

**ARKANSAS DEPARTMENT OF EDUCATION**  
**RULES GOVERNING INSTRUCTIONAL MATERIALS**  
**March 1, 2012 \_\_\_\_\_, 2013**

**1.00 REGULATORY AUTHORITY**

- 1.01 These rules shall be known as the Arkansas Department of Education Rules Governing Instructional Materials.
- 1.02 These rules are enacted pursuant to the Arkansas State Board of Education’s authority under Ark. Code Ann. §§ 6-11-105, 6-21-401 et seq., and 25-15-201 et seq.

**2.00 PURPOSE**

The purpose of these rules is to set forth requirements related to the purchase, distribution and use of instructional materials.

**3.00 DEFINITIONS**

~~3.01 “Basal textbook” means the textbook that contains the core curriculum for the subject area to be taught.~~

~~3.023.01~~ “Commissioner” means the Commissioner of Education.

~~3.033.02~~ “Instructional materials” means:

~~3.03-13.02.1~~ Traditional books, textbooks, and trade books in printed and bound form;

~~3.03-23.02.2~~ Activity-oriented programs that may include:

~~3.03-2-13.02.1~~ Manipulatives;

~~3.03-2-23.02.2~~ Hand-held calculators; or

~~3.03-2-33.02.3~~ Other hands-on material; and

~~3.03-33.02.3~~ Technology-based materials that require the use of electronic equipment in order to be used in the learning process. ~~Technology-based~~

~~materials do not include the equipment required to make use of these materials. In accordance with Ark. Code Ann. 6-21-403, school districts may purchase digital resources and make available any equipment needed to access the digital resources.~~

~~3.04~~3.03 “School” or “School District” as those terms are used in these rules, shall include open-enrollment public charter schools.

~~3.05~~ —“State” means the State of Arkansas.

~~3.06~~3.04 “State Board” means the Arkansas State Board of Education.

~~3.07~~ —“Supplemental textbook” means textbooks that supplement the basal textbook.

~~3.08~~ —“Textbook” includes textbooks in both printed form and electronic form.

#### **4.00 GENERAL POWERS AND DUTIES OF THE STATE BOARD OF EDUCATION**

4.01 Pursuant to Ark. Code Ann. § 6-21-404, the State Board of Education is authorized and empowered to may:

~~4.01.1~~ Provide for a statewide textbook selection committee as follows;

~~4.01.1.1~~ —The Commissioner of Education shall select a statewide selection committee no later than June 15 of each year. Each state committee shall be composed of members representative of the subject areas and instructional levels being adopted and from the state at large. The committee shall include licensed personnel from public schools and shall include a majority of classroom teachers.

~~4.01.1.2~~ —The committee shall recommend a list of instructional materials consistent with course content standards and curriculum frameworks.

~~4.01.2~~ 4.01.1 Require reports from school districts on the use and distribution of instructional materials; and

~~4.01.3~~ 4.01.2 Do whatever else may be necessary for the general welfare of the public school ~~textbook~~ and instructional materials system in order to acquire the items at the lowest possible cost.

4.02 The powers enumerated in section 4.00 of these rules and in Ark. Code Ann. § 6-21-404 are cumulative and not restrictive.

~~4.03~~ ~~The State Board shall have the power to modify the bid and contract form and negotiate any additional or modified terms that the State Board deems necessary for the administration of these rules.~~

~~4.04~~ ~~Publishers must sell their materials at the same price to all schools and school districts in the State of Arkansas and must guarantee that price for the life of a state adoption cycle.~~

4.05 The State Board, through the Department of Education, will include funding for instructional materials in the foundation funding amount provided to each school district pursuant to Ark. Code Ann. § 6-20-2305.

## 5.00 GENERAL REQUIREMENTS RELATED TO INSTRUCTIONAL MATERIALS

5.01 Each school district shall select ~~a textbook~~ an instructional materials selection committee, ~~to be composed of a majority of licensed personnel, which shall include classroom teachers.~~

5.01.2 A majority of its members shall be licensed personnel, which shall include classroom teachers.

5.02 Public school districts shall provide ~~textbooks, other~~ instructional materials, ~~or digital resources,~~ including the availability of any equipment needed to access the ~~digital resources~~ instructional materials, for all pupils attending the public schools of this state in kindergarten through grade twelve (K-12), inclusive, in all subjects taught in those grades, without cost to the pupils.

5.03 School districts may select their own ~~textbooks, instructional materials, or digital resources,~~ or school districts may select from the recommended state-approved list. including the materials needed to access the instructional materials.

5.04 Any materials purchased with state funds shall be consistent with course content standards and curriculum frameworks.

5.05 The Department of Education shall monitor to ensure that all school districts in the State of Arkansas comply with Section 5.00 of these rules and with Ark. Code Ann. § 6-21-403. The primary methods of compliance shall be through a Report of Local Adoptions filed by a school districts with the Department of Education and through a school district's Statement of Assurance filed with the Department of Education pursuant to Ark. Code Ann. § 6-15-202.

5.05.1 The Department of Education shall report in the annual school performance report a school district that fails to provide textbooks, *other instructional materials, or digital resources*, including the availability of any equipment needed to access the *digital resources instructional materials* or any school district that charges any student a fee for use of or access to any instructional materials.

5.05.2 The State Board of Education shall report to the members of the House Committee on Education and Senate Committee on Education annually any school district out of compliance with Section 5.00 of these rules and with Ark. Code Ann. § 6-21-403 by November 1 of each year.

5.06 As used in this subsection, "person" means an individual, a partnership, a corporation, or an association.

5.06.1 A person who operates in this state shall not charge a school district a price for instructional materials that exceeds the lowest contracted price currently bid in another state on the same product.

5.06.2 A person shall sell instructional materials at the same price to all school districts in the state and must guarantee the price for the remainder of the school year.

## ~~6.00 DETERMINATION OF RECOMMENDED INSTRUCTIONAL MATERIALS~~

~~6.01 By March 15 of each year, the Department of Education shall prepare and distribute to school districts a recommended list of books, series of books, and other instructional materials for all subjects and instructional levels required by the Standards for Accreditation of Arkansas Public Schools and School Districts.~~

~~6.02 School districts may elect to purchase instructional materials from the state-recommended list, or school districts may select other instructional materials.~~

~~6.03~~ If a school district selects other instructional material not recommended by the Department of Education, the school district shall certify to the Department of Education by June of each year which instructional materials the school district wishes to purchase by state contract from the state recommended list.

~~6.04~~ If a school district selects other instructional materials not recommended by the Department of Education, the school district may purchase such materials outside any state contract.

**7.006.00      **CONDITIONS FOR OFFERING TEXTBOOKS FOR ADOPTION, SALE OR EXCHANGE****

6.01 As used in this subsection, “person” means an individual, a partnership, a corporation, a company, or an association.

~~7.01~~      6.01.1 Before any person, company, or corporation shall offer any school textbooks or other a person may offer instructional materials used in kindergarten through grade twelve (K-12), inclusive, for adoption, sale, or exchange in the State of Arkansas, the person, company, or corporation shall comply with the following conditions by June 30 of each year, submit to the Department of Education a certified list of:

6.01.1.1 All state contracts made during the state fiscal year just ended on all instructional materials the publisher sold in this state during the state fiscal year just ended; and

6.01.1.2 Instructional materials sold to each school district in Arkansas, including the price of each instructional material.

~~7.01.1~~ The person, company, or corporation shall file a bid and contract form in the office of the Commissioner of Education showing the prices at which the publisher will agree to sell to the State of Arkansas during the contract period.

~~7.01.2~~ When the State Board of Education accepts any or all of the textbooks or other instructional materials in the bid and contract form and so certifies the form, the bid and contract form shall become an official contract.

~~7.01.3~~ The State Board of Education is authorized to permit publishers to bid current wholesale prices, or the State Board may require publishers to bid

~~lowest existing contract prices at which the textbooks or other instructional materials are being sold elsewhere in the country.~~

~~7.01.4 The State Board of education shall certify in the call for bids whether it wants current wholesale prices or lowest contract prices.~~

~~7.01.5 In the bid and contract form, the publisher shall certify the date on which the current wholesale prices were established and submit a list of all existing adoption bids showing such items as may be requested by the State Board on an official form furnished by the State Board.~~

~~7.01.6 At the end of each fiscal year of the contract, the publisher shall submit a certified list of all state contracts made during the fiscal year just closed on all books or other instructional materials for which the publisher has a contract in the State of Arkansas.~~

~~7.01.7 The publisher shall automatically reduce prices in Arkansas whenever a contract is made at a lower price in another state after the date of the contract in Arkansas.~~

~~7.01.8 If any publisher makes a contract on a special or state edition in another state after the date of the contract in Arkansas, the State Board is authorized to require the publisher to supply the special or state edition to the schools of Arkansas at the contract price in other states.~~

~~7.01.9 The State Board may require a publisher to bid an exchange price on all basal or supplementary textbook bids, and all the price regulations in these rules applying to regular contracts shall also apply to exchange prices; and~~

~~7.01.10 The person, company, or corporation shall deposit a copy of each textbook and other instructional material in printed, digital or manuscript form in the Office of the Commissioner.~~

~~7.01.10.16.02~~ All publishers doing business in the State of Arkansas shall maintain one (1) or more book depositories at the publisher's expense in Arkansas this state.

~~7.01.10.2 All items offered for sale in Arkansas pursuant to these rules shall be equal in quality to those deposited in the Office of the Commissioner and shall meet the minimum standards and specifications set forth by the State Board.~~

## **8.00 — CONTRACTS WITH PUBLISHERS**

- 8.01 — ~~The State Board of Education shall make and execute contracts with all publishers whose books, series of books, or instructional materials have been recommended by the Department of Education.~~
- 8.02 — ~~The State Board shall determine the contract period, provided no contract period shall be for less than three (3) years nor more than five (5) years for courses subject to rapid knowledge base changes. For courses determined by the State Board to be free of rapid knowledge base changes, the contract period may be for a maximum of ten (10) years.~~
- 8.03 — ~~Contract periods for paperback books, novels, plays, and other forms of literature in a softbound cover that are part of a basal textbook program may be from one (1) to five (5) years.~~
- 8.04 — ~~If during the first two (2) years of any contract, the consumer price index has increased by twelve percent (12%) or more, the State Board is authorized to renegotiate with the contract holder the prices contained in the contract. The State Board may grant a price increase in the last three (3) years of the contract, provided the publisher certifies that the price is no higher than the lowest contract prices the product is currently bid in any other state.~~
- 8.05 — ~~The State Board is authorized to renew or extend contracts for no less than one (1) year nor more than two (2) years. This provision shall be made a part of the publisher's contract, and the State Board may exercise the provision by notifying the publisher no less than one (1) year prior to the expiration of the original contract.~~

## **9.00 — EXCHANGE PROVISIONS**

- 9.01 — ~~Any textbook exchange provisions approved by the State Board will guarantee the payment of exchange prices and govern the exchange on basal and supplementary textbooks.~~
- 9.02 — ~~The State Board may incorporate any exchange provisions it approves in the contract of the publisher, and the publisher shall be bound by such exchange provision of the contract as if it were a part of these rules.~~

**10.007.00 ASSESSMENT OF DAMAGES FOR PUBLISHER'S FAILURE TO COMPLY**

~~10.01~~7.01 The State Board is authorized to assess any publisher any amount of damages to the State of Arkansas for failure to comply with the terms of ~~the publisher's contract~~ Ark. Code Ann. § 6-21-401 et seq. or any published regulation of the State Board, provided that the publisher has been given a hearing before the State Board regarding the assessment of damages.

~~10.02~~7.02 ~~Failure~~ If a publisher fails to reimburse the State of Arkansas within six (6) months after notice of assessment has been served on the publisher, shall give the State Board the right to cancel all the contracts of the publisher involved and to forbid the publisher to bid any future adoptions the state board may prohibit the publisher from selling instructional materials in Arkansas for a maximum period of five (5) years from the date that damages are assessed pursuant to Section 10.00 7.00 of these rules.

~~10.03~~7.03 The following procedures shall apply to a situation involving a publisher's alleged failure to comply with the terms of ~~the publisher's contract~~ Ark. Code Ann. § 6-21-401 et seq. or any published regulation of the State Board:

~~10.03-17~~03.1 The Commissioner of Education shall provide written notice, via certified mail, return receipt requested, to the publisher. The written notice shall include specific allegations of precisely how the publisher failed to comply with the terms of ~~the publisher's contract~~ Ark. Code Ann. § 6-20-401 et seq. or any published regulation of the State Board. The written notice shall also include a recommendation from the Commissioner of Education concerning the assessment of damages for the publisher's failure to comply.

~~10.03-27~~03.2 Within thirty (30) days of receipt of the written notification from the Commissioner of Education, the publisher shall respond in writing to the Commissioner of Education, indicating one of the following:

~~10.03-2-17~~03.2.1 The publisher concurs with the specific allegations and/or recommended assessment of damages; or



~~10.03.2.2~~10.03.2.2 The publisher disputes the specific allegations and/or recommended assessment and requests an appeal before the State Board of Education. Such a notice of appeal shall include a brief statement of the reasons why the Commissioner's specific allegations and/or recommended assessment of damages should not be adopted.

~~10.03.47~~10.03.4 If the publisher concurs with the Commissioner's specific allegations and/or recommended assessment of damages, or fails to respond to the same within thirty (30) days, the Commissioner shall place his or her recommended assessment of damages on the consent agenda of the next regularly scheduled State Board of Education meeting in accordance with the State Board of Education's procedures for the submission of agenda items.

~~10.03.57~~10.03.5 If the publisher disputes the Commissioner's specific allegations and/or recommended assessment of damages, the State Board of Education shall hear the publisher's appeal within sixty (60) days of receipt of the notice of appeal. Through mutual agreement, the Commissioner of Education and the publisher may extend the date of the hearing for an additional thirty (30) days.

~~10.047~~10.04 The following procedures shall apply to a hearing before the State Board of Education:

~~10.04.17~~10.04.1 Each party will have the opportunity to present an opening statement of no longer than five (5) minutes, beginning with the representative of the Department of Education. The Chairperson of the State Board of Education may, only for good cause shown and upon the request of either party, allow either party additional time to present their opening statements.

~~10.04.27~~10.04.2 Each party will be given thirty (30) minutes to present their cases, beginning with the representative of the Department of Education. The Chairperson of the State Board of Education may, only for good cause shown and upon the request of either party, allow either party additional time to present their cases.

~~10.04.37~~10.04.3 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 of Education.

- ~~10.04.47.04.4~~ For the purposes of the record, documents offered during the hearing by the Department of Education shall be clearly marked in sequential, numeric order (1, 2, 3).
- ~~10.04.57.04.5~~ For the purposes of the record, documents offered during the hearing by the publisher shall be clearly marked in sequential, alphabetic letters (A, B, C).
- ~~10.04.67.04.6~~ The Department of Education shall have the burden of proving, by a preponderance of the evidence, that the Commissioner's specific allegations and/or recommended assessment of damages be adopted.
- ~~10.04.77.04.7~~ The State Board of Education may:
- ~~10.04.7.17.04.7.1~~ Adopt the Commissioner's specific allegations and/or recommended assessment of damages be adopted;
- ~~10.04.7.27.04.7.2~~ Modify the Commissioner's recommended assessment of damages; or
- ~~10.04.7.37.04.7.3~~ Grant the appeal of the publisher.
- ~~10.04.87.04.8~~ The State Board of Education may announce its decision immediately after hearing all arguments and evidence or may take the matter under advisement. The State Board of Education shall provide a written decision to the Department of Education and the publisher within fourteen (14) days of the hearing.

**11.008.00 NOTICE OF ILLEGAL ACTS INVOLVING SCHOOL OFFICIALS  
PURSUANT TO ARK. CODE ANN. § 6-21-410**

**11.018.01** It shall be illegal for the Commissioner of Education or any other employee connected with the Department of Education, any member of any selecting committee, or any member of any school board of directors to accept or receive any money, gift, property, or favor whatsoever from any person, firm, corporation, or any agent thereof offering for sale any item pursuant to Ark. Code Ann. § 6-21-401 et seq. or from any person in any way interested in such sale.

**11.01.18.01.1** Any person who pleads guilty or nolo contendere to or is found guilty of violating Ark. Code Ann. § 6-21-410(a) shall be found guilty of a Class B misdemeanor.

**11.01.28.01.2** Any fines collected under Ark. Code Ann. § 6-21-410(a) shall be deposited into the State Treasury to the credit of the Public School Fund.

**11.028.02** It shall be illegal for any teacher in the public schools of Arkansas or any person connected with the public school system of Arkansas in any capacity to have any interest in the profits, proceeds, or sale of any ~~school textbooks or other~~ instructional materials used in the schools of Arkansas under his or her charge or with which he or she is connected in any official capacity. However, this provision shall not apply nor have any reference to royalties or fees received by a person from the sale of ~~school books or other~~ instructional materials of which he or she is the author.

**11.02.18.02.1** Any person who pleads guilty or nolo contendere to or is found guilty of violating Ark. Code Ann. § 6-21-410(b) shall be guilty of a violation and subject to a fine of no less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200).

**11.02.28.02.2** Any fines collected under Ark. Code Ann. Ark. Code Ann. § 6-21-410(b) shall be deposited into the State Treasury to the credit of the Public School Fund.

**11.038.03** It shall be illegal for any person directly or indirectly to promise or offer to give or cause to be promised, offered, or given any money, good, bribe, present, reward, or any valuable thing whatsoever to the Commissioner of Education, his or her assistants, or any other employee of the Department of Education, the Director of the Department of Career Education, his or her assistants, or any other employee of the Department of Career Education, any school board members, teachers, or other persons with the intent of influencing their decisions on any questions, matters, causes, or proceedings in the selection of any ~~textbooks or other~~ instructional materials.

**11.03.18.03.1** Any person who pleads guilty or nolo contendere to or is found guilty of violating Ark. Code Ann. § 6-21-410(c) shall be guilty of a Class B misdemeanor.

**11.03.28.03.2** Any fines collected under Ark. Code Ann. § 6-21-410(c) shall be deposited into the State Treasury to the credit of the Public School Fund.

**ARKANSAS DEPARTMENT OF EDUCATION**  
**RULES GOVERNING PUBLIC CHARTER SCHOOLS**  
**October 2013**

**1.00 REGULATORY AUTHORITY AND PURPOSE**

- 1.01 These rules shall be known as the Arkansas Department of Education Rules Governing Public Charter Schools.
- 1.02 The State Board of Education enacted these rules pursuant to its authority as set forth in Ark. Code Ann. §§ 6-11-105, 6-23-101 et seq., 25-15-201 et seq., and Act 509 of 2013.

**2.00 LEGISLATIVE AND REGULATORY INTENT**

- 2.01 It is the intent of the Arkansas General Assembly, and of these rules, to provide opportunities for teachers, parents, pupils, and community members to establish and maintain public schools that operate independently from the existing structure of local school districts as a method to accomplish the following:
- 2.01.1 Improve student learning;
- 2.01.2 Increase learning opportunities for all students, with special emphasis on expanding learning experiences for students who are identified as low-achieving;
- 2.01.3 Encourage the use of different and innovative teaching methods;
- 2.01.4 Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site;
- 2.01.5 Provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system; and
- 2.01.6 Hold the schools established under this chapter accountable for meeting measurable student achievement standards.

