as required by A.C.A. § 6-24-101 et seq. that are relevant to proposed contract:

Specific facts and reasons for justifying the contract were:

The unusual and limited circumstances necessitating the contract were:

List of relevant data enclosed supporting the unusual and limited circumstances:

Note: For employment contracts, the following information may be necessary to support a finding of unusual and limited circumstances:

- *A copy of the job vacancy announcement or posting;*
- *A description of how/where the job vacancy announcement was posted;*
- *Copies of applications received;*
- *A list of those applicants who were interviewed;*
- *Interview/Applicant score sheets kept by the interviewer or hiring committee;*
- *A copy of the interviewer's or hiring committee's recommendation(s); and*
- *Specific justification of why the selected applicant is the best qualified candidate.*

For contracts and transactions other than employment contracts, the following information may be necessary to support a finding of unusual and limited circumstances:

- *Request for bids (if bids were required);*
- *Copies of bids submitted by interested vendors (if bids were required);*
- *Price lists or quotes by interested vendors;*
- *Number of bidders or interested vendors with names and addresses; and*
- *A list of those vendors offering similar services in the area.*

Whereas _____, board member(s) having declared an interest in the proposed contract, left the meeting prior to the discussion of the contract and did not return to the meeting room until the voting on the contract had been concluded.

Whereas the Board, after serious consideration, moved to approve the contract with:

Whereas the contract was approved with the following restrictions and/or limitations:

Whereas the period of the contract shall be from _____ to _____.

Therefore, due to the specific reasons cited above, it is hereby declared to be the intent of the _____ School District Board of Directors to award this contract to

As is required by A.C.A. § 6-24-101 et seq., the contract is contingent upon approval by the Commissioner of the Arkansas Department of Education, if required. If approval is denied, this contract approved by the Board would be null and void.

Superintendent

Board President

Date

Date

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Education
DIVISION Legal Services
PERSON COMPLETING THIS STATEMENT Jennifer Davis
TELEPHONE NO. 501-682-4227 **FAX NO.** 501-682-4249 **EMAIL:** jennifer.davis@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE ADE Rules Governing Ethical Guidelines and Prohibitions for Educational Administrators, Employees, Board Members and Other Parties

- 1. Does this proposed, amended, or repealed rule have a financial impact? Yes No
- 2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes No
- 3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;

- (b) The reason for adoption of the more costly rule;

- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

- (a) What is the cost to implement the federal rule or regulation?

<u>Current Fiscal Year</u>	<u>Next Fiscal Year</u>
General Revenue _____	General Revenue _____
Federal Funds _____	Federal Funds _____
Cash Funds _____	Cash Funds _____
Special Revenue _____	Special Revenue _____
Other (Identify) _____	Other (Identify) _____

Total 0

Total 0

(b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue _____

General Revenue _____

Federal Funds _____

Federal Funds _____

Cash Funds _____

Cash Funds _____

Special Revenue _____

Special Revenue _____

Other (Identify) _____

Other (Identify) _____

Total 0

Total 0

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ 0

\$ 0

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ 0

\$ 0

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and

- (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
 - (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
 - (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
 - (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.