*Source: Ark. Code Ann. § 6-23-102*

### 3.00 DEFINITIONS

- 3.01 “Academic Eligibility” means qualified for selection or admission based upon academic performance.
- 3.02 “Affected School District” means each public school district from which an open-enrollment public charter school is expected to draw students for the purposes of enrollment; the public school district in which the open-enrollment public charter school will be located; and each public school district that is contiguous to the public school district in which the open-enrollment public charter school will be located.
- 3.03 “Athletic Eligibility” means qualified for selection or admission based upon athletic performance or upon athletic eligibility requirements set forth by the Arkansas Activities Association.
- 3.04 “Application” means the proposal by a public school district or eligible entity for obtaining conversion public charter school status, open-enrollment public charter school status, or limited public charter school status. *Source: Ark. Code Ann. § 6-23-103(1)*
- 3.05 “Authorizer” means an entity that authorizes a charter, which may be either the:
- 3.05.1 Department of Education; or
- 3.05.2 State Board of Education acting under Ark. Code Ann. § 6-23-703 and Section 10.0 of these rules. *Source: Act 509 of 2013*
- 3.06 “Average daily membership” means the total number of days of school attended plus the total number of days absent by students in kindergarten through grade twelve (K-12) during the first three (3) quarters of each school year divided by the number of school days actually taught in the school district during that period of time rounded up to the nearest hundredth. Open-enrollment public charter school students who are enrolled in a curriculum that fulfills the requirements established by the State Board of Education under the Standards for Accreditation of Arkansas Public Schools and School Districts may be counted for average daily membership. *Source: Current rule as modified by Ark. Code Ann. § 6-20-2303(3).*

- 3.07 “Charter,” or “charter contract” means a performance-based contract for an initial five-year period between the authorizer and an approved applicant for public charter school status that exempts the public charter school from state and local rules, regulations, policies, and procedures specified in the contract and from the provisions of Title 6 of the Arkansas Code specified in the contract. *Source: Ark. Code Ann. § 6-23-103(2)*. The initial charter or charter contract may be renewed as set forth in these rules. For the purposes of these rules, the initial five-year period of a charter begins to run on the July 1 following approval of the charter unless otherwise specified by the authorizer. The period for any subsequent renewal of an initial charter shall begin to run on the July 1 following approval of the renewal.
- 3.08 “Conversion public charter school” means a public school that has converted to operating under the terms of a charter approved by the local school board and the authorizer. *Source: Ark. Code Ann. § 6-23-103(3)*.
- 3.09 “Debt” means any financial obligation incurred by a public charter school which will not be paid in full within 365 days from the date on which the financial obligation is incurred. *Source: Current rule as modified herein*.
- 3.10 “Eligible entity” means:
- 3.10.1 A public institution of higher education;
  - 3.10.2 A private nonsectarian institution of higher education;
  - 3.10.3 A governmental entity; or
  - 3.10.4 An organization that:
    - 3.10.4.1 Is nonsectarian in its program, admissions policies, employment practices, and operations, and
    - 3.10.4.2 Has applied for tax-exempt status under § 501(c)(3) of the Internal Revenue Code of 1986. The eligible entity must obtain status as a tax-exempt organization under § 501(c)(3) of the Internal Revenue Code of 1986 prior to the first day of its operation with students.

*Source: Ark. Code Ann. § 6-23-103(4)*.

- 3.11 “Founding member” means any individual who is either:
- 3.11.1 A member or an employee of the eligible entity applying for the initial charter for an open-enrollment public charter school; or
  - 3.11.2 A member of the initial governing nonadvisory board of the open-enrollment public charter school.

*Source: Ark. Code Ann. § 6-23-103(5).*

- 3.12 “Letter of Intent” means a written notice submitted to the Department of Education Charter School Office that a public school district or an eligible entity intends to file a charter school application. The letter of intent shall be submitted by the established deadline on forms provided by the Department of Education.

*Source: Current rule.*

- 3.13 “Limited Public Charter School” means a public school that has converted to operating under the terms of a limited public charter approved by the local school board and the authorizer. *Source: Ark. Code Ann. § 6-23-103(6).*

- 3.14 “License” means the authority granted by the authorizer to an already-existing open-enrollment public charter sponsoring entity for the purpose of establishing another open-enrollment public charter school(s) provided the applicant for a charter license(s) meets the following minimum conditions: (1) maintains an existing open-enrollment public charter school charter from the authorizer; and (2) meets the requirements of Section 6.05 of these rules. *Source: Current rule and Ark. Code Ann. § 6-23-304.*

- 3.15 “Local school board” means a board of directors exercising the control and management of a public school district. For the purposes of these rules, “local school board” also refers to the board of directors of a school district where a public charter school will be physically located. *Source: Current rule and Ark. Code Ann. § 6-23-103(7).*

- 3.16 “Net assets” refers to the status of particular items upon the occurrence of the dissolution, nonrenewal, or revocation of the charter, with the purpose being to identify publicly-funded unencumbered assets as property of the state at that point. Specifically, “net assets” refer to any unencumbered asset for which public funds were spent. *Source: Attorney General Opinion No. 2007-204*

- 3.17 “Open-enrollment public charter school” means a public school that:
- 3.17.1 Is operating under the terms of a charter granted by the authorizer on the application of an eligible entity;
  - 3.17.2 May draw its students from any public school district in this state; and
  - 3.17.3 Is a local educational agency under the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 7801, as it existed on April 10, 2009.
  - 3.17.4 “Open-enrollment public charter school” also possesses the same meaning as given the term “charter school” in the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 7221i, as it existed on April 10, 2009.

*Source: Ark. Code Ann. § 6-23-103(8).*

- 3.18 “Parent” means any parent, legal guardian, or other person having custody or charge of a school-age child. *Source: Ark. Code Ann. § 6-23-103(9).*
- 3.19 “Public school” means a school that is part of a public school district under the control and management of a local school board. *Source: Ark. Code Ann. § 6-23-103(10).*
- 3.20 “Public charter school” means a conversion public charter school, an open-enrollment public charter school, or a limited public charter school. *Source: Ark. Code Ann. § 6-23-103(11).*
- 3.21 “Sectarian” means of or relating to a particular religious sect. *Source: Black’s Law Dictionary, 8<sup>th</sup> Ed., 2004.*
- 3.22 “Short-term Line of Credit” means any financial obligation or obligations incurred by a public charter school as the result of an agreement by a lender or potential creditor to advance funds of ten thousand dollars (\$10,000.00) or more in the form of:



- 3.22.1 A loan (or combination of loans) that is payable in full in less than three hundred sixty-five (365) days from the date on which the financial obligation is incurred; or
- 3.22.2 A loan (or combination of loans) that does not define a date certain at which the loan is payable in full.

#### **4.00 RULES APPLICABLE TO ALL PUBLIC CHARTER SCHOOLS**

##### **4.01 Charter Form for Public Charter Schools – Requirements – Revision**

4.01.1 A charter for a public charter school shall:

- 4.01.1.1 Be in the form of a written contract signed by the Commissioner of Education and the chief operating officer of the public charter school;
- 4.01.1.2 Satisfy the requirements of Title 6, Chapter 23 of the Arkansas Code and of these rules; and
- 4.01.1.3 Ensure that the information required under Ark. Code Ann. § 6-23-404 is consistent with the information provided in the application and any modification that the authorizer may require.

4.01.2 Any revision or amendment of the charter for a public charter school may be made only with the approval of the authorizer.

*Source: Ark. Code Ann. § 6-23-104*

##### **4.02 Authorizer Hearing Notice Requirements**

- 4.02.1 For applications for a public charter school, the public charter school applicant shall submit its application according to a schedule set forth by the State Board of Education.
- 4.02.2 For renewal requests for a public charter school, the public charter school applicant shall submit its renewal request according to a schedule set forth by the State Board of Education.

4.02.3 Requests seeking amendments to current charters will be heard at the authorizer meetings in February and October of each year.

~~4.02.3~~ 4.02.4 For requests seeking authorizer approval for a change in the physical location of a public charter school, the public charter school applicant shall submit such request not later than thirty-five (35) days prior to the date of the authorizer meeting at which the request will be heard. For open-enrollment public charter schools, each such request shall be contemporaneously sent by the applicant to the superintendent of the local school district in which the public charter school is located.

~~4.02.3~~ 4.02.4.1 For the purposes of these rules, a change in the physical location of a public charter school means a relocation of a public charter school from its present location.

~~4.02.3~~ 4.02.4.2 Requests for a change in the physical location of a public charter school shall include maps of the present and proposed future locations of the charter school, and shall identify the local public school district in which the proposed future location will be located.

~~4.02.3~~ 4.02.4.3 Not later than seven (7) days after receipt of the request to change the physical location of a public charter school, the Commissioner of Education may, in writing, require the public charter school, the local school district and the Department of Education to submit additional information, including without limitation a desegregation analysis, concerning the proposed change in the physical location of the public charter school. Should the Commissioner of Education require the submission of such additional information, he or she shall modify the deadlines contained in Sections 4.04.4, 4.04.5, 4.04.6 of these rules accordingly.

~~4.02.4~~ 4.02.5 For requests seeking authorizer approval for other amendments to a public school charter, the public charter school applicant shall submit such request not later than thirty-five (35) days prior to the date of the authorizer meeting at which the request will be heard. For open-enrollment public charter schools, each such request shall be

contemporaneously sent by the applicant to the superintendent of the local school district in which the public charter school will be located.

~~4.02.54.02.6~~ 4.02.64.02.6 For requests seeking authorizer approval for licenses for an existing open-enrollment public charter school, the open-enrollment public charter school applicant shall submit such request for license not later than thirty-five (35) days prior to the date of the authorizer meeting at which the request will be heard. Each such request shall be contemporaneously sent by the applicant to the superintendent of the local school district in which the public charter school will be located.

~~4.02.64.02.7~~ 4.02.64.02.7 Under circumstances involving imminent peril to the health, welfare, or safety of students, or under circumstances that may negatively impact the continuation of educational services offered by the public charter school, and upon written request from the public charter school, the Commissioner of Education or his or her designee may waive the thirty-five (35) day deadline set forth in Sections ~~4.02.2~~ 4.02.3 through Sections ~~4.02.5~~ 4.02.6 of these rules. The decision of whether to grant such a waiver is within the sole discretion of the Commissioner of Education or his or her designee. If the Commissioner of Education, or his or her designee, grants such a waiver, he or she shall also adjust the resulting deadlines for local school districts and Department of Education staff contained in Sections 4.04.5 and 4.04.6 of these rules.

#### 4.03 Basis and Procedure for Public Charter School Probation or Charter Modification, Revocation or Denial of Renewal

4.03.1 The authorizer may place a public charter school on probation or may modify, revoke, or deny renewal of its charter if the authorizer determines that the persons operating the public charter school:

4.03.1.1 Committed a material violation of the charter, including failure to satisfy accountability provisions prescribed by the charter;

4.03.1.2 Failed to satisfy generally accepted accounting standards of fiscal management;

4.03.1.3 Failed to comply with this Title 6, Chapter 23 of the Arkansas Code or other applicable law or regulation; or

- 4.03.1.4 Failed to meet academic or fiscal performance criteria deemed appropriate and relevant for the public charter school by the authorizer.
- 4.03.1.5 Pursuant to the federal mandate contained in P.L. 111-117, 123 Stat. 3264, the authorizer will consider increases in student academic achievement for all groups of students described in Section 1111 (b)(2)(C)(v) of the Elementary and Secondary Education Act as a primary factor in determining whether to non-renew or revoke a public charter school's charter. However, any one of the circumstances listed in Sections 4.03.1.1 through 4.03.1.4 of these rules may be reason enough to non-renew or revoke a public charter school's charter.
- 4.03.2 Any action the authorizer may take under Ark. Code Ann. § 6-23-105 and Section 4.02 of these rules shall be based on the best interests of the public charter school's students, the severity of the violation, and any previous violation the public charter school may have committed.
- 4.03.3 The authorizer's procedures for placing a public charter school on probation or modifying, revoking, or denying renewal of the school's charter can be found in these rules as follows:
  - 4.03.3.1 Conversion public charter schools: Section 5.07
  - 4.03.3.2 Open-enrollment public charter schools: Section 6.24
  - 4.03.3.3 Limited public charter schools: Section 7.12
- 4.03.4 There is no further right of appeal beyond the determination of the authorizer except as set forth in Sections 9.00 and 10.00 of these Rules.
- 4.03.5 The Arkansas Administrative Procedure Act, § 25-15-201 et seq., shall not apply to any hearing concerning a public charter school.

*Source: Ark. Code Ann. § 6-23-105.*

#### 4.04 Impact on School Desegregation Efforts

- 4.04.1 The applicants for a public charter school, the local school board for the district in which the proposed public charter school would be located, and the authorizer shall carefully review the potential impact of an application for a public charter school on the efforts of a public school district or public school districts to comply with court orders and statutory obligations to create and maintain a unitary system of desegregated public schools.
- 4.04.2 The authorizer shall attempt to measure the likely impact of a proposed public charter school on the efforts of public school districts to achieve and maintain a unitary system.
- 4.04.3 The authorizer shall not approve any public charter school under Title 6, Chapter 23, or any other act or any combination of acts that hampers, delays, or in any manner negatively affects the desegregation efforts of a public school district or public school districts in this state.
- 4.04.4 A public charter school or applicant shall provide to the Department of Education, with a copy to the local school board for the school district in which the public charter school is or will be located, a desegregation analysis carefully reviewing the potential impact of the public charter school's application or request on the efforts of a public school district or public school districts to comply with court orders and statutory obligations to create and maintain a unitary system of desegregated public schools:
- 4.04.4.1 In its application for a public charter school charter;
  - 4.04.4.2 In its renewal request for its existing public charter school charter;
  - 4.04.4.3 In its request to change the physical location of its existing charter school if required by the Commissioner of Education in accordance with Section 4.02.3 of these rules;
  - 4.04.4.4 In any request to amend its existing charter to increase its enrollment cap or add grade levels; and

- 4.04.4.5 For an existing open-enrollment public charter school, in any request for a license.
- 4.04.5 The local school board of the school district in which the proposed public charter school is or will be located may provide to the Department of Education, with a copy to the public charter school or applicant, a desegregation analysis carefully reviewing the potential impact of an application for a public charter school, or a request under Section 4.04.4 above, on the efforts of a public school district or public school districts to comply with court orders and statutory obligations to create and maintain a unitary system of desegregated public schools:
- 4.04.5.1 Not later than twenty (20) days prior to the authorizer's consideration of an application of a public charter school;
- 4.04.5.2 Not later than twenty (20) days prior to the authorizer's consideration of a proposed renewal of a public charter school;
- 4.04.5.3 Not later than twenty (20) days prior to the authorizer's consideration of a change in the physical location of a public charter school if required by the Commissioner of Education in accordance with Section 4.02.3 of these rules;
- 4.04.5.4 Not later than twenty (20) days prior to the authorizer's consideration of a proposed amendment to a public charter that includes an increased enrollment cap or the addition of grade levels; and
- 4.04.4.5 Not later than twenty (20) days prior to the authorizer's consideration of a proposed license for an existing open-enrollment public charter school.
- 4.04.5.6 Failure of the local school board of the district in which the proposed public charter school will be located to submit to the Department of Education a desegregation analysis as set forth above shall result in a waiver of the local school board's right to submit such a desegregation analysis to the authorizer.

- 4.04.6 In accordance with Section 4.04 of these rules, the Department of Education staff shall submit to the authorizer, with copies to the public charter school or applicant and the local school board of the school district in which the public charter school is or will be located, a desegregation analysis:
- 4.04.6.1 Not later than ten (10) days prior to the authorizer’s consideration of an application of a public charter school;
  - 4.04.6.2 Not later than ten (10) days prior to the authorizer’s consideration of a proposed renewal of a public charter school;
  - 4.04.6.3 Not later than ten (10) days prior to the authorizer’s consideration of a change in physical location of a public charter school if required by the Commissioner of Education in accordance with Section 4.02.3 of these rules;
  - 4.04.6.4 Not later than ten (10) days prior to the authorizer’s consideration of a proposed amendment to a public charter that includes an increased enrollment cap or the addition of grade levels;
  - 4.04.6.5 Not later than ten (10) days prior to the authorizer’s consideration of a proposed license for an existing open-enrollment public charter school; and
  - 4.04.6.5 At any other time as directed by the authorizer or the Commissioner of Education.
  - 4.04.6.6 The Department of Education’s desegregation analysis will include as attachments the desegregation analyses provided by the applicant or public charter school and the local school board in which the public charter school is or will be located.

*Source: Ark. Code Ann. § 6-23-106.*

#### 4.05 Observance of Anti-Discrimination Laws

- 4.05.1 All public charter schools shall observe and comply with all anti-discrimination laws, both federal and state, except where otherwise exempted under federal charter school law.
- 4.05.2 All public charter schools are responsible for meeting the requirements of the Individuals with Disabilities Act (IDEA) and these rules.
- 4.05.3 All public charter schools are responsible for meeting the requirements of Section 504 of the Rehabilitation Act.

*Source: Current rules as modified.*

#### 4.06 Reporting Requirements

- 4.06.1 Within ten (10) calendar days of the close of the first quarter of each school year, a public charter school shall submit a written report to the Department of Education that contains the following information for the current school year:
  - 4.06.1.1 The number of applications for enrollment received;
  - 4.06.1.2 The number of applicants with a disability identified under the Individuals with Disabilities Act, 20 U.S.C. § 1400 et seq.; and
  - 4.06.1.3 The number of applications for enrollment the public charter school denied and an explanation of the reason for each denial.
- 4.06.2 Within ten (10) calendar days of the close of the fourth quarter of each school year, a public charter school shall submit a written report to the Department of Education that contains the following information for the current school year:
  - 4.06.2.1 The number of students in each of the following categories:
    - 4.06.2.1.1 Students who dropped out of the public charter school during the school year;
    - 4.06.2.1.2 Students who were expelled during the school year by the public charter school;



- 4.06.2.1.3 Students who were enrolled in the public charter school but for a reason other than those cited under Sections 4.06.2.1.1 and 4.06.2.1.2 did not complete the school year at the public charter school;
  - 4.06.2.1.4 Students identified in Sections 4.06.2.1.1 through 4.06.2.1.3 who transferred to another open-enrollment public charter school;
  - 4.06.2.1.5 Students identified in Sections 4.06.2.1.1 through 4.06.2.1.3 who transferred to a private school;
  - 4.06.2.1.6 Students identified in Sections 4.06.2.1.1 through 4.06.2.1.3 who transferred to a home school;
  - 4.06.2.1.7 Students identified in Sections 4.06.2.1.1 through 4.06.2.1.3 who transferred to a school outside of Arkansas; and
  - 4.06.2.1.8 Students identified in Sections 4.06.2.1.1 through 4.06.2.1.3 who transferred to a traditional public school district within Arkansas.
  - 4.06.2.1.9 The report shall identify the dates of transfer for all students identified in Section 4.06.2.1.8.
- 4.06.2.2 For all students enrolled in the public charter school, the scores for assessments required under the Arkansas Comprehensive Testing, Assessment, and Accountability Program Act, § 6-15-401 et seq., including without limitation benchmark assessments and end-of-course assessments

- 4.06.2.3 If there is any discrepancy in the number of students for whom scores are reported under Section 4.06.2.2 of these rules, and the number of students enrolled at the beginning of the school year, the public charter school shall explain in the report the reason for the discrepancy.
- 4.06.3 The Department of Education shall not exempt a public charter school from the reporting required under Section 4.06 of these rules.
- 4.06.4 The Department of Education shall publish a copy of each report on the department's website.
- 4.06.5 If a public charter school fails to comply with Ark. Code Ann. § 6-23-107 and Section 4.06 of these rules, the Department of Education shall note the failure in the annual evaluation of the public charter school.
- 4.06.6 Every public charter school shall furnish any other information, record, or report requested by the Department of Education Charter School Office unless disclosure of the information, record, or report is explicitly prohibited by court order or by federal or state law.
- 4.06.7 The Department of Education Charter School Office shall, at least annually, post on the Department of Education's website a list of deadlines for which legally required reports are due from the public charter school to the Department of Education.

*Source: Ark. Code Ann. § 6-23-107 – Act 993 of 2011.*

- 4.07 Public Charter Schools Receiving Federal Dissemination Grants from the Arkansas Department of Education
- 4.07.1 Public Charter Schools that receive federal dissemination grant funds from the Department of Education shall, by July 1 of each year, provide the Department of Education Charter School Office with a list of the public charter school's best or promising practices in accordance with their approved dissemination grant applications.
- 4.07.2 By August 1 of each year, the Department of Education Charter School Office will post a link of each public charter school's best or promising practices on the Department of Education's website.

#### 4.08 Application Process, Schedule and Forms

- 4.08.1 A procedure for establishing a public charter school shall be published by the Department of Education as approved by the State Board.
- 4.08.2 All dates and requirements listed in the procedures for establishing a public charter school shall be strictly followed by the public charter school applicant.
- 4.08.3 If all dates and requirements listed in the procedures for establishing a public charter school are not strictly followed by the public charter school applicant, the authorizer may refuse to consider the application.
- 4.08.4 Application forms and other documents needed for the public charter school application process shall be provided by the Arkansas Department of Education Charter School Office and are incorporated into these rules as if fully set forth herein.
- 4.08.5 Any requests for technical assistance by a charter applicant shall be made to the Arkansas Department of Education Charter School Office.
- 4.08.6 Letter of Intent: Each public charter school letter of intent shall be submitted by the potential applicant by certified mail, hand delivery or by electronic means and must be received by the Department of Education Charter School Office on or before the established deadline. The Department of Education Charter School Office may refuse to process or review any letter of intent not received by the established deadline.
- 4.08.7 Charter Application: Each public charter school application shall be submitted by the applicant by certified mail, hand delivery or by electronic means and must be received by the Department of Education Charter School Office on or before the established deadline. The Department of Education Charter School Office may refuse to process or review any application not received by the established deadline.
- 4.08.8 The Department of Education shall review the application for a public charter school and present to the authorizer a written evaluation of the application. The Department's evaluation shall be sent to the public charter school applicant.

4.08.9 The public charter school applicant shall be allowed an opportunity to submit a written response to the Arkansas Department of Education's evaluation by an established deadline.

4.08.10 The Department of Education may require additional information from a charter applicant to be delivered by the charter applicant in oral or written form, or both.

## **5.00 RULES APPLICABLE TO CONVERSION PUBLIC CHARTER SCHOOLS**

### 5.01 Application for Conversion Public Charter School Status

5.01.1 Any public school district may apply to the authorizer for conversion public charter school status for a public school in the public school district in accordance with a schedule approved by the State Board. The authorizer shall not approve an application for conversion public charter school status that has not first been approved by the school district's board of directors.

5.01.2 A public school district's application for conversion public charter school status for the public school may include, without limitation, the following purposes:

5.01.2.1 Adopting research-based school or instructional designs, or both, that focus on improving student and school performance;

5.01.2.2 Addressing school improvement status resulting from sanctions listed in Ark. Code Ann. §§ 6-15-207(c)(8) and 6-15-429(a) and (b); or

5.01.2.3 Partnering with other public school districts or public schools to address students' needs in a geographical location or multiple locations.

5.01.3 An application for a conversion public charter school shall:

- 5.01.3.1 Describe the results of a public hearing called by the local school board for the purpose of assessing support of an application for conversion public charter school status.
- 5.01.3.2 Notice of the public hearing shall be:
  - 5.01.3.2.1 Distributed to the community, licensed personnel, and the parents of all students enrolled at the public school for which the public school district initiated the application; and
  - 5.01.3.2.2 Published in a newspaper having general circulation in the public school district at least three (3) weeks prior to the date of the meeting;
- 5.01.3.3 Describe a plan for school improvement that addresses how the conversion public charter school will improve student learning and meet the state education goals;
- 5.01.3.4 Outline proposed performance criteria that will be used during the initial five-year period of the charter to measure the progress of the conversion public charter school in improving student learning and meeting or exceeding the state education goals;
- 5.01.3.5 Describe how the licensed employees and parents of the students to be enrolled in the conversion public charter school will be involved in developing and implementing the school improvement plan and identifying performance criteria;
- 5.01.3.6 Describe how the concerns of licensed employees and parents of students enrolled in the conversion public charter school will be solicited and addressed in evaluating the effectiveness of the improvement plan; and
- 5.01.3.7 List the specific provisions of Title 6 of the Arkansas Code and the specific rules and regulations promulgated by the

State Board from which the public charter school will be exempt.

- 5.01.4 A licensed teacher employed by a public school in the school year immediately preceding the effective date of a charter for a public school conversion within that public school district may not be transferred to or be employed by the conversion public charter school over the licensed teacher's objection, nor shall that objection be used as a basis to deny continuing employment within the public school district in another public school at a similar grade level.
- 5.01.5 If the transfer of a teacher within the public school district is not possible because only one (1) public school exists for that teacher's certification level, then the local school board shall call for a vote of the licensed teachers in the proposed conversion public charter school site and proceed, at the local school board's option, with the conversion public charter school application if a majority of the licensed teachers approve the proposal.

*Source: Ark. Code Ann. § 6-23-201.*

## 5.02 Authorization for Conversion Public Charter School Status

- 5.02.1 As requested by the conversion public charter school applicant, the authorizer shall review the application for conversion public charter school status and may approve any application that:
- 5.02.1.1 Provides a plan for improvement at the school level for improving student learning and for meeting or exceeding the state education goals;
  - 5.02.1.2 Includes a set of performance-based objectives and student achievement objectives for the term of the charter and the means for measuring those objectives on at least a yearly basis;
  - 5.02.1.3 Includes a proposal to directly and substantially involve the parents of students to be enrolled in the conversion public charter school, as well as the licensed employees and the

broader community, in the process of carrying out the terms of the charter; and

- 5.02.1.4 Includes an agreement to provide a yearly report to parents, the community, the local school board, and the authorizer that indicates the progress made by the conversion public

charter school in meeting the performance objectives during the previous year.

*Source: Ark. Code Ann. § 6-23-202.*

### 5.03 Resubmission of Conversion Public Charter School Applications

5.03.1 The authorizer may allow applicants to resubmit applications for conversion public charter school status if the original application was, in the opinion of the authorizer, deficient in one (1) or more respects.

5.03.2 The Department of Education may provide technical assistance to the conversion public charter school applicants in the creation or modification of these applications.

*Source: Ark. Code Ann. § 6-23-203*

5.04 **Public Conversion Charter School Renewal:** The authorizer is authorized to renew charters of conversion public charter schools on a one-year or multiyear basis, not to exceed five (5) years, after the initial five-year period if the renewal is approved by the local school board.

*Source: Ark. Code Ann. § 6-23-204*

5.05 **Teacher Hires when Charter Revoked:** If a licensed teacher employed by a public school district in the school year immediately preceding the effective date of the charter is employed by a conversion public charter school and the charter is revoked, the licensed teacher will receive a priority in hiring for the first available position for which the licensed teacher is qualified in the public school district where the licensed teacher was formerly employed.

### 5.06 Authorizer Hearing Procedures Related to Conversion Public Charter Schools (Application, Renewal, or Request for Charter Amendment)

5.06.1 All persons, with the exception of the attorneys representing the parties, who plan to provide testimony during the hearing must be sworn by a certified court reporter.

5.06.2 The conversion public charter school or applicant shall have twenty (20) minutes to present its case to the authorizer for approval of the proposed



conversion public charter school, renewal, or amendment. The Chair of authorizing body may grant additional time, if necessary.

- 5.06.3 Parties opposed to the conversion public charter school application, renewal, or amendment, if any, shall have twenty (20) minutes to present their case to the authorizer for disapproval of the proposed conversion public charter school, renewal, or amendment. The Chair of the authorizing body may grant additional time, if necessary.
- 5.06.4 The conversion public charter school or applicant shall have five (5) minutes to respond to any arguments in opposition to the conversion public charter school application, renewal, or amendment. The Chair of the authorizing body may grant additional time, if necessary.
- 5.06.5 The authorizer will follow the presentation with discussion of the conversion public charter school application or request and questions, if any, to the conversion public charter school or applicant, opposing parties, or both.
- 5.06.6 The authorizer may issue a final decision at the hearing or take the matter under advisement until a future scheduled meeting.
- 5.06.7 The authorizer may defer the vote to approve or disapprove a charter application, renewal, or amendment in order to allow a public charter school or applicant to make modifications or receive technical assistance to correct deficiencies in the application or request.

*Note: Additional requirements pertaining to hearings involving the Department of Education as authorizer may be found in Section 9.00 of these Rules. Additional requirements pertaining to hearings involving the State Board of Education as authorizer may be found in Section 10.00 of these Rules.*

5.07 Authorizer Hearing Procedures Related to Conversion Public Charter Schools  
(Modification, Probation or Revocation of Charter)

- 5.07.1 Not later than twenty (20) days prior to the authorizer meeting at which the matter of modification, probation or revocation will be considered, the Department of Education shall provide written notice of the reason(s) for the proposed action, as well as of the time and location of such hearing, to the conversion public charter school.

- 5.07.2 All persons, with the exception of the attorneys representing the parties, who plan to provide testimony during the hearing must be sworn by a certified court reporter.
- 5.07.3 Arkansas Department of Education staff shall have twenty (20) minutes to present its case to the authorizer for modification, probation, or revocation of a conversion public charter school charter. The Chair of the authorizing body may grant additional time, if necessary.
- 5.07.4 The conversion public charter school shall have twenty (20) minutes to present its case to the authorizer for regarding the proposed modification, probation, or revocation of the conversion public charter school charter. The Chair of the authorizing body may grant additional time, if necessary.
- 5.07.5 The authorizer will follow the presentation with discussion of the matter and questions, if any, to representatives from the Department of Education, the conversion public charter school, or both.
- 5.07.6 The authorizer may issue a final decision at the hearing or take the matter under advisement until a future scheduled meeting.

*Note: Additional requirements pertaining to hearings involving the Department of Education as authorizer may be found in Section 9.00 of these Rules. Additional requirements pertaining to hearings involving the State Board of Education as authorizer may be found in Section 10.00 of these Rules.*

## **6.00 RULES APPLICABLE TO OPEN-ENROLLMENT PUBLIC CHARTER SCHOOLS**

### **6.01 Application for an Open-Enrollment Public Charter School**

- 6.01.1 Pursuant to Title 6, Chapter 23 of the Arkansas Code and these rules, an eligible entity may apply to the authorizer to grant a charter for an open-enrollment public charter school to operate in a facility of a commercial or nonprofit entity or a public school district. As noted in Section 6.17.11 of these Rules, an open-enrollment public charter school shall have the right of first refusal to purchase or lease for fair market value a closed public school facility or unused portions of a public school facility located in a

public school district from which it draws students if the public school district decides to sell or lease the public school facility.

- 6.01.2 The authorizer shall adopt an application form, schedule, and a procedure that must be used to apply for an open-enrollment public charter school. The State Board shall adopt any applications, forms, schedules and procedures that are required to be promulgated through the Administrative Procedure Act.
- 6.01.3 The authorizer shall adopt, in conjunction with the application form adopted under section 6.01.2 of these Rules, a scoring rubric that shall constitute criteria to inform the authorizer's approval of a program for which an open-enrollment public charter may be granted. The State Board shall adopt any rubric that is required to be promulgated through the Administrative Procedure Act.
- 6.01.4 The application to the authorizer for an open-enrollment public charter school shall be made in accordance with a schedule approved by the authorizer. The State Board shall adopt any schedule that is required to be promulgated through the Administrative Procedure Act.
- 6.01.5 The application form must provide space for including all information required under Title 6, Chapter 23 and these rules to be contained in the charter.
- 6.01.6 The application for an open-enrollment public charter school shall:
- 6.01.6.1 Describe the results of a public hearing called by the applicant for the purpose of assessing support for an application for an open-enrollment public charter school.
    - 6.01.6.1.1 Notice of the public hearing shall be published one (1) time a week for three (3) consecutive weeks in a newspaper having general circulation in the public school district in which the open-enrollment public charter school is likely to be located.
      - 6.01.6.1.1.1 The last publication of notice shall be no less than seven (7)

days before the public meeting.

6.01.6.1.1.2 The notice shall not be published in the classified or legal notice section of the newspaper.

6.01.6.1.2 Within seven (7) calendar days following the first publication of notice required under Section 6.01.6.1.1 of these rules, letters announcing the public hearing shall be sent to the superintendent of each of the public school districts from which the open-enrollment public charter school is likely to draw students for the purpose of enrollment and the superintendent of any public school district that is contiguous to the public school district in which the open-enrollment public charter school will be located.

6.01.6.1.3 An affected school district may submit written comments concerning the application to the authorizer to be considered at the time of the authorizer's review of the application.

6.01.6.2 Describe a plan for academic achievement that addresses how the open-enrollment public charter school will improve student learning and meet the state education goals;

6.01.6.3 Outline the proposed performance criteria that will be used during the initial five-year period of the open-enrollment public charter school operation to measure its progress in improving student learning and meeting or exceeding the state education goals;

6.01.6.4 List the specific provisions of Title 6 of the Arkansas Code and the specific rules and regulations promulgated by the

State Board from which the open-enrollment public charter school seeks to be exempted;

6.01.6.5 Describe the facility to be used for the open-enrollment public charter school and state the facility's current use.

6.01.6.5.1 If the facility to be used for an open-enrollment public charter school is a public school district facility, the open-enrollment public charter school must operate in the facility in accordance with the terms established by the local school board of the public school district in an agreement governing the relationship between the open-enrollment public charter school and the public school district.

6.01.6.5.2 If the facility that will be used for the open-enrollment public charter school is owned by or leased from a sectarian organization, the terms of the facility agreement must be disclosed to the authorizer.

6.01.6.6 Include a detailed budget and a governance plan for the operation of the open-enrollment public charter school.

6.01.7 Review and Approval by the Local School Board:

6.01.7.1 The application may be reviewed and approved by the local school board of the public school district in which the proposed open-enrollment public charter school will operate.

6.01.7.2 Any decision by the local school board approving or disapproving the application must be made within forty-five (45) days of the local school board's receipt of the application.

- 6.01.7.3 The applicant may submit to the authorizer for expedited review an application approved by the local school board under Section 6.01.7.1 of these rules.
  - 6.01.7.4 If the local school board disapproves the application, or if the local school board takes no action in the time allowed by Section 6.01.7.2 of these Rules, the applicant shall have an immediate right to proceed with a written notice of appeal to the authorizer.
  - 6.01.7.5 The authorizer shall hold a hearing within forty-five (45) calendar days after receipt of the notice of appeal or a request for review, unless the applicant and the local school board agree to a later date.
  - 6.01.7.6 All interested parties may appear at the hearing and present relevant information regarding the application.
- 6.02 A licensed teacher employed by a public school district in the school year immediately preceding the effective date of a charter for an open-enrollment public charter school operated at a public school facility may not be transferred to or be employed by the open-enrollment public charter school over the licensed teacher's objections.

*Source: Ark. Code Ann. §§ 6-23-301 and 6-23-302 as amended by Act 993 of 2011*

### 6.03 Authorization for an Open-Enrollment Public Charter School

- 6.03.1 As requested by the applicant for an open-enrollment public charter school, the authorizer shall review the application for an open-enrollment public charter school and may approve any application that:
  - 6.03.1.1 Provides a plan for academic achievement that addresses how the open-enrollment public charter school proposes to improve student learning and meet the state education goals;
  - 6.03.1.2 Includes a set of performance criteria that will be used during the initial five-year period of the open-enrollment

public charter school's operation to measure its progress in meeting its academic performance goals;

- 6.03.1.3 Includes a proposal to directly and substantially involve the parents of students to be enrolled in the open-enrollment public charter school, the licensed employees, and the broader community in carrying out the terms of the open-enrollment charter;
- 6.03.1.4 Includes an agreement to provide an annual report to parents, the community, and the authorizer that demonstrates the progress made by the open-enrollment public charter school during the previous academic year in meeting its academic performance objectives;
- 6.03.1.5 Includes a detailed budget, a business plan, and a governance plan for the operation of the open-enrollment public charter school; and
- 6.03.1.6 Establishes the eligible entity's status as a tax-exempt organization under § 501(c)(3) of the Internal Revenue Code of 1986 prior to the first day of its operation with students.

*Source: Ark. Code Ann. § 6-23-303*

#### 6.04 Other Application Requirements – Preference for Certain Districts

6.04.1 The authorizer may approve or deny an application based on:

- 6.04.1.1 Criteria provided by law;
- 6.04.1.2 Criteria provided by rule adopted by the authorizer under section 6.01.3 of these Rules;
- 6.04.1.3 Findings of the authorizer relating to improving student performance and encouraging innovative programs; and

- 6.04.1.4 Written findings or statements received by the authorizer from any public school district likely to be affected by the open-enrollment public charter school.
- 6.04.2 The authorizer shall give preference in approving an application for an open-enrollment public charter school to be located in any public school district:
- 6.04.2.1 When the percentage of students who qualify for free or reduced-price lunches is above the average for the state;
- 6.04.2.2 When the district has been classified by the State Board as in academic distress under Ark. Code Ann. § 6-15-428; or
- 6.04.2.3 When the district has been classified by the Department of Education as in some phase of school improvement status under Ark. Code Ann. § 6-15-426 or some phase of fiscal distress under the Arkansas Fiscal Assessment and Accountability Program, § 6-20-1901 et seq., if the fiscal distress status is a result of administrative fiscal mismanagement, as determined by the State Board.
- 6.04.3 The Department of Education, State Board, or a combination of the department and the State Board may grant no more than a total of twenty-four (24) charters for open-enrollment public charter schools except as provided under Section 6.04.3.1 below.
- 6.04.3.1 If the cap on the number of charters available for an open-enrollment public charter schools is within two (2) charters of meeting any existing limitation or cap on available open-enrollment charters, the number of available charters shall automatically increase by five (5) slots more than the most recent existing limitation or cap on open-enrollment charters.
- 6.04.3.2 By March 1 each year, the Department of Education shall issue a Commissioner's Memo stating the existing limitation on the number of charters available for open-enrollment public charter schools and the number of



charters available for open-enrollment public charter schools during the next application cycle.

- 6.04.4 An open-enrollment public charter applicant's school campus shall be limited to a single open-enrollment public charter school per charter except as allowed in Section 6.05 of these rules.
- 6.04.5 An open-enrollment public charter school shall not open in the service area of a public school district administratively reorganized under Ark. Code Ann. § 6-13-1601 et seq., until after the third year of the administrative reorganization.
- 6.04.6 A private or parochial elementary or secondary school shall not be eligible for open-enrollment public charter school status.

*Source: Ark. Code Ann. § 6-23-304 as amended by Act 987 of 2011*

#### 6.05 Open-Enrollment Public Charter School Licenses

- 6.05.1 A charter applicant that receives an approved open-enrollment public charter may petition the authorizer for additional licenses to establish an open-enrollment public charter school in any of the various congressional districts in Arkansas if the applicant meets the following conditions:
  - 6.05.1.1 The approved open-enrollment public charter applicant has demonstrated academic success as defined by the State Board for all public schools;
  - 6.05.1.2 The approved open-enrollment public charter applicant has not:
    - 6.05.1.2.1 Been subject to any disciplinary action by the authorizer;
    - 6.05.1.2.2 Been classified as in academic or fiscal distress;
    - 6.05.1.2.3 Had its open-enrollment public charter placed on charter school probation or suspended or revoked under Ark. Code Ann.

§ 6-23-105 or Section 4.03 of these rules;  
and

- 6.05.1.2.4 The authorizer determines in writing by a majority of a quorum present that the open-enrollment public charter applicant has generally established the educational program results and criteria set forth in Section 6.05 of these rules.

*Source: Ark. Code Ann. § 6-23-304 as amended by Act 993 of 2011*

#### 6.06 Resubmission of Open-Enrollment Public Charter School Applications

- 6.06.1 If the authorizer disapproves an application for an open-enrollment public charter school, the authorizer shall notify the applicant in writing of the reasons for such disapproval.
- 6.06.2 The authorizer may allow the applicant for an open-enrollment public charter school to resubmit its application if the original application was found to be deficient by the authorizer.
- 6.06.3 The Department of Education may provide technical assistance to the applicant for an open-enrollment public charter school in the creation or modification of its application.

*Source: Ark. Code Ann. § 6-23-305*

#### 6.07 Contents of Open-Enrollment Public Charters

- 6.07.1 An open-enrollment public charter granted by the authorizer shall:
- 6.07.1.1 Describe the educational program to be offered;
- 6.07.1.2 Specify the period for which the open-enrollment public charter or any renewal is valid;
- 6.07.1.3 Provide that the continuation or renewal of the open-enrollment public charter is contingent on acceptable student performance on assessment instruments adopted by the State Board and on compliance with any accountability

provision specified by the open-enrollment public charter, by a deadline, or at intervals specified by the open-enrollment public charter;

6.07.1.4 Establish the level of student performance that is considered acceptable for the purposes of Section 6.07.1.3 of these rules;

6.07.1.5 Specify any basis, in addition to a basis specified by Title 6, Chapter 23 of the Arkansas Code or Section 4.03 of these rules, on which the open-enrollment public charter school may be placed on probation or its charter revoked or on which renewal of the open-enrollment public charter school may be denied;

6.07.1.6 Prohibit discrimination in admissions policy on the basis of gender, national origin, race, ethnicity, religion, disability, or academic or athletic eligibility, except as follows:

6.07.1.6.1 The open-enrollment public charter school may adopt admissions policies that are consistent with federal law, regulations, or guidelines applicable to charter schools;

6.07.1.6.2 Consistent with the requirements of Section 6.07.1.14.3 of these rules, the open-enrollment public charter school may allow a weighted lottery to be used in the student selection process when necessary to comply with Title VI of the federal civil rights act of 1964, Title IX of the federal Education Amendments of 1972, the equal protection clause of the Fourteenth Amendment to the United States Constitution, a court order, or a federal or state law requiring desegregation; and

6.07.1.6.3 The open-enrollment public charter may provide for the exclusion of a student who has been expelled from another public

school district in accordance with Title 6 of the Arkansas Code.

- 6.07.1.7 Specify the grade levels to be offered;
- 6.07.1.8 Describe the governing structure of the program;
- 6.07.1.9 Specify the qualifications to be met by professional employees of the program;
- 6.07.1.10 Describe the process by which the persons providing the program will adopt an annual budget;
- 6.07.1.11 Describe the manner in which the annual audit of the financial and programmatic operations of the program is to be conducted, including the manner in which the persons providing the program will provide information necessary for the public school district in which the program is located to participate;
- 6.07.1.12 Describe the facilities to be used, including the terms of the facility utilization agreement if the facility for the open-enrollment public charter school is owned or leased from a sectarian organization;
- 6.07.1.13 Describe the geographical area, public school district, or school attendance area to be served by the program;
- 6.07.1.14 Specify the methods for applying for admission, enrollment criteria, and student recruitment and selection processes.
  - 6.07.1.14.1 Except as provided in Section 6.07.1.14.2 of these rules, if more eligible students apply for a first-time admission than the open-enrollment public charter school is able to accept by the annual deadline that the open-enrollment public charter school has established for the receipt of applications for the next school year, the open-enrollment public charter must require the open-

enrollment public charter school to use a random, anonymous student selection method that shall be described in the charter application.

6.07.1.14.1.1 If there are still more applications for admissions than the open-enrollment public charter school is able to accept after the completion of the random, anonymous student selection method, then the open-enrollment public charter school shall place the applicants on a waiting list for admission.

6.07.1.14.1.2 The waiting list is valid until the next time the open-enrollment public charter school is required to conduct a random, anonymous student selection.

6.07.1.14.2 However, an open-enrollment public charter school may allow a preference for:

6.07.1.14.2.1 Children of the founding members of the eligible entity. The number of enrollment preferences granted to children of founding members shall not exceed ten percent (10%) of the total number of students enrolled in the open-enrollment public charter school; and

6.07.1.14.2.2 Siblings of students currently enrolled in the open-enrollment public charter school.

6.07.1.14.3 The open-enrollment public charter may use a weighted lottery in the student selection process only when necessary to comply with a:

6.07.1.14.3.1 Federal court order; or

6.07.1.14.3.2 Federal administrative order issued by an appropriate federal agency having proper authority to enforce remedial measures necessary to comply with Title VI of the federal Civil Rights Act of 1964, Title IX of the federal Education Amendments of 1972 and the equal protection clause of the Fourteenth Amendment to the United States Constitution.

6.07.1.15 Include a statement that the eligible entity will not discriminate on the basis of race, sex, national origin, ethnicity, religion, age, or disability in employment decisions, including hiring and retention of administrators, teachers, and other employees whose salaries or benefits are derived from any public moneys.

*Source: Ark. Code Ann. § 6-23-306 as amended by Act 993 of 2011*

6.08 Renewal of an Open-Enrollment Charter: After the initial five-year period of an open-enrollment public charter, the authorizer may renew the open-enrollment public charter on a one-year or multiyear basis, not to exceed twenty (20) years.

*Source: Ark. Code Ann. § 6-23-307 as amended by Act 993 of 2011*

- 6.09 **Priority Hiring for Teachers:** If a licensed teacher employed by a public school district in the school year immediately preceding the effective date of the open-enrollment public charter is employed by an open-enrollment public charter school and the open-enrollment public charter is revoked, the licensed teacher will receive a priority in hiring for the first available position for which the licensed teacher is qualified in the school district where the licensed teacher was formerly employed.

*Source: Ark. Code Ann. § 6-23-308*

- 6.10 **Status Report:** The authorizer shall report on the status of the open-enrollment public charter school programs to the General Assembly each biennium and to the House Committee on Education and the Senate Committee on Education during the interim between regular sessions of the General Assembly.

*Source: Ark. Code Ann. § 6-23-310*

- 6.11 **Authority under a Charter for Open-Enrollment Public Charter Schools**

6.11.1 **An open-enrollment public charter school:**

- 6.11.1.1 Shall be governed by an eligible entity that is fiscally accountable under the governing structure as described by the charter;
- 6.11.1.2 Shall provide instruction to students at one (1) or more elementary or secondary grade levels as provided by the charter;
- 6.11.1.3 Shall retain the authority to operate under the charter contingent on satisfactory student performance as provided by the charter in accordance with Title 6, Chapter 23 of the Arkansas Code and these rules;
- 6.11.1.4 Shall have no authority to impose taxes;
- 6.11.1.5 Shall not incur any debts without the prior review and approval of the Commissioner of Education;

- 6.11.1.5.1 Requests for approval of debt must be submitted to the Commissioner of Education by the open-enrollment public charter school no later than thirty (30) days prior to the date upon which the debt will be incurred.
- 6.11.1.5.2 Under circumstances involving imminent peril to the health, welfare, or safety of students, or under circumstances that may negatively impact the continuation of educational services offered by the public charter school, and upon written request from the public charter school, the Commissioner of Education may waive the thirty (30) day deadline set forth in Section 6.11.1.5.1 of these rules. The decision of whether to grant such a waiver is within the sole discretion of the Commissioner of Education.
- 6.11.1.6 Shall not enter into any short-term line of credit, or receive any funds from a short-term line of credit, without prior notice to the Commissioner of Education;
  - 6.11.1.6.1 Notice of a short-term line of credit must identify the lender or creditor, the principal amount, the interest rate, and the payment terms;
  - 6.11.1.6.2 No public funds may be used to repay any short-term line of credit unless prior notice of the line of credit was given to and received by the Commissioner of Education;
- 6.11.1.7 Shall not charge students tuition or fees that would not be allowable charges in the public school districts; and
- 6.11.1.8 Shall not be religious in its operations or programmatic offerings.



- 6.11.2 An open-enrollment public charter school is subject to any prohibition, restriction, or requirement imposed by Title 6 of the Arkansas Code and any rule and regulation promulgated by the State Board under Title 6 of the Arkansas Code relating to:
- 6.11.2.1 Monitoring compliance with Title 6 of the Arkansas Code, as determined by the Commissioner;
  - 6.11.2.2 Public school accountability under Title 6 of the Arkansas Code;
  - 6.11.2.3 High school graduation requirements as established by the State Board;
  - 6.11.2.4 Special education programs as provided by Title 6 of the Arkansas Code;
  - 6.11.2.5 Conducting criminal background checks for employees as provided by Title 6 of the Arkansas Code;
  - 6.11.2.6 Health and safety codes as established by the State Board and local governmental entities; and
  - 6.11.2.7 Ethical guidelines and prohibitions as established by Ark. Code Ann. § 6-24-101 et seq., and any other controlling state or federal law regarding ethics or conflicts of interest.

*Source: Ark. Code Ann. § 6-23-401*

#### 6.12 Enrollment Numbers and Deadline:

- 6.12.1 An open-enrollment public charter school may enroll a number of students not to exceed the number of students specified in its charter.
- 6.12.2 Any student enrolling in an open-enrollment public charter school shall enroll in that school by the deadline established in Ark. Code Ann. § 6-23-402 for the upcoming school year during which the student will be attending the open-enrollment public charter school.

6.12.3 However, if a student enrolled by the deadline established in Ark. Code Ann. § 6-23-402 should no longer choose to attend the open-enrollment public charter school or if the open-enrollment public charter school has not yet met its enrollment cap, the open-enrollment public charter school may enroll a number of replacement or additional students not to exceed the enrollment cap of the open-enrollment public charter school.

6.12.4 Open-enrollment public charter schools shall keep records of attendance in accordance with the law and submit quarterly attendance reports to the Department of Education.

*Source: Ark. Code Ann. § 6-23-402 as amended by Acts 989 and 993 of 2011*

6.13 Annual Audit of Open-Enrollment Public Charter School Required:

6.13.1 Any other provision of the Arkansas Code or these rules notwithstanding, an open-enrollment public charter school shall be subject to the same auditing and accounting requirements as any other public school district in the state.

6.13.2 An open-enrollment public charter school shall prepare an annual certified audit of the financial condition and transactions of the open-enrollment public charter school as of June 30 each year in accordance with auditing standards generally accepted in the United States and Government Auditing Standards issued by the Comptroller General of the United States, and containing any other data as determined by the State Board for all public schools.

6.13.3 If the school is an open-enrollment public charter school in its first year of operation, the Legislative Auditor shall prepare the required annual financial audit for the school unless:

6.13.3.1 The open-enrollment public charter school chooses to retain the services of a licensed certified public accountant in public practice in good standing with the Arkansas State Board of Public Accountancy; and

6.13.3.2 The authorizer approves the open-enrollment public charter school's use of an entity other than the Legislative Auditor to prepare the annual financial audit.

- 6.13.4 No open-enrollment public charter school shall engage an accountant or accounting firm to conduct any audit if the accountant or accounting firm is listed on any ineligibility list maintained by the Department of Education or the Division of Legislative Audit.

*Source: Ark. Code Ann. §§ 6-23-403, 6-23-505, and 10-4-413 as amended by Act 993 of 2011.*

6.14 Evaluation of Open-Enrollment Public Charter Schools:

- 6.14.1 The Department of Education shall cause to be conducted an annual evaluation of open-enrollment public charter schools.

- 6.14.2 An annual evaluation shall include, without limitation, consideration of:

- 6.14.2.1 Student scores under the statewide assessment program described in Ark. Code Ann. § 6-15-433;
- 6.14.2.2 Student attendance;
- 6.14.2.3 Student grades;
- 6.14.2.4 Incidents involving student discipline;
- 6.14.2.5 Socioeconomic data on students' families;
- 6.14.2.6 Parental satisfaction with the schools;
- 6.14.2.7 Student satisfaction with the schools; and
- 6.14.2.8 The open-enrollment public charter school's compliance with Ark. Code Ann. § 6-23-107 and Section 4.06 of these rules.

- 6.14.3 The authorizer may require the charter holder to appear before the authorizer to discuss the results of the evaluation and to present further information to the authorizer as the authorizer deems necessary.

*Source: Ark. Code Ann. § 6-23-404 as amended by Act 993 of 2011*

- 6.15 Monthly Reports: An open-enrollment public charter school in its initial school year of operation shall provide monthly reports on its enrollment status and compliance with its approved budget for the current school year to the Department of Education.

*Source: Ark. Code Ann. § 6-23-405 as added by Act 993 of 2011*

- 6.16 Department of Education Review: The Department of Education shall:
- 6.16.1 Conduct an end-of-semester review of each open-enrollment public charter school that is in its initial school year of operation at the end of the first semester and at the end of the school year; and
  - 6.16.2 Report to the State Board and the Commissioner of Education on the open-enrollment public charter school's:
    - 6.16.2.1 Overall financial condition; and
    - 6.16.2.2 Overall condition of student enrollment.

*Source: Ark. Code Ann. § 6-23-406 as added by Act 993 of 2011*

- 6.17 Funding for Open-Enrollment Public Charter Schools
- 6.17.1 An open-enrollment public charter school shall receive funds equal to the amount that a public school would receive under Ark. Code Ann. § 6-20-2305(a) and (b) as well as any other funding that a public charter school is entitled to receive under law or under rules promulgated by the State Board.
  - 6.17.2 For the first year of operation and any year the open-enrollment public charter school adds a new grade, the foundation funding for an open-enrollment public charter school is determined as follows:
    - 6.17.2.1 The initial funding estimate shall be based on enrollment as of the deadline established by Ark. Code Ann. § 6-23-501;
    - 6.17.2.2 In December, funding will be adjusted based upon the first quarter average daily membership; and

- 6.17.2.3 A final adjustment will be made after the current three-quarter average daily membership is established.
- 6.17.3 For the second year and each school year thereafter, the previous year's average daily membership will be used to calculate foundation funding amounts.
- 6.17.4 National school lunch state categorical funding under Ark. Code Ann. § 6-20-2305(b)(4) shall be provided to an open-enrollment public charter school as follows:
- 6.17.4.1 For the first year of operation and in any year when a grade is added, free or reduced-price meal eligibility data as reported by October 1 of the current school year will be used to calculate the national school lunch state categorical funding under the State Board rules governing special needs funding; and
- 6.17.4.2 For the second year and each school year of operation thereafter, the previous year's October 1 national school lunch student count as specified in State Board rules governing special needs funding will be used to calculate national school lunch state categorical funding for the open-enrollment public charter school.
- 6.17.5 Professional development funding under Ark. Code Ann. § 6-20-2305(b)(5) shall be provided to an open-enrollment public charter school for the first year of operation and in any year in which a grade is added as follows:
- 6.17.5.1 In the first year of operation and in any year when a grade is added, the open-enrollment public charter school shall receive professional development funding based upon the initial projected enrollment student count as of the date required by Ark. Code Ann. § 6-23-501 multiplied by the per-student professional development funding amount under Ark. Code Ann. § 6-20-2305(b)(5) for that school year.

- 6.17.5.2 For the second year and each school year thereafter, professional development funding will be based upon the previous year's average daily membership multiplied by the per-student professional development funding amount for that school year.
- 6.17.6 The Department of Education shall distribute other categorical funding under Ark. Code Ann. § 6-20-2305(a) and (b) for which an open-enrollment public charter school is eligible as provided by state law and rules promulgated by the State Board.
- 6.17.7 An open-enrollment public charter school shall not be denied foundation funding or categorical funding in the first year or any year of operation provided that the open-enrollment public charter school submits to the Department of Education the number of students eligible for funding as specified in applicable rules.
- 6.17.8 Foundation funding for an open-enrollment public charter school shall be paid in twelve (12) installments each fiscal year.
- 6.17.9 An open-enrollment public charter school may receive any state and federal aids, grants, and revenue as may be provided by law.
- 6.17.10 Open-enrollment public charter schools may receive gifts and grants from private sources in whatever manner is available to public school districts.
- 6.17.11 An open-enrollment public charter school shall have a right of first refusal to purchase or lease for fair market value a closed public school facility or unused portions of a public school facility located in a public school district from which it draws students if the public school district decides to sell or lease the public school facility.
- 6.17.11.1 The public school district may not require lease payments that exceed the fair market value of the property.
- 6.17.11.2 The application of this Section 6.17.11 is subject to the rights of a repurchase under Ark. Code Ann. § 6-13-103 regarding property taken by eminent domain.

- 6.17.11.3 A public school district is exempt from the requirements of this Section 6.17.11 if the public school district, through an open bid process, receives and accepts an offer to lease or purchase the property from a purchaser other than the open-enrollment public charter school for an amount that exceeds the fair market value.
- 6.17.11.4 The purposes of this Section 6.17.11 are to:
- 6.17.11.4.1 Acknowledge that taxpayers intended a public school facility to be used as a public school; and
- 6.17.11.4.2 Preserve the option to continue that use.
- 6.17.11.5 Nothing in this Section 6.17.11 is intended to diminish the opportunity for an Arkansas Better Chance program to bid on the purchase or lease of the public school facility on an equal basis as the open-enrollment public charter school.

*Source: Ark. Code Ann. § 6-23-501 as amended by Acts 989 and 993 of 2011*

#### 6.18 Source of Funding for Open-Enrollment Public Charter Schools

- 6.18.1 Open-enrollment public charter schools shall be funded each year through funds set aside from funds appropriated to state foundation funding aid in the Public School Fund.
- 6.18.2 The amount set aside shall be determined by the State Board.

*Source: Ark. Code Ann. § 6-23-502*

#### 6.19 Use of Funding by Open-Enrollment Public Charter Schools

- 6.19.1 An open-enrollment public charter school may not use the moneys that it receives from the state for any sectarian program or activity or as collateral for debt.
- 6.19.2 No indebtedness of any kind incurred or created by the open-enrollment public charter school shall constitute an indebtedness of the state or its political subdivisions, and no indebtedness of the open-enrollment public

charter school shall involve or be secured by the faith, credit, or taxing power of the state or its political subdivisions.

- 6.19.3 Every contract or lease into which an open-enrollment public charter school enters shall include the wording of Section 6.19.2 of these rules.

*Source: Ark. Code Ann. § 6-23-503*

- 6.20 Employee Benefits: Employees of an open-enrollment public charter school shall be eligible to participate in all benefits programs available to public school employees.

*Source: Ark. Code Ann. § 6-23-504*

6.21 Deposit and Management of Charter School Funds

- 6.21.1 All charter school funds, including state foundation funding, other state funding, federal funding, and grants and private donations received directly by a charter school, shall be deposited into a bank account titled in the name of the charter school.

- 6.21.2 Non-charter school funds of the sponsoring entity shall be deposited in a separate bank account titled in the name of the sponsoring entity and shall not be commingled with charter school funds.

- 6.21.3 If the charter school operates an approved federal child nutrition program, food service revenues shall be deposited and managed as required by federal law and by any regulations promulgated by the Arkansas Department of Education Child Nutrition Unit or the Arkansas Department of Human Services.

- 6.21.4 Charter schools may, but are not required to, secure bank accounts as detailed in Ark. Code Ann. § 6-20-222.

6.22 Assets of Open-Enrollment Public Charter School as Property of State

- 6.22.1 Upon dissolution of the open-enrollment public charter school or upon nonrenewal or revocation of the charter, all net assets of the open-enrollment public charter school, including any interest in real property, purchased with public funds shall be deemed the property of the state,



unless otherwise specified in the charter of the open-enrollment public charter school.

- 6.22.2 If the open-enrollment public charter school used state funds to purchase or finance personal property, real property, or fixtures for use by the open-enrollment public charter school, the Department of Education may require that the property be sold.
- 6.22.3 The state has a perfected priority security interest in the net proceeds from the sale or liquidation of the property to the extent of the public funds used in the purchase.

*Source: Ark. Code Ann. § 6-23-506*

6.23 Authorizer Hearing Procedures Related to Open-Enrollment Public Charter Schools (Application, Renewal, or Request for Charter Amendment)

- 6.23.1 All persons, with the exception of the attorneys representing the parties, who plan to provide testimony during the hearing must be sworn by a certified court reporter.
- 6.23.2 The open-enrollment public charter school or applicant shall have twenty (20) minutes to present its case to the authorizer for approval of the proposed open-enrollment public charter school application, renewal, or request. The Chair of the authorizing body may grant additional time, if necessary.
- 6.23.3 Parties opposed to the open-enrollment public charter school application, renewal, or request, if any, shall have twenty (20) minutes to present its case to the authorizer for disapproval of the proposed open-enrollment public charter school application, renewal, or request. The Chair of the authorizing body may grant additional time, if necessary.
- 6.23.4 The open-enrollment public charter school or applicant shall have five (5) minutes to respond to any arguments in opposition to the open-enrollment public charter school application, renewal, or request. The Chair of the authorizing body may grant additional time, if necessary.
- 6.23.5 The authorizer will follow the presentation with discussion of the open-enrollment public charter school application, renewal, or request, and

questions, if any, to the open-enrollment public charter school or applicant, opposing parties, or both.

- 6.23.6 The authorizer may issue a final decision at the hearing or take the matter under advisement until a future scheduled meeting.
- 6.23.7 The authorizer may defer the vote to approve or disapprove a charter application, renewal, or request in order to allow a public charter school or applicant to make modifications or receive technical assistance to correct deficiencies in the application, renewal, or request.
- 6.23.8 During the roll call vote on each open-enrollment public charter initial application, if a particular member of the authorizing body votes against the initial application, that member should state his or her reasons for disapproval as necessary to comply with Ark. Code Ann. § 6-23-305.

*Note: Additional requirements pertaining to hearings involving the Department of Education as authorizer may be found in Section 9.00 of these Rules. Additional requirements pertaining to hearings involving the State Board of Education as authorizer may be found in Section 10.00 of these Rules.*

#### 6.24 Authorizer Hearing Procedures Related to Open-Enrollment Public Charter Schools (Modification, Probation or Revocation of Charter)

- 6.24.1 Not later than twenty (20) days prior to the authorizer meeting at which the matter of modification, probation or revocation will be considered, the Department of Education shall provide written notice of the reason(s) for the proposed action, as well as of the time and location of such hearing, to the open-enrollment public charter school.
- 6.24.2 All persons, with the exception of the attorneys representing the parties, who plan to provide testimony during the hearing must be sworn by a certified court reporter.
- 6.24.3 Arkansas Department of Education staff shall have twenty (20) minutes to present its case to the authorizer for modification, probation, or revocation of an open-enrollment public charter school charter. The Chair of the authorizing body may grant additional time, if necessary.

- 6.24.4 The open-enrollment public charter school shall have twenty (20) minutes to present its case to the authorizer for regarding the proposed modification, probation, or revocation of the open-enrollment public charter school charter. The Chair of the authorizing body may grant additional time, if necessary.
- 6.24.5 The authorizer will follow the presentation with discussion of the matter and questions, if any, to representatives from the Department of Education, the open-enrollment public charter school, or both.
- 6.24.6 The authorizer may issue a final decision at the hearing or take the matter under advisement until a future scheduled meeting.

*Note: Additional requirements pertaining to hearings involving the Department of Education as authorizer may be found in Section 9.00 of these Rules. Additional requirements pertaining to hearings involving the State Board of Education as authorizer may be found in Section 10.00 of these Rules.*

#### 6.25 Charter School Facilities

An open-enrollment public charter school shall not commence operations with students in any new or renovated facility unless the school has obtained for the new construction or renovation:

- 6.25.1 A certificate of occupancy issued by a local code official approved by the state fire marshal;
- 6.25.2. A certificate of occupancy or other approval of the state fire marshal; or
- 6.25.3 A certificate of substantial completion issued by a licensed architect.

### **7.00 RULES APPLICABLE TO LIMITED PUBLIC CHARTER SCHOOLS**

- 7.01 Any public school may apply to the Department of Education for limited public charter school status for alternative comprehensive staffing and compensation programs designed to enhance student and teacher performance and improve employee salaries, opportunities, and incentives, to be known as a “limited public charter school.” The authorizer shall not approve an application for limited public charter school status that has not first been approved by the school district’s board of directors.

- 7.02 A limited public charter school shall be for the purpose of instituting alternative staffing practices in accordance with a schedule approved by the authorizer.
- 7.03 A limited public charter school shall be initially established for no more than five (5) years and may be renewed on a one-year or multiyear basis, not to exceed five (5) years per charter renewal.
- 7.04 The application for a limited public charter school shall:
- 7.04.1 Contain the provisions of Title 6 of the Arkansas Code and the specific rules and regulations promulgated by the State Board from which the limited public charter school will be exempt.
- 7.04.1.1 The provisions from which the public school district may be exempt for the limited public charter school only shall be limited to the following:
- 7.04.1.1.1 The duty-free lunch period requirements set forth in Ark. Code Ann. § 6-17-111;
- 7.04.1.1.2 The daily planning period requirements set forth in Ark. Code Ann. § 6-17-114;
- 7.04.1.1.3 The committee on personnel policies requirements set forth in Ark. Code Ann. § 6-17-201 et seq., and
- 7.04.1.1.4 Standards for accreditation set forth in the Arkansas Code, set forth by the Department of Education, or set forth by the State Board of Education.
- 7.04.1.2 No limited public charter school may be allowed an exemption that would allow a full-time licensed employee to be paid less than the salary provided in the public school district's salary schedule for that employee;
- 7.04.2 Describe a plan for school improvement that addresses how the limited public charter school will improve student learning and meet the state education goals;

- 7.04.3 Describe how the licensed employees at the limited public charter school will be involved in developing and implementing the school performance plan set forth in Section 7.04.2 of these rules and in identifying performance criteria;
- 7.04.4 Outline proposed performance criteria that will be used during the initial five-year period of the charter to measure the progress of the limited public charter school in improving student learning and meeting or exceeding the state education goals; and
- 7.04.5 Be reviewed as a regular agenda item and approved after sufficient public comment by the local school board and the authorizer.
- 7.05 Any application to obtain limited public charter school status approved by a local school board shall be forwarded by the local school board to the authorizer.
- 7.06 If a local school board does not approve a public school's application, the local school board shall inform the applicants and faculty of the public school of the local school board's reasons for not approving the application.
- 7.07 A licensed teacher employed by a public school in the year immediately preceding the effective date of a limited public charter for a limited public charter school within that public school district may not be transferred to or be employed by the limited public charter school over the licensed teacher's objections, nor shall that objection be used as a basis to deny continuing employment within the public school district in another public school at a similar grade level.
- 7.08 If the transfer of a teacher within a public school district is not possible because only one (1) public school exists for the teacher's certification level, then the local school board shall call for a vote of the licensed teachers in the proposed limited public charter school site and proceed, at the local school board's option, with the limited public charter school application if a majority of the licensed teachers approve the proposal.
- 7.09 A licensed teacher choosing to join the staff of a limited public charter school shall be employed by the district by a written contract as set forth in Ark. Code Ann. § 6-13-620(5), with the contract being subject to the provisions of the Teacher Fair Dismissal Act of 1983, Ark. Code Ann. § 6-17-1501 et seq.

- 7.09.1 The licensed teacher shall also enter into a separate supplemental contract specifically for the teacher's employment in the limited public charter school, with the supplemental contract being exempt from the Teacher Fair Dismissal Act of 1983, Ark. Code Ann. § 6-17-1501 et seq., and from Ark. Code Ann. § 6-17-807.
- 7.09.2 Termination of the supplemental contract shall not be used as a basis to deny continued employment of the teacher within the public school district in another public school at a similar grade level.
- 7.10 Limited public charter schools shall be evaluated annually by the Department of Education based on criteria approved by the authorizer, including without limitation:
  - 7.10.1 Student performance data in order to determine progress in student achievement that has been achieved by the limited public charter school; and
  - 7.10.2 The limited public charter school's compliance with Ark. Code Ann. § 6-23-107 and Section 4.05 of these rules.
  - 7.10.3 The Department of Education shall annually report its evaluation to the State Board and the Commissioner of Education.
  - 7.10.4 Based upon that evaluation, the authorizer may revoke a limited public charter.

*Source: Ark. Code Ann. § 6-23-601 as amended by Act 993 of 2011*

- 7.11 Authorizer Hearing Procedures Related to Limited Public Charter Schools (Application, Renewal, or Request for Charter Amendment)
  - 7.11.1 All persons, with the exception of the attorneys representing the parties, who plan to provide testimony during the hearing must be sworn by a certified court reporter.
  - 7.11.2 The limited public charter school or applicant shall have twenty (20) minutes to present its case to the authorizer for approval of the proposed limited public charter school application, renewal, or request. The Chair of the authorizing body may grant additional time, if necessary.

- 7.11.3 Parties opposed to the limited public charter school application, renewal, or request, if any, shall have twenty (20) minutes to present its case to the authorizer for disapproval of the proposed limited public charter school application, renewal, or request. The Chair of the authorizing body may grant additional time, if necessary.
- 7.11.4 The limited public charter school applicant shall have five (5) minutes to respond to any arguments in opposition to the limited public charter school application, renewal, or request. The Chair of the authorizing body may grant additional time, if necessary.
- 7.11.5 The authorizer will follow the presentation with discussion of the limited public charter school application, renewal, or request and questions, if any, to the limited public charter school or applicant, opposing parties, or both.
- 7.11.6 The authorizer may issue a final decision at the hearing or take the matter under advisement until a future scheduled meeting.

*Note: Additional requirements pertaining to hearings involving the Department of Education as authorizer may be found in Section 9.00 of these Rules. Additional requirements pertaining to hearings involving the State Board of Education as authorizer may be found in Section 10.00 of these Rules.*

7.12 Authorizer Hearing Procedures Related to Limited Public Charter Schools  
(Modification, Probation or Revocation of Charter)

- 7.12.1 Not later than twenty (20) days prior to the authorizer meeting at which the matter of modification, probation or revocation will be considered, the Department of Education shall provide written notice of the reason(s) for the proposed action, as well as of the time and location of such hearing, to the limited public charter school.
- 7.12.1 All persons, with the exception of the attorneys representing the parties, who plan to provide testimony during the hearing must be sworn by a certified court reporter.
- 7.12.2 Arkansas Department of Education staff shall have twenty (20) minutes to present its case to the authorizer for modification, probation, or revocation

of a limited public charter school charter. The Chair of the authorizing body may grant additional time, if necessary.

- 7.12.3 The limited public charter school shall have twenty (20) minutes to present its case to the authorizer for regarding the proposed modification, probation, or revocation of the limited public charter school charter. The Chair of the authorizing body may grant additional time, if necessary.
- 7.12.4 The authorizer will follow the presentation with discussion of the matter and questions, if any, to representatives from the Department of Education, the conversion public charter school, or both.
- 7.12.5 The authorizer may issue a final decision at the hearing or take the matter under advisement until a future scheduled meeting.

*Note: Additional requirements pertaining to hearings involving the Department of Education as authorizer may be found in Section 9.00 of these Rules. Additional requirements pertaining to hearings involving the State Board of Education as authorizer may be found in Section 10.00 of these Rules.*

## **8.00 RULES APPLICABLE TO THE CLOSURE OR DISSOLUTION OF PUBLIC CHARTER SCHOOLS**

### **8.01 Required Notices**

8.01.1 No later than fifteen (15) days after the authorizer votes to non-renew or revoke the charter, or the charter otherwise dissolves, the charter school or sponsoring entity shall furnish to the Department of Education:

8.01.1.1 A complete inventory of all personal property, real property, equipment, and fixtures owned or financed by the charter school, with documentation showing a description of each asset, serial number, tag number, location, estimated value, any encumbrance on the asset including recorded security interest or lien, and the source of funds for each purchase;

8.01.1.2 The account number and financial institution contact information for every account in which the charter school or sponsoring entity deposited any state or federal funds at



any time, and complete bank statements for the twelve (12) months preceding the effective date of closure;

8.01.1.3 A complete list of all debts or obligations owed by the charter school and still outstanding as of the effective date of closure, including all outstanding checks or warrants;

8.01.1.4 A complete list of all accounts receivable owed to the charter school and still outstanding as of the effective date of closure; and

8.01.1.5 Complete contact information for every member of the charter school's board or governing entity.

8.01.2 If the authorizer votes to non-renew or revoke the charter, or the charter otherwise dissolves, the charter school or sponsoring entity shall, on a timeline established by the Department, send written notice of closure, as approved by the Department, to:

8.01.2.1 The parents and legal guardians of all students;

8.01.2.2 All employees of the charter school;

8.01.2.3 All creditors of the charter school; and

8.01.2.4 Every school district in which any students of the charter school reside.

8.01.3 Every notice sent pursuant to Section 8.01.2 above must include:

8.01.3.1 The effective date of closure and last day of regular instruction; and

8.01.3.2 Contact information of the person employed or retained by the charter school or sponsoring entity to handle inquiries regarding the closure.

8.01.4 Parental notices sent pursuant to Section 8.01.2 must additionally include:

8.01.4.1 The student's school district of residence, and the contact information for that district's enrollment office;

8.01.4.2 A statement that parents should contact the resident school district or any charter school where the student intends to enroll and should ask that school or district to request transfer of the student's educational records from the closing charter school; and

8.04.4.3 Contact information for the individual or entity charged with storage of student records after the school's closure.

8.01.5 Employee notices sent pursuant to Section 8.01.2 must additionally include the date of termination of all employee benefits (health insurance, etc.), along with any COBRA or other documentation required by law.

8.01.6 The deadline for any notice required by this Section may be extended by the Department of Education Charter School Office for good cause.

8.02 Assets of Open-Enrollment Public Charter School as Property of State

8.02.1 Upon the dissolution, non-renewal, or revocation of an open-enrollment public charter, all net assets of the open-enrollment public charter school purchased with public funds, including any interest in real property, shall be deemed the property of the state, unless otherwise specified in the charter or by federal law.

8.02.2 The Commissioner of Education or his or her designee shall take all steps necessary to protect and recover any and all state assets in the possession or control of the former charter school or the sponsoring entity.

8.02.2.1 If any state or federal funds remain in any bank account(s) titled in the name of the charter school or sponsoring entity, the Commissioner of Education or his or her designee shall notify the financial institution that the account(s) holds state or federal funds and shall direct that the account(s) be immediately frozen, subject to further direction by the Commissioner or his or her designee.

- 8.02.2.2 Any funds remaining in any bank account(s) titled in the name of the charter school shall be presumed to be state or federal funds until such time as the sponsoring entity furnishes documentation showing otherwise.
- 8.02.2.3 The Commissioner or his or her designee shall secure and arrange for the recovery and storage of all personal property, equipment, and fixtures purchased or financed in whole or in part with any state or federal funds. Any personal property or equipment contained within the charter school facility shall be presumed to have been purchased or financed in whole or in part with state or federal funds until such time as the sponsoring entity furnishes documentation showing otherwise.
- 8.02.2.4 At all times, the charter school, the sponsoring entity, and their officers, agents, and employees, must protect the school's assets against theft, misappropriation, and deterioration.

### 8.03 Distribution of Property

- 8.03.1 Upon the dissolution, non-renewal, or revocation of an open-enrollment public charter, the following property shall be sold, unless the Commissioner of Education determines otherwise:
  - 8.03.1.1 Real property or fixtures purchased or financed in whole or in part by the open-enrollment public charter school with state funds;
  - 8.03.1.2 Real property or fixtures purchased or financed in whole or in part by the sponsoring entity with federal grant funds administered by the Department of Education, unless federal law requires some other method of distribution;
  - 8.03.1.3 Personal property encumbered by a recorded security interest or lien and purchased or financed by the open-enrollment public charter school in whole or in part with state funds;

- 8.03.1.4 Personal property purchased or financed in whole or in part with state funds by an open-enrollment public charter school that never received federal funds and never directly benefited from a federal grant administered by the Department of Education; and
  - 8.03.1.5 Any other personal property not distributed as provided by Sections 8.03.3 and 8.03.4 below.
- 8.03.2 The state has a perfected priority security interest in the net proceeds from the sale or liquidation of property sold pursuant to Section 8.03.1 above to the extent of the public funds used in the purchase. For the purpose of this section, “net proceeds” means the sale proceeds remaining after the satisfaction of all lien, security, ownership, or other interests that supersede the state’s interest.
- 8.03.3 If the open-enrollment public charter school at any time operated an approved federal child nutrition program, all commodities and foodservice equipment purchased in whole or in part with federal funds or with nutrition program revenues shall be sold or transferred as directed by the Arkansas Department of Education Child Nutrition Unit.
- 8.03.4 If the open-enrollment public charter school or its sponsoring entity received a federal grant administered by the Department of Education, then all other personal property, including furniture, equipment and supplies, purchased with state or federal funds may be redistributed to other Arkansas public charter schools or traditional public schools as allowed by federal law.
- 8.04 Distribution of Funds
- 8.04.1 Upon the dissolution, non-renewal, or revocation of an open-enrollment public charter, the Commissioner of Education or his or her designee shall assert control over any funds deemed the property of the state under Section 8.02 above.
  - 8.04.2 In order to comply with federal and state law, the Commissioner of Education shall use such funds to satisfy the following obligations of the charter school in the order listed:

- 8.04.2.1 Domestic support obligations withheld from an employee's wages in compliance with a court order prior to the effective date of dissolution, non-renewal, or revocation;
  - 8.04.2.2 Federal tax liens imposed by the Internal Revenue Code for taxes or payroll tax withholding owed;
  - 8.04.2.3 Any state tax lien or certificate of indebtedness issued by the Arkansas Department of Finance and Administration for taxes or payroll tax withholding owed;
  - 8.04.2.4 Any debt owed to the Arkansas Department of Education Child Nutrition Unit for penalties or reimbursement of overpayments;
  - 8.04.2.5 Any debt owed to the Department of Education or other state agency for reimbursement of any other overpayment of federal funds;
  - 8.04.2.6 Unpaid contributions to the Arkansas Teacher Retirement System accrued prior to the effective date of dissolution, non-renewal, or revocation;
  - 8.04.2.7 Unpaid contributions to the Employee Benefits Division of the Arkansas Department of Finance & Administration accrued prior to the effective date of dissolution, non-renewal, or revocation; and
  - 8.04.2.8 Unpaid employee wages accrued prior to the effective date of dissolution, non-renewal, or revocation in accordance with the school's salary schedule in effect as of the beginning of the current school year.
- 8.04.3 Any remaining funds deemed the property of the state under Section 8.02 above shall be deposited into the State Treasury to the credit of the Department of Education Public School Fund Account.

## 8.05 Distribution of Records

8.05.1 The charter school or sponsoring entity must promptly submit all student records to the transfer school, including:

8.05.1.1 Individualized Education Programs (IEPs) and all records regarding special education and supplemental services;

8.05.1.2 Student health / immunization records;

8.05.1.3 Attendance records;

8.05.1.4 Testing materials, including scores, test booklets, etc. required to be maintained by the School; and

8.05.1.5 All other student records.

8.05.1.6 All end-of-school-year grades and evaluations must be completed and made part of the student records, including any IEP, Committee on Special Education meetings, or progress reports.

8.05.1.7 To the extent that testing scores, etc. are scheduled to arrive after the school closure, arrangements should be made with the testing agent to forward such material to the transfer school.

8.05.2 No later than thirty (30) days after closure or dissolution of the charter, the charter school or sponsoring entity shall send each employee of the charter school:

8.05.2.1 Copies of his or her contracts, evaluations, recommendation letters, and any other proof of employment and/or termination;

8.05.2.2 Documentation of staff development hours; and

8.05.2.3 Notice that employees must keep this documentation for their records as the state will have no way of providing proof of employment after the school is closed.

- 8.05.3 If the charter school operated an approved federal child nutrition program, all child nutrition records shall be delivered to the Arkansas Department of Education Child Nutrition Unit on a schedule established by the Unit.
- 8.05.4 Any student records remaining in the possession of the charter school or sponsoring entity, or in the possession of any other entity or individual designated by the charter school or sponsoring entity, shall be maintained in a manner sufficient to protect student privacy rights in accordance with the Federal Educational Rights and Privacy Act of 1974, as amended.
- 8.05.5 The sponsoring entity shall maintain all relevant corporate or governance records for at least five (5) years after the effective date of closure, specifically including but not limited to:
- 8.05.5.1 All board minutes, policies, and bylaws of the charter school board or governing entity;
  - 8.05.5.2 Bonds, mortgages, loan agreements, and all other financing instruments;
  - 8.05.5.3 Lease agreements;
  - 8.05.5.4 Accounting and bank records;
  - 8.05.5.5 Payroll and tax records as required by federal law;
  - 8.05.5.6 Grant records as specified by 34 C.F.R. § 80.42 or other relevant federal or state law; and
  - 8.05.5.7 Any other document required by law to be maintained.

## **9.00 DEPARTMENT OF EDUCATION AS PUBLIC CHARTER AUTHORIZER**

- 9.01 The Department of Education is the designated public charter authorizer with jurisdiction and authority over all public charters issued in this state to take the following action on a proposed or established public charter:
- 9.01.1 Approve;

- 9.01.2 Reject;
  - 9.01.3 Renew;
  - 9.01.4 Non-renew;
  - 9.01.5 Place on probation;
  - 9.01.6 Modify;
  - 9.01.7 Revoke; or
  - 9.01.8 Deny.
- 9.02 The department shall exercise authority over public charter schools under Title 6, Chapter 23 of the Arkansas Code and these rules through a public charter authorizing panel established within the department.
- 9.02.1 The Commissioner of Education shall appoint a public charter authorizing panel that consists of professional staff employed at the department to serve at the pleasure of the commissioner.
  - 9.02.2 The commissioner may elect to serve as a member on the charter authorizing panel as the chair.
  - 9.02.3 The public charter authorizing panel is composed of an odd number of members and consists of no less than five (5) members and no more than eleven (11) members.
- 9.03 The department may waive provisions of Title 6 of the Arkansas Code or State Board of Education rules as allowed by law for public charters.
- 9.04 The department shall conduct all hearings on public charter school matters as required by law, rule, and process and make final determinations as allowed by law.
- 9.04.1 A hearing under Title 6, Chapter 23 of the Arkansas Code and these rules conducted by the department shall be an open meeting under the Freedom of Information Act of 1967, Ark. Code Ann. § 25-19-106.



- 9.04.2 For the purposes of Ark. Code Ann. § 25-19-106, the members of the public charter authorizing panel shall be considered a governing body only in regards to actions specifically authorized by Title 6, Chapter 23, Subchapter 7 of the Arkansas Code and these rules.
- 9.04.3 All decisions of the panel shall be made by a majority vote of the quorum.
- 9.04.4 A decision of the department is final except as provided under Ark. Code Ann. § 6-23-703 and Section 10.00 of these rules.
- 9.04.5 The Arkansas Administrative Procedure Act, Ark. Code Ann. § 25-15-201 et seq. shall not apply to a hearing concerning a public charter school.
- 9.05 The department shall be the primary authorizer of public charters except as provided under Ark. Code Ann. § 6-23-703 and Section 10.00 of these rules.
- 9.06 The department shall notify in writing the State Board, charter applicant, public charter school, and affected school districts, if any, of final decisions made by the department no less than fourteen (14) calendar days before the next regularly scheduled State Board meeting after the final decision is made by the department.
- 9.06.1 A charter applicant, public charter school, and affected school district, if any, may submit in writing a request that the State Board review the final decision of the department under Ark. Code Ann. § 6-23-703 and Section 10.00 of these rules.
- 9.06.2 The written request submitted under Section 9.06.1 of these rules shall state the specific reasons supporting a review by the State Board.
- 9.06.3 The decision of whether to review a final decision of the department is discretionary by the State Board and the provisions of this section and Ark. Code Ann. § 6-23-703 do not grant any right of appeal to a charter applicant, public charter school, or affected school district.

*Source: Ark. Code Ann. § 6-23-701 through 6-23-702.*

## **10.00 STATE BOARD OF EDUCATION OPTIONAL REVIEW**

10.01 If a charter applicant, public charter school, or affected districts submits a request that the State Board review the final decision of the department under Section 9.06.1 of these rules, the State Board shall:

10.01.1 Allow the party requesting review three (3) minutes to present the reasons for review.

10.01.2 Allow any parties opposed to the State Board review three (3) minutes to present the reasons to deny review.

10.01.3 Allow the party requesting review one (1) minute to offer any closing remarks.

10.01.4 Allow additional time at the discretion of the Chair.

~~10.01~~10.02 On a motion approved by a majority vote, the State Board may exercise a right of review of a charter determination made by the department at the next regularly scheduled State Board meeting after receiving notice provided under Ark. Code Ann. § 6-23-702(b) and Section 9.06 of these rules.

~~10.02~~10.03 If the State Board votes to review a final decision made by the department, the State Board shall:

~~10.02.1~~10.03.1 State the specific additional information the State Board requires from the department, public charter school, public charter school applicant, or affected school district.

~~10.02.2~~10.03.2 Conduct a full hearing regarding a final decision made by the department under Ark. Code Ann. § 6-23-701(a) and Section 9.04 of these Rules; and

~~10.02.3~~10.03.3 Hold the hearing at the earlier of:

~~10.02.3.1~~10.03.3.1 The next regularly scheduled State Board meeting following the State Board meeting during which the State Board voted to authorize a review; or

~~10.02.3.2~~10.03.3.2 A special board meeting called by the State Board.

~~10.03~~10.04 At the conclusion of the hearing, the State Board may issue a final decision by State Board vote.

~~10.03.1~~10.04.1 The State Board may decide by a majority vote of the quorum to:

~~10.03.1.1~~10.04.1.1 Affirm the decision of the department;

~~10.03.1.2~~10.04.1.2 Take other lawful action on the public charter;

~~10.03.1.3~~10.04.1.3 Request additional information from the department, public charter school, public charter school applicant, or affected school district, if needed.

~~10.03.1.4~~10.04.1.4 If the State Board requests additional information under Ark. Code Ann. § 6-23-703(c)(2)(C)(i) or Section 10.03.1.3 of these Rules, the State Board shall hold a subsequent hearing at the earlier of the next regularly scheduled State Board meeting or a special board meeting called by the State Board.

~~10.03.2~~10.04.2 A decision made by the State Board is final with no right of appeal.

*Source: Ark. Code Ann. § 6-23-703*

Arkansas Department of Education Rules Governing the  
Arkansas Comprehensive Testing, Assessment and Accountability Program (ACTAAP)  
and the Academic Distress Program  
~~January 2013~~

1.0 Regulatory Authority

- 1.01 These Rules shall be known as the Arkansas Department of Education Emergency Rules Governing the Arkansas Comprehensive Testing, Assessment and Accountability Program (ACTAAP) and the Academic Distress Program.
- 1.02 The State Board of Education promulgated these Rules pursuant to ~~implementation of~~ Ark. Code Ann. §§ 6-11-105, 6-15-401 et seq., 6-15-2009, and 25-15-204 and Acts 600, 1073, 1081 and 1429 of 2013.
- 1.03 These Rules ~~have been amended to~~ reflect the decision of the United States Department of Education (~~USDOE~~ US Ed) to grant flexibility to the Arkansas Department of Education (ADE) from certain provisions of the Elementary and Secondary Education Act (ESEA). As indicated throughout these Rules, certain provisions of these Rules shall only apply during time periods designated by the ~~USDOE~~ US Ed for which the ADE receives flexibility from certain provisions of ESEA.
- 1.04 These Rules include the applicable requirements formerly contained within the Arkansas Department of Education Rules Governing Public School End-of-Course Assessments and Remediation.

2.0 Purposes of Rules

- 2.01 To develop a single comprehensive testing, assessment and accountability program, which applies to and governs all public schools and public school districts in Arkansas.
- 2.02 To develop a single comprehensive testing, assessment and accountability program which utilizes the most current and effective testing, evaluation, and assessment research information designed to achieve the following purposes:
- 2.02.1 Set clear academic standards that are periodically reviewed and revised;
- 2.02.2 Establish professional development standards for all administrators, teachers and instructional support personnel;
- 2.02.3 Establish expected achievement levels;
- 2.02.4 Report on student achievement and other indicators;

- 2.02.5 Provide evaluation data;
  - 2.02.6 Recognize academic success and failure;
  - 2.02.7 Apply awards and sanctions; and
  - 2.02.8 Comply with current federal and state law and State Board rules and regulations.
- 2.03 To ensure that all students in the public schools of Arkansas have an equal opportunity to demonstrate grade-level and subject area academic proficiency through the application of knowledge and skills in the core academic subjects consistent with state curriculum frameworks, performance standards and assessments.
  - 2.04 To improve student learning and classroom instruction and to support high academic standards for all students, including identifiable subgroups, by establishing the provisions, procedures and requirements for the student assessment program.
  - 2.05 To require point-in-time intervention when it is determined that a student(s) is not performing at grade level or subject area academic proficiency.
  - 2.06 To outline testing and assessment security and confidentiality requirements.
  - 2.07 To establish a program to identify, evaluate, assist and advise public schools and public school districts in academic distress.
- 3.0 Definitions – For the purpose of these Rules, the following terms mean:
    - 3.01 “Academic Content Standards” – standards that are approved by the State Board of Education and that set the skills to be taught and mastery level for each grade and content area.
    - 3.02 “Academic Distress:”
      - 3.02.1 A classification assigned to any public school district:
        - 3.02.1.1 In which 49.5% or less of its students achieve proficient or advanced in math and literacy on the state-mandated criterion referenced assessments administered in that district for the most recent three (3) year period; or
        - 3.02.1.2 Has a Needs Improvement (Priority) school within the school district that has not made the progress required under the school’s Priority Improvement Plan (PIP).

3.02.2 A classification assigned to any public school:

3.02.2.1 In which 49.5% or less of its students achieve proficient or advanced in math and literacy on the state-mandated criterion referenced assessments administered in that district for the most recent three (3) year period; or

3.02.2.2 Is a Needs Improvement (Priority) school that has not made the progress required under the school's Priority Improvement Plan (PIP).

3.02.23 The ADE shall re-establish the thresholds listed in Sections 3.02.1-4 and 3.02.2 of these Rules when the Partnership for Assessment of Readiness for College and Careers (PARCC) assessments become fully operational.

3.03 "Academic Improvement Plan (AIP)" – a plan detailing supplemental or intervention and remedial instruction, or both, in deficient academic areas for any student who is not proficient on a portion or portions of the state-mandated Arkansas Comprehensive Assessment Program. Academic improvement plans shall be created and implemented by appropriate teachers, counselors, and any other pertinent school personnel. All academic improvement plans shall be reviewed annually and revised to ensure an opportunity for student demonstration of proficiency in the targeted academic areas on the next state-mandated Arkansas Comprehensive Assessment Program. A cumulative review of all academic improvement plans shall be part of the data used by the school in creating and revising its comprehensive school improvement plan. All academic improvement plans shall be subject to review by the Department of Education.

NOTE: For the purposes of these Rules, "Academic Improvement Plan (AIP)" and "Individualized Academic Improvement Plan (IAIP)" may be used interchangeably.

3.04 "ACT" – the ACT assessment for college placement administered by ACT, Inc.

3.045 "Adequate Yearly Progress" – the level of academic performance required of public schools or school districts on the state-mandated augmented criterion-referenced, or norm-referenced assessments and other indicators as required in the Arkansas Comprehensive Testing, Assessment, and Accountability Program, which shall comply with the Elementary and Secondary Education Act as reauthorized in the No Child Left Behind Act of 2001.

3.06 "Advanced Placement Test" – the test administered by the College Board for a high school preparatory course that incorporates the topics specified

by the College Board on its standard syllabus for a given subject area and is approved by the College Board.

- ~~3.05~~ “Alternative Education Intervention Program” – A special instructional program for students who have been retained for two consecutive years. The program shall include research-based learning opportunities and instructional strategies.
- 3.06~~7~~7 “Approved Early Reading Assessments” – Those assessments that identify students’ strengths and weaknesses in all of the elements of reading as described in the Report of the National Reading Panel.
- 3.07~~8~~8 “Approved Intensive Reading Program” – Programs of high-quality instruction that include the essential elements of reading described in the Report of the National Reading Panel.
- 3.08~~9~~9 “Annexation” – The joining of an affected school district or part of the school district with a receiving district under Ark. Code Ann. § 6-15~~3~~3-1401 et seq. or § 6-13-1601 et seq.
- 3.09~~10~~10 “Arkansas Comprehensive Assessment Program” –The testing component of Arkansas Comprehensive, Testing, Assessment and Accountability Program, which shall consist of: (1) developmentally appropriate, augmented, criterion-referenced, or norm-referenced assessments in kindergarten through grade twelve (K-12) as determined by the State Board; (2) Any other assessments as required by the State Board; 3)other assessments that are based on researched best practices as determined by qualified experts that would be in compliance with federal and state law; and (4) end-of-course examinations for designated grades and content areas, and the high school literacy assessment.
- 3.40~~11~~11 “Arkansas Comprehensive Testing, Assessment and Accountability Program” – a system of measurement and reporting designed to ensure that all students in the public schools of this state demonstrate academic achievement through the application of knowledge and skills in core academic subjects consistent with state curriculum frameworks and performance standards. During the time periods designated by the ~~USDOE~~ US Ed for which the ADE may receive flexibility from certain provisions of ESEA as set forth in Section 13.00 of these Rules, the measurement system will ensure that all students in the public schools of Arkansas demonstrate performance and growth toward College and Career Readiness.
- 3.44~~12~~12 “Arkansas Comprehensive School Improvement Plan (ACSIP)” – the individual school’s comprehensive plan developed by a local school team and based on priorities indicated by assessment and other pertinent data and designed to provide an opportunity for all students to demonstrate proficiency on all portions of the state-mandated Arkansas Comprehensive Assessment Program. This plan shall be reviewed annually by the district and monitored by the Arkansas Department of Education in accordance with Ark. Code Ann. § 6-15-426.

- 3.13 “Assessment” means an examination instrument designed to measure certain levels of knowledge; as measured by established requisite scale scores, for those academic courses that are the subject of end-of-course testing as required by these Rules.
- ~~3.42~~14 “Augmented Test” – An assessment required by state statute, rule or regulation which combines both criterion-referenced and norm-referenced instruments.
- ~~3.43~~15 “Awards” – financial or other recognition of a public school structured to recognize schools that demonstrate and maintain high performance over time and to recognize schools that demonstrate growth on the state-mandated indicators. Awards also can be used to highlight individual schools so that their practices can be adopted in other schools and districts across the state.
- ~~3.44~~16 “Benchmarks/Grade-Level Benchmarks” – Academic Content Standards and/or grade-level statements of what a student should know and be able to do. The Grade-Level Benchmarks provide guidance to classroom teachers in planning instruction aligned with the Academic Content Standards.
- ~~3.45~~17 “Board” or “State Board”– The Arkansas State Board of Education.
- 3.18 “College and career readiness” means the acquisition of the knowledge and skills a student needs to be successful in future endeavors, including:
- 3.18.1 Successfully completing credit-bearing, first-year courses at a postsecondary institution; and
- 3.18.2 Embarking on a chosen career.
- 3.19 “College and career readiness assessment” means a set of criterion-referenced assessments of a student’s acquisition of the knowledge and skills the student needs to be successful in future endeavors, including credit-bearing, first-year courses at a postsecondary institution, such as two-year or four-year college, trade school, or technical school, or to embark on a career.
- ~~3.46~~20 “Consolidation” – The joining of two (2) or more school districts or parts of the school districts to create a new single school district under Ark. Code Ann. § 6-153-1401 et seq. or § 6-13-1601 et seq.
- ~~3.47~~21 “Criterion-Referenced Test (CRT)” – an assessment required by state statute, rule or regulation which is designed by the State to measure student performance/achievement on the State’s Academic Content Standards.
- ~~3.48~~22 “Department” or “ADE” – The Arkansas Department of Education.



- 3.1923 “District Improvement Plan” – a district-wide plan coordinating the actions of the various comprehensive school improvement plans within a school district. The main focus of the district improvement plan shall be to ensure that all students demonstrate proficiency on all portions of state-mandated Arkansas Comprehensive Assessment Program.
- 3.2024 “Early Intervention” – short-term, intensive, focused, individualized instruction developed from ongoing, daily, systematic diagnosis that occurs while a child is in the initial, kindergarten through grade one (K -1), stages of learning early reading, writing, and mathematical strategies to ensure acquisition of the basic skills and to prevent the child from developing poor problem-solving habits that become difficult to change. The goal is to maintain a student’s ability to function proficiently at grade level.
- 3.2425 “Elementary School” – public school(s) having some combination of grades kindergarten through four (K – 4).
- ~~3.22 “End-of-Course Exam” – a criterion-referenced assessment taken upon the successful completion of a course of study to determine whether a student demonstrates, according to a requisite scale score established by rule of the Board, attainment of necessary knowledge and skills. End-of-Course exams include both general end-of-course assessments and high-stakes end-of-course assessments as further defined herein and as further explained in the Arkansas Department of Education Rules Governing End-of-Course Assessments and Remediation.~~
- 3.2326 “Essential Elements – Early Reading” Comprehension – Ability to understand and communicate; Decoding and Word Recognition (Phonics) – Ability to match the letters of written language and the individual sounds of spoken language in order to read and write words; Fluency – Ability to read text accurately, and with expression, volume, phrasing, smoothness and appropriate pace; Phonemic Awareness – Ability to hear and manipulate the sounds of spoken language; Vocabulary – Ability to understand words and their meanings in order to communicate and comprehend effectively.
- 3.2427 “Grade Level” – appropriate grade classification indicated by the performance of a student (or group of students) at the proficient or advanced level on state-mandated Arkansas Comprehensive Assessment Program tests.
- 3.2528 ~~“General End-of-Course Assessment” – a criterion-referenced assessment taken upon successful completion of~~ “General End-of-Course Assessment” – a criterion-referenced assessment taken upon successful completion of during a course of study set by the State Board of Education:
- (a) to determine whether a student demonstrates, according to a requisite scale score established by rule of the State Board, attainment of sufficient knowledge and skills to indicate a necessary and satisfactory mastery of the subject level content in that end-of-course assessment; and

(b) for which failure to meet that requisite scale score requires sufficient remediation before a student is entitled to receive full academic credit for the course.

~~(c) Further guidance concerning the administration and remediation of general end-of-course assessments may be found in the Arkansas Department of Education Rules Governing Public School End-of-Course Assessments and Remediation.~~

~~3.26~~29 “High School” –grades nine through twelve (9-12).

~~3.27~~30 “High School Literacy Assessment” – an end-of-level literacy assessment given to all students in grade eleven (11).

~~3.28~~ —“High Stakes End-of-Course Assessment”—a criterion-referenced assessment taken upon the successful completion of both the Algebra I and the English II course of study under Ark. Code Ann. § 6-15-433(b)(3)(A)(iii):

~~(a) to determine whether a student demonstrates, according to a requisite scale score established by rule of the State Board, attainment of sufficient knowledge and skills to indicate a necessary and satisfactory passing standard of the subject level content in that particular end-of-course assessment; and~~

~~(b) for which failure to meet the requisite scale score requires that the student shall not receive academic credit for the course of study for which the assessment was taken until the student meets the requisite scale score on the initial, a subsequent, or an alternative high-stakes end-of-course assessment as allowed or required by Arkansas law or by State Board rules.~~

~~(c) Further guidance concerning the administration and remediation of high-stakes end-of-course assessments may be found in the Arkansas Department of Education Rules Governing Public School End-of-Course Assessments and Remediation.~~

3.31 “Individualized Academic Improvement Plan (IAIP)” – a written plan detailing supplemental or intervention and remedial instruction, or both, in deficient areas for any student who has not met the requisite scale score on an end-of-course assessment.

NOTE: For the purposes of these Rules, “Academic Improvement Plan (AIP)” and “Individualized Academic Improvement Plan (IAIP)” may be used interchangeably.

3.32 “Individualized Education Program (IEP)” – a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with 34 C.F.R. 300.320 through 300.324.

- 3.2933 “Intensive Reading Improvement Plan (IRI)” – An intervention program for any K-2 student identified with substantial reading difficulties.
- 3.34 “International Baccalaureate Assessment” – an assessment administered by the International Baccalaureate Organization for a course offered under the International Baccalaureate Diploma Program.
- 3.3035 “Longitudinal Tracking” –tracking individual student yearly academic achievement gains based on scheduled and annual assessments.
- 3.3436 “Middle School” or “Middle Level”– grades five through eight (5 – 8).
- 3.3237 “No Child Left Behind Act” – the No Child Left Behind Act of 2001 as signed into federal law on January 8, 2002.
- 3.3338 “Norm-Referenced Test (NRT)” – an assessment required by state law, rule or regulation to measure the performance/achievement of Arkansas students relative to the achievement of students who comprised the norm or standardization group for a particular commercial instrument, ~~including which may include~~ the assessments developed under the Partnership for Assessment of Readiness for College and Careers (PARCC).
- 3.3439 “Parent” – a parent, parents, legal guardian, a person standing in loco parentis, or legal representative, as appropriate, of a student, or the student if the student is eighteen (18) years of age or older.
- 3.3540 “Participation in Remediation” - The amount of student involvement required in a student academic improvement plan that addresses those deficiencies for that student.
- 3.3641 “Pass Rate” – The pass rate for the Benchmark Exams and the developmental appropriate assessments for K – 2 shall be proficiency. ~~However, the pass rate for end-of-course and high school literacy shall be those scores established and independently approved by the State Board of Education. (See 6.04 for the proficiency definition)~~
- 3.3742 “Point-in-Time Intervention and Remediation” – intervention and remediation applied during the academic year upon the discovery that a student is not performing at grade level.
- 3.3843 “Public School District/Public School” – those school districts and schools (including open-enrollment charter schools) created pursuant to Title 6 of the Arkansas Code and subject to the Arkansas Comprehensive Testing, Assessment and Accountability Program specifically excluding those schools or educational programs created by or receiving authority to exist under §6-15-501; §9-28-205, and §12-29-301 through §12-29-310, or other provisions of Arkansas law.
- 3.3944 “Reconstitution” – a reorganization intervention in the administrative unit or governing body of a public school district, including without limitation the suspension, reassignment, replacement, or removal of a current

superintendent or the suspension, removal, or replacement of some or all of the current school board members, or both.

- 3.4045 “Remediation” – a process of using diagnostic instruments to provide corrective, specialized supplemental instruction to help a student in grades two through four (2-4) overcome academic deficiencies. For students in grades five through twelve (5-12), remediation shall be a detailed, sequential set of instructional strategies, implemented to remedy any academic deficiencies indicated by below-basic or basic performance on the state-mandated augmented, criterion-referenced, or norm-referenced assessments. Remediation shall not interfere with or inhibit student mastery of current grade level academic learning expectations.
- 3.4446 “Safe Harbor” – An alternate method of demonstrating Adequate Yearly Progress under the No Child Left Behind Act determined by decreasing the percent of students not performing at the proficient level on the Criterion Referenced Assessments by at least ten percent. Safe Harbor can only be applied if the school meets the secondary indicator condition and tests 95% or more of eligible students. Safe harbor shall not apply during the time periods designated by the ~~USDOE~~ US Ed for which the ADE may receive flexibility from certain provisions of ESEA as set forth in Section 13.00 of these Rules.
- 3.4247 “Sanction” – intervention by the state to assist teaching and learning at a public school or a public school district that fails to meet expected performance goals on the state-mandated criterion-referenced assessments and/or other indicators.
- 3.48 “SAT” – the standardized college entrance examination administered by the College Board.
- 3.4349 “School Improvement” – the initial classification applied to a school that fails to meet adequate yearly progress for two successive years. During the time periods designated by the ~~USDOE~~ US Ed for which the ADE may receive flexibility from certain provisions of ESEA, the classifications and interventions for schools in need of improvement shall be as set forth in Section 13.00 of these Rules.
- 3.4450 “Secure Examination or Assessment” – an assessment instrument, materials or other student achievement evaluation method required by State statute, rule or regulation that is administered to assess student performance or achievement and takes place on the dates specified on the testing/assessment calendar developed by the Commissioner of the Department.
- 3.4551 “Starting Point” – a specific figure for grade-level clusters K- 5, 6-8, and 9-12 in the content areas of literacy and mathematics which was derived by determining the school at the 20th percentile in the state based on total enrollment, among all schools ranked by the percentage of students at the proficient level, using data for the 2001-2002 school year or subsequent year for which there is a recalculation.

3.4652 “Substantial Reading Deficiency” – a determination for first and second grade students who score in the Below Basic Category on the State Reading Assessment in the previous school year and for kindergarten students who are rated as Delayed in both oral communication and written language on the Uniform Reading Scale (URS).

3.4753 Uniform School Readiness Screening” - uniform, objective evaluation procedures that are geared to either kindergarten or first grade, as appropriate, and developed by the State Board and specifically formulated for children entering public school for the first time.

~~3.48 “Value-Added Computations of Student Gains” – statistical analyses of the educational impact of the school’s instructional delivery system on individual student learning using a comparison of previous and post student achievement gains against a national cohort.~~

#### 4.0 Academic Content Standards

4.01 The Board shall establish clear, specific, challenging academic content standards, which define what students shall know and be able to do in each content area. Instruction in all public schools shall be based on these academic content standards.

4.02 The Board shall establish a schedule for periodic review and revision of academic content standards to ensure that Arkansas academic content standards are rigorous and equip students to compete in the global workforce. For each review, the Department will provide the following:

4.02.1 Study and consideration of academic content standards from across the nation and international levels as appropriate;

4.02.2 Study and consideration of evaluations from national groups or organizations as appropriate;

4.02.3 Revisions by committees composed of Arkansas teachers and instructional supervisory personnel from public schools, assisted by teachers from institutions of higher education;

4.02.4 Review and input by the Departments of Higher Education and Career Education as well as community members; and

4.02.5 Public dissemination of revised academic content standards at the Board meeting and on the Department web site.

4.03 The Board shall provide for external review of academic content standards by nationally recognized content experts in the discipline/area under consideration.

4.04 The Board shall establish a clear, concise system of reporting the academic performance of each school on the state’s mandated

augmented criterion-referenced or norm-referenced assessments, that conform with the requirements of current state and federal law.

- 4.05 Academic standards for every level of the grades kindergarten through twelve (K-12) education system and education financial resources shall be aligned with student performance expectations at each level of the grades kindergarten through twelve (K-12) education system.
- 4.06 The State Board voted to participate in the Common Core State Standards for English Language Arts (ELA) and Mathematics in July 2010. The Common Core State Standards can be found at:

<http://www.corestandards.org/the-standards>

The Common Core State Standards for ELA and Mathematics, as they existed on July 9, 2012, are hereby incorporated into these Rules by reference.

## 5.0 Arkansas Comprehensive Assessment Program

The Board shall establish a statewide assessment system for grades K through 12 to be implemented in each public school in the State by the Department. All districts shall comply with the requirements of the assessment system. Failure to do so shall result in a recommendation to the Board for Probationary status or loss of accreditation as set out in the Standards for Accreditation, or for other intervention or sanction as allowed or required by these rules, state or federal law. The Arkansas Department of Education shall transition to the PARCC assessments by the 2014-2015 school year.

School district boards of directors shall not establish school calendars that jeopardize or limit the valid testing and comparison of student learning gains.

Every student attending an Arkansas public school shall participate in the statewide program of educational assessments required in Ark. Code Ann. §§ 6-15-419, 6-15-433, 6-15-2009 and established by the State Board.

### 5.01 Kindergarten, Grade One and Grade Two

5.01.1 The Board shall adopt and the Department shall implement a developmentally appropriate uniform school readiness screening to validate a child's school readiness as part of a comprehensive evaluation design. The Department shall require that all school districts administer the uniform school readiness-screening to each kindergarten student in the district upon the student's entry into kindergarten. Children who enter public school for the first time in first grade must be administered the uniform school readiness screening developed for use in the first grade.

5.01.2 Kindergarten, Grades 1 and 2: The Department shall select a developmentally appropriate assessment to be administered to all

students in first grade and second grade in reading and mathematics.

5.02 Criterion-Referenced Tests - Grades three through eight and high school

5.02.1 The Department shall develop and implement an augmented, criterion-referenced, or norm-referenced assessment as follows: (1) Grades three (3) through eight (8) which measures application of knowledge and skills in ~~reading and writing literacy~~ English language arts and mathematics and science in Grades 5 and 7; (2) End-of-Course testing in Algebra I, Geometry and Biology; (3) High school literacy that measures application of knowledge and skills in ~~reading and writing literacy~~ English language arts; and (4) social studies as funds are available and approved by the State Board of Education; ~~and (5) for the 2014-2015 school year and thereafter, End-of-Course testing in English II.~~

5.02.2 All criterion-referenced assessments shall be based on the Arkansas Curriculum Frameworks and Academic Content Standards.

5.02.3 All students in Grades 3 – 8 as well as all students enrolled in courses for which End-of-Course assessments are administered, shall take the criterion-referenced assessments on the testing dates established by the Department. This requirement includes the high school literacy assessment. This authority shall include field testing and any other requirements needed to establish fully-developed assessment instruments and methodologies.

5.02.4 Each school district shall administer augmented criterion-referenced assessments to its students according to procedures established by the Commissioner of Education and specified in the applicable assessment administration materials.

5.02.5 Accounting for Students with Disabilities and Limited English Proficient Students

5.02.5.1 Each student in the specified grades or courses shall participate as outlined in the test coordinator's handbook. A student shall participate in the Arkansas Alternate Assessment Program only upon the formal determination of the student's individual education program (IEP) committee, as documented in the student's individual educational program.

5.02.5.2 The Individual Education Program (IEP) committee shall determine whether participation in the standard state assessment program is appropriate for students with IEPs. Students with disabilities for whom it is deemed inappropriate to take the

standard state assessments (augmented benchmarks, ~~General and High-Stakes~~ End-of-Course, and High School Literacy) with the established accommodations shall participate in the Arkansas Alternate Assessment Program following the guidelines established by the Board.

- 5.02.5.3 Scores for students with disabilities shall be reported with other assessment results from the school.
- 5.02.5.4 ~~LEP~~ English Learners (ELs) ~~students~~ shall participate in all required criterion referenced assessments. ~~LEP students~~ ELs may access state approved accommodations provided such accommodations have been recommended by the language proficiency assessment committee and are used regularly in classroom instruction and assessment.
- 5.02.5.5 ~~LEP students~~ ELs with less than one year in a U.S. school will not be required to take the State required literacy benchmark test or the High School Literacy Assessment. Districts may exercise this option. ~~LEP students~~ ELs must take the appropriate mathematics and science tests.

#### 5.02.6 End-of-Course Assessments

- 5.02.6.1 Every student attending an Arkansas public school in Arkansas shall participate in the actual course and statewide program of end-of-course assessments as designated by the State Board.
- 5.02.6.2 Every student required to participate in the statewide program of educational assessments required by Ark. Code Ann. § 6-15-2009 shall not receive credit on his or her transcript for Algebra, Geometry, Biology, or any other course that requires an end-of-course assessment for which the student has not received the requisite scale score on a general end-of-course assessment, until the student is identified as having participated in remediation through an individual academic improvement plan.
- 5.02.6.3 The individual academic improvement plan shall include remediation activities focuses on those areas for need for students who failed to meet the requisite score on an end-of-course assessment.



- 5.02.6.4 For the purpose of an end-of course assessment, remediation does not require that a student retake a subsequent end-of-course assessment in order to receive academic credit for a course.
- 5.02.6.5 The end-of-course assessment program shall be maintained in such a manner as to meet the requirements of state and federal law, including the full range of students with disabilities.
- 5.02.6.6 The superintendent of each public school district shall be responsible for the proper administration of Ark. Code Ann. § 6-15-2009 and these Rules to implement the requirements of Ark. Code Ann. § 6-15-2009.
- 5.02.6.7 To the extent that a public school district is determined to have knowingly failed to administer the provisions of applicable law or these Rules, the superintendent's license shall be subject to probation, suspension, or revocation under Ark. Code Ann. § 6-17-410.
- 5.02.6.8 The ADE shall establish and publish by Commissioner's Memo each school year an end-of-course assessment cycle for end-of-course assessments that shall be strictly followed by school districts unless a school district has received a written waiver from the ADE because of a catastrophic occurrence.
- 5.02.6.9 The ADE shall prepare and develop the form of end-of-course assessments along with any and all documents, manuals, forms and protocols necessary for the proper administration, completion, submission and scoring of the assessment. The assessment shall be composed of sections that may include both multiple choice and open-response test items.
- 5.02.6.10 All Arkansas laws and ADE rules governing test administration, security and confidentiality that apply to examinations given to Arkansas public schools from K-12 grade shall apply in full to all end-of-course assessments and alternative assessments set forth under Ark. Code Ann. § 6-15-2009.
- 5.02.6.11 The ADE shall take steps to ensure that the end-of-course assessments are properly aligned with state standards and that professional development

training is available for teachers teaching courses for which an end-of-course assessment is required.

5.02.6.12 In administering the assessments under Ark. Code Ann. § 6-15-2009 and these Rules, the school district shall provide state-approved accommodations for students with state-recognized disabilities and for English language learners as allowed by law and ADE rules.

5.02.6.13 The ADE shall establish and promulgate by way of these Rules the requisite scale score requirement for any Arkansas public school student taking each end-of-course assessment and alternative assessment.

### 5.03 Norm-Referenced Tests

5.03.1 The Board shall adopt a norm-referenced test to be administered in grade 3 through grade 9 in mathematics and reading and in science at grades 5 and 7, which shall be administered by the Department annually.

5.03.2 Each school district shall administer the norm-referenced tests to its students according to procedures established by the Department and specified in the applicable test administration materials.

### 5.04 National Assessment of Educational Progress

5.04.1 Selected schools shall participate in any and all components of the National Assessment of Educational Progress (NAEP).

5.04.2 Any school that fails to participate in the administration of any NAEP assessment shall be reported to the Board and may be subject to probationary status as set out in the Standards for Accreditation.

### 5.05 Test Administration

5.05.1 The Department shall establish mandatory training sessions for local district testing coordinators and other appropriate school personnel to ensure understanding of the administration of assessments and effective use of assessment reporting data to improve classroom instruction and learning to provide program evaluation;

5.05.2 The superintendent or his/her designee in each school district shall be responsible for coordinating all local assessment activities including:

- 5.05.2.1 Scheduling testing times of all affected campuses according to the testing calendar developed by the Department;
  - 5.05.2.2 Ensuring that security is maintained as specified in the appropriate testing administration materials;
  - 5.05.2.3 Ensuring that all district personnel involved in the testing have been properly trained as specified by the Department;
  - 5.05.2.4 Ensuring that all testing instruments are administered to all students according to the procedures established by the Commissioner of Education and specified in the applicable assessment administration materials;
  - 5.05.2.5 Ensuring that all assessment documents and student identification information are properly and accurately coded;
  - 5.05.2.6 Attesting whether ALL students have participated in the appropriate grade-level assessment(s); and
  - 5.05.2.7 Recommending for adoption by local school boards a school calendar that in no way jeopardizes or limits the valid testing and comparison of students' learning gains.
- 5.05.3 The appropriate test administration materials shall specify any allowable accommodations available to students participating in the administration of standard state assessments.
- 5.05.4 All students enrolled in a State-tested grade shall be accounted for in the Arkansas Comprehensive Assessment Program.
- 5.06 A Technical Advisory Committee composed of nationally-recognized testing experts and psychometricians shall be selected by the Commissioner of Education and shall advise the Department in all technical aspects of the assessment system.
- 5.07 Test Security and Confidentiality
- 5.07.1 Violation of the security or confidential integrity of any test or assessment is prohibited.
  - 5.07.2 The Board shall sanction a person who engages in conduct prohibited by this section. Sanctions shall be considered and imposed in compliance with the Department's rules Governing Alleged Testing Improprieties or in the Department's Rules Governing Background Checks and License Revocation, as appropriate. Additionally, the Board may sanction a school district or school, or both, in which conduct prohibited in this section occurs. Sanctions imposed by the Board may include without limitation one (1) or more of the following:

- 5.07.2.1 Revocation, suspension, or probation of an individual's license,
  - 5.07.2.2 Issuance of a letter of reprimand to a licensed individual to be placed in his or her state ~~personnel~~ professional licensure file;
  - 5.07.2.3 Additional training or professional development to be completed by a licensed individual within the time specified;
  - 5.07.2.4 Additional professional development to be administered by the school district or open-enrollment public charter school to all licensed school district personnel involved in test administration within the time specified;
  - 5.07.2.5 Issuance of a letter of warning to the school district or open-enrollment public charter school; and
  - 5.07.2.6 Establishment of a school district or open-enrollment public charter school plan containing strict test security guidelines that will implement procedures to ensure the security and confidential integrity of all assessment instruments.
  - 5.07.2.7 Professional development required pursuant to this section as a result of violating test security or confidentiality may be in addition to professional development required for licensure.
- 5.07.3 Procedures for maintaining the security and confidential integrity of all testing and assessment instruments and procedures shall be specified in the appropriate test or assessment administration instructions. Conduct that violates the security or confidential integrity of a test or assessment is defined as any departure from either the requirements established by the Commissioner of Education for the administration of the assessment or from the procedures specified in the applicable test administration materials. Conduct of this nature may include, but is not limited to, the following acts and omissions:
- 5.07.3.1 Viewing secure assessment materials;
  - 5.07.3.2 Duplicating secure assessment materials;
  - 5.07.3.3 Disclosing the contents of any portion of secure assessment materials;

- 5.07.3.4 Providing, suggesting, or indicating to an examinee a response or answer to any secure assessment items;
- 5.07.3.5 Aiding or assisting an examinee with a response or answer to any secure assessment item;
- 5.07.3.6 Changing or altering any response or answer of an examinee to a secure assessment item;
- 5.07.3.7 Failing to follow the specified testing procedures or to proctor students;
- 5.07.3.8 Failing to administer the assessment on the designated testing dates;
- 5.07.3.9 Encouraging or assisting an individual to engage in the conduct described herein;
- 5.07.3.10 Failing to report to the appropriate authority that an individual has engaged in conduct set forth in this section;
- 5.07.3.11 Failing to follow the specified procedures and required criteria for alternate assessments; or
- 5.07.3.12 Failing to return the secured test booklets to the testing company in a timely manner.

5.07.4 The superintendent of each school district shall develop procedures to ensure the security and confidential integrity of all assessment instruments and test items. The superintendent shall be responsible for immediately notifying the Department in writing of conduct that violates the security or confidential integrity of an examination or assessment.

## 6.0 Student Performance Levels

- 6.01 The Board shall establish four (4) performance levels for each criterion-referenced assessment administered as part of ACTAAP. The Board shall establish five (5) performance levels for the Alternate Assessment for Students with Disabilities as part of ACTAAP. Those performance levels shall be: (1) Not Evident; (2) Emergent; (3) Supported Independence; (4) Functional Independence; and (5) Independent. Performance levels shall be established for mathematics, reading/language arts and science independently. Additionally, the Board shall establish a pass/proficiency rate for each ~~high-stakes~~ end-of-course assessment.
- 6.02 The Board shall establish four (4) performance levels for Grades K-2 for the norm-referenced assessment administered as part of the Arkansas

Comprehensive Assessment Program for reading and mathematics. The following numerical scores define those performance levels.

Mathematics Norm Referenced Assessment standard score cut scores*				
Grade	Below Basic	Basic	Proficient	Advanced
K	0-120	121-128	129-136	137-400
1	0-134	135-146	147-159	160-400
2	0-148	149-164	165-181	182-400

\*Lowest possible standard score value is 80

Reading Norm-Referenced Assessment standard score cut scores*				
Grade	Below Basic	Basic	Proficient	Advanced
K	0-119	120-127	128-137	138-400
1	0-136	137-145	146-158	159-400
2	0-153	154-165	166-182	183-400

\*Lowest possible standard score value is 80

~~6.03 All initial high-stakes end-of course assessments for Algebra I shall be administered by grade ten (10). Beginning with the 2014-2015 school year, all initial high-stakes end-of-course assessments for English II shall be administered by grade ten (10). The Board shall establish a requisite scale score of student performance on the High-Stakes End-of-Course Algebra I Examination. The following numerical scores define that performance level.~~

High-Stakes End-of-Course Algebra I Pass Scale Score	
Not Pass	Pass
158 and Below	159 and Above

6.043 The following numerical scores define the performance levels on the criterion-referenced assessments and on the Alternate Assessments for Students with Disabilities for Not Evident, Emergent, Supported Independence, Functional Independence and Independent. Functional Independence and Independent are considered to be grade level.

Mathematics Criterion Referenced Assessments (Augmented Benchmark Exams) Scale Score Ranges				
Grade	Below Basic	Basic	Proficient	Advanced
3	0 - 408	409 - 499	500 - 585	586 & above
4	0 - 494	495 - 558	559 - 639	640 & above
5	0 - 543	544 - 603	604 - 696	697 & above
6	0 - 568	569 - 640	641 - 721	722 & above
7	0 - 621	622 - 672	673 - 763	764 & above
8	0 - 654	655 - 699	700 - 801	802 & above

<b>Literacy Criterion Referenced Assessments (Augmented Benchmark Exams)</b>				
<b>Scale Score Ranges</b>				
Grade	Below Basic	Basic	Proficient	Advanced
3	0 - 329	330 - 499	500 - 653	654 & above
4	0 - 353	354 - 558	559 - 747	748 & above
5	0 - 381	382 - 603	604 - 798	799 & above
6	0 - 416	417 - 640	641 - 822	823 & above
7	0 - 425	426 - 672	673 - 866	867 & above
8	0 - 506	507 - 699	700 - 913	914 & above

<b>Science Criterion Referenced Assessments (Augmented Benchmark Exams)</b>				
<b>Scale Score Ranges</b>				
Grade	Below Basic	Basic	Proficient	Advanced
5	0 - 153	154 - 199	200 - 249	250 & above
7	0 - 151	152 - 199	200 - 249	250 & above

<b>General-End-of-Course Algebra I</b>			
<b>Scale Score Ranges</b>			
Below Basic	Basic	Proficient	Advanced
0 - 151	152 - 199	200 - 249	250 & above

<b>General End-of-Course Geometry</b>			
<b>Scale Score Ranges</b>			
Below Basic	Basic	Proficient	Advanced
0 - 151	152 - 199	200 - 249	250 & above

<b>General End-of-Course Biology</b>			
<b>Scale Score Ranges</b>			
Below Basic	Basic	Proficient	Advanced
0 - 145	146 - 199	200 - 249	250 & above

<b>Grade 11 Literacy</b>			
<b>Scale Score Ranges</b>			
Below Basic	Basic	Proficient	Advanced
0 - 168	169 - 199	200 - <del>249</del> <u>227</u>	<del>250</del> <u>228</u> & above

<b>Mathematics Alternate Assessment for Students with Disabilities</b>					
<b>Scale Score Ranges</b>					
Grade	Not Evident	Emergent	Supported Independence	Functional Independence	Independent
3	520 - 672	673 - 703	704 - 708	709 - 723	724 - 733
4	523 - 673	674 - 707	708 - 712	713 - 721	722 - 736
5	545 - 674	675 - 708	709 - 713	714 - 725	726 - 733
6	535 - 677	678 - 708	709 - 714	715 - 722	723 - 731
7	478 - 675	676 - 705	706 - 713	714 - 720	721 - 731
8	484 - 697	698 - 717	718 - 725	726 - 727	728 - 738

<b>Literacy Alternate Assessment for Students with Disabilities Scale Score Ranges</b>					
Grade	Not Evident	Emergent	Supported Independence	Functional Independence	Independent
3	487 - 663	664 - 685	686 – 710	711 - 730	731 - 734
4	503 - 672	673 - 692	693 – 712	713 - 727	728 - 733
5	545 - 664	665 - 692	693 – 717	718 - 730	731 - 735
6	518 - 637	638 - 684	685 – 709	710 - 721	722 - 732
7	464 - 620	621 - 674	675 – 708	709 - 722	723 - 736
8	442 - 622	623 - 690	691 – 719	720 - 726	727 - 742

<b>Science Alternate Assessment for Students with Disabilities Scale Score Ranges</b>					
Grade	Not Evident	Emergent	Supported Independence	Functional Independence	Independent
5	563 - 700	701 - 718	719 - 723	724 - 730	731 - 736
7	490 - 670	671 - 688	689 - 705	706 - 720	721 - 733

<b>Grade 9 Mathematics Alternate Assessment for Students with Disabilities Scale Score Ranges</b>				
Not Evident	Emergent	Supported Independence	Functional Independence	Independent
0 - 99	100 -149	150 -199	200 - 249	250 - 300

<b>Science Grade 10 Alternate Assessment Scale Score Ranges</b>				
Not Evident	Emergent	Supported Independence	Functional Independence	Independent
486 - 600	601 - 664	665 - 692	693 - 715	716 - 742

<b>Grade 11 Literacy Alternate Assessment for Students with Disabilities Scale Score Ranges</b>				
Not Evident	Emergent	Supported Independence	Functional Independence	Independent
483 - 595	596 - 655	656 – 680	681 - 692	693 - 740

## 7.0 Student Accountability

- 7.01 By the year 2013-2014 all students are expected to perform at the proficient level or above.
- 7.02 Students identified as failing to achieve at the proficient level on a) the state mandated CRT (as referenced in Section 6.04 tables: Mathematics Criterion Referenced Assessments, Science Criterion Referenced Assessments, Literacy Criterion Referenced Assessments), b) students in grade K scoring delayed on either written language or oral communications and scoring delayed in mathematics on the state mandated uniform readiness screening (as referenced in Section 3.46 Uniform School Readiness Screening); and c) students in grades 1 and 2



not scoring proficient on the state mandated NRT (as referenced in Section 6.02 tables, Mathematics Norm Referenced Assessment standard score cut scores and Reading Norm-Referenced Assessment standard score cut scores), shall be evaluated by school personnel, who shall jointly develop a remediation plan with the student's parents. The remediation plan (AIP or if appropriate IRI) will assist the student in achieving the expected standard and will describe the parent's role and responsibilities as well as the consequences for the student's failure to participate in the plan.

- 7.02.1 The AIP shall be prepared using the format designed by the Department of Education. However, the local school may adjust the format as deemed necessary.
- 7.02.2 The AIP shall be developed cooperatively by appropriate teachers and/or other school personnel knowledgeable about the student's performance or responsible for the remediation in consultation with the student's parents. An analysis of student strengths and deficiencies based on test data and previous student records shall be available for use in developing the plan. The plan shall be signed by the appropriate school administrator and the parent/guardian.
- 7.02.3 The AIP should be flexible, should contain multiple remediation methods and strategies, and should include an intensive instructional program different from the previous year's regular classroom instructional program. Examples of strategies and methods include, but are not limited to, computer assisted instruction, tutorial, extended year, learning labs within the school day, Saturday school, double blocking instruction in deficient areas during the school day, extended day etc.
- 7.02.4 The AIP shall include formative assessment strategies and shall be revised periodically based on results from the formative assessment.
- 7.02.5 The AIP shall include standards-based supplemental/remedial strategies aligned with the child's deficiencies.
- 7.02.6 A highly qualified teacher and/or a highly qualified paraprofessional under the guidance of a highly qualified teacher shall provide instructional delivery under the AIP.
- 7.02.7 The AIP should contain an implementation timeline that assures the maximum time for remedial instruction.
- 7.02.8 AIPs should be individualized; however, similar deficiencies based on test data, may be remediated through group instruction.
- 7.02.9 In any instance where a student with disabilities identified under the Individuals with Disabilities Education Act has an

Individualized Education Program (IEP) that already addresses any academic area or areas in which the student is not proficient on state-mandated augmented, criterion-referenced, or norm-referenced assessments, the individualized education program shall serve to meet the requirement of an AIP.

7.03 Retention for failure to participate in the Academic Improvement Plan

7.03.1 The public school district where the student is enrolled shall notify the student's parent, guardian, or caregiver of the parent's role and responsibilities as well as the consequences for the student's failure to participate in the plan. This notice may be provided via student handbooks issued to students.

7.03.2 A student in grades three (3) through eight (8), identified as not ~~passing a benchmark assessment~~ meeting the requisite scale score on the criterion-referenced assessment and failing to participate in the subsequent AIP shall be retained and shall not be promoted to the next appropriate grade until the student is deemed to have participated in the AIP or the student passes the benchmark assessment for the current grade level in which the student is retained. The local district shall determine the extent of the required participation in remediation as set forth in the student academic improvement plan.

7.03.3 Any student required to take an ~~general~~ end-of-course assessment who is identified as not meeting the requisite scale score for a particular assessment shall participate in the remediation activities as required by the student's individualized AIP in the school year that the assessment results are reported in order to receive academic credit on his or her transcript for the course related to the end-of-course assessment.

7.03.3.1 The individualized AIP shall include remediation activities focused on those areas in which a student failed to ~~pass a general~~ meet the requisite scale score of an end-of-course assessment.

7.03.3.2 A student who is identified as not meeting the requisite scale score for a ~~general~~ an end-of-course assessment shall not receive academic credit on his or her transcript for the courses related to the ~~general~~ end-of-course assessment until the student is identified as having participated in remediation through an individualized AIP. ~~For the purpose of a general end-of-course assessment, remediation does not require that a student pass a subsequent end-of-course assessment in order to receive academic credit for a course.~~

7.03.4 Remedial activities and instruction provided during high school ~~may~~ shall not be in lieu of English language arts, mathematics, science, history or ~~social studies~~, or other core subjects courses required for graduation.

7.03.5 Any student who does not score at the Proficient level on the criterion-referenced assessments in reading, writing English language arts and mathematics shall continue to be provided with remedial or supplemental instruction until the expectations are met or the student is not subject to compulsory school attendance.

7.03.6 Any student that has an AIP and fails to remediate, but scores at the Proficient level on the criterion-referenced assessments, shall not be retained.

7.03.7 Students not proficient on the High School Literacy Test shall participate in a remediation program.

~~7.03.8 A student who does not meet the requisite scale score on the relevant high-stakes end-of-course assessment shall participate in an individualized academic improvement plan.~~

~~7.03.8.1 An individualized academic improvement plan shall include research-based remediation activities and multiple opportunities for the student to take and pass subsequent high-stakes end-of-course assessments as long as the student remains enrolled in an Arkansas public school and has not reached twenty-one (21) years of age.~~

~~7.03.8.2 If after two subsequent high-stakes end-of-course assessments a student does not meet the requisite scale score on the initial high-stakes end-of-course assessment, the student shall participate in strand analysis or formative analysis remediation provided and supported by the department before taking a third or subsequent high-stakes end-of-course assessment.~~

~~7.03.8.3 Subsequent high-stakes end-of-course assessments and associated remediation programs may be administered in electronic format.~~

7.03.8 The State Board may require remediation activities and an individualized academic improvement plan for a student in grade eleven (11) or below who does not meet the requisite scale score for a particular college and career readiness measurement.

7.03.8.1 The State Board may require that the individualized academic improvement plan include one (1) or more opportunities for a student to retake the measurement.

7.03.8.2 For the purpose of a college and career readiness measurement, remediation shall not require that a student pass a subsequent college and career readiness measurement in order to graduate from an Arkansas high school.

- 7.04 The results of ~~general and high-stakes~~ end-of-course assessments shall become a part of each student's transcript or permanent record. Each course for which a student completes the ~~general~~ end-of-course assessment shall be recorded with the performance level (advanced, proficient, basic or below-basic). ~~Each course for which a student completes the high-stakes end-of-course assessment shall be recorded with the pass level (pass, not pass) and by performance level (Below Basic, Basic, Proficient, Advanced).~~
- 7.05 Each year the ADE shall make public item and task prototypes for the English language arts and mathematical assessments required by these rules or a selection of actual items and tasks from the most recent assessments.
- 7.056 The Department shall implement a statistical system that shall provide the best analysis of classroom, school, and school district effects on student progress based on established, value-added longitudinal calculations, which shall measure the difference in a student's previous year's achievement compared to the current year achievement for the purposes of improving student achievement, accountability, and recognition.
- 7.067 The approach used by the Department shall be in alignment with federal statutes and developed in 2004-2005 to collect data to allow research and evaluation of student achievement growth models.
- 7.078 The approach shall include value-added longitudinal calculations with sufficient transparency in the model's conception and operation to allow others in the field to validate or replicate the results and an assessment of the model's accurateness in relation to other models.
- 7.089 Reading Deficiency for Students in Kindergarten through Grade Two
- 7.089.1 Any student who exhibits a substantial deficiency in reading, based upon statewide assessments conducted in grades kindergarten through two (K-2), or through teacher observations, shall be provided intensive reading instruction utilizing a scientifically-based reading program. The intensive instruction shall systematically, explicitly, and coherently provide instruction in the five essential elements of reading as defined in Section 3.23. The student shall continue to be provided with intensive reading instruction until the reading deficiency is corrected.
- 7.089.2 The State Board of Education established performance levels for kindergarten, grade 1 and grade 2 that define substantial difficulties in reading based on the state-mandated, developmentally appropriate assessment. The state-mandated Uniform Screening Readiness (USR) instrument shall be used to determine substantial reading difficulty for kindergarten students.
- 7.089.3 All kindergarten students exhibiting substantial difficulties in reading will be evaluated by school personnel for the purpose of

diagnosing specific reading difficulties. This evaluation will occur within 30 days of receiving the USR results.

- 7.089.4 Within 30 days of the beginning of school, grade 1 and grade 2 students exhibiting substantial difficulties in reading will be evaluated by school personnel for the purpose of diagnosing specific reading difficulties. However, in those school years in which the State Board of Education shall revise the performance levels schools shall be allowed 30 days from the date of the final approval to conduct the evaluation.
- 7.089.5 The evaluation shall include the Dynamic Indicators of Basic Early Literacy Skills (DIBELS).
- 7.089.6 School personnel shall develop an Intensive Reading Improvement plan (IRI) that describes the intervention program for any student identified with substantial reading difficulty. The IRI shall be developed cooperatively by appropriate teachers and/or other school personnel knowledgeable about the student's performance or responsible for remediation.
- 7.089.7 The IRI shall contain an implementation timeline that assures the maximum time for remedial instruction. The intervention shall occur during the regular school day whenever possible, but may include extended day when appropriate. The intervention shall supplement, and not supplant, core classroom instruction.
- 7.089.8 The IRI shall include valid and reliable progress monitoring assessments to measure student growth toward the grade level benchmarks in each essential element of reading.
- 7.089.9 The intensive reading instruction provided under the IRI shall utilize strategies that are aligned with scientifically-based reading research.
- 7.089.9.1 The intensive instruction shall systematically, explicitly and coherently provide instruction in the five essential areas of reading. The intensity and focus of the instruction shall be based on the evaluation results, teacher observation, and data from progress monitoring assessments. The intervention plan shall be revised periodically to reflect student needs as indicated on progress monitoring assessments.
- 7.089.9.2 The IRI should be individualized; however, similar deficiencies may be remediated through group instruction.
- 7.089.9.3 A highly qualified teacher and/or a highly qualified paraprofessional under the guidance of a highly qualified teacher shall provide instruction under the IRI.

~~7.089~~.9.4 The intervention shall continue until the child has reached grade level benchmarks in all essential areas of reading.

~~7.089~~.10 Student achievement in each of the essential elements shall be monitored monthly after students complete the intervention. Students who are not meeting current expectations shall be provided additional interventions.

~~7.089~~.11 In any instance where a student with disabilities identified under the Individuals with Disabilities Act has an IEP that already addresses reading deficiencies, the individual education program shall serve to meet the requirements of the IRI.

~~7.0910~~ The parent or guardian of any student identified with a substantial reading deficiency shall be notified in writing to include the following:

~~7.0910~~.1 That the child has been identified as having a substantial deficiency in reading;

~~7.0910~~.2 A description of the current services that are provided to the child; and,

~~7.0910~~.3 A description of the proposed supplemental instructional services and supports that will be provided to the child that are designed to remediate the identified area of reading deficiency.

## 8.0 School Accountability

NOTE: Consult Section 13.00 of these Rules for applicable ESEA flexibility provisions as approved by the ~~USDOE~~ US Ed on June 29, 2012.

8.01 The Department of Education shall provide analyses of data produced by the Arkansas Comprehensive Assessment Program and other reliable measures of student learning to determine classroom, school, and school district academic performance.

8.02 Student performance trend data shall be included in the components used in developing objectives of the school improvement plan, internal evaluations of instructional and administrative personnel, assignment of staff, allocation of resources, acquisition of instructional materials and technology, performance-based budgeting, and assignment of students into educational programs of the local school program.

8.03 Each school shall develop one (1) Arkansas Comprehensive, School Improvement Plan (ACSIP) focused on student achievement. This requirement is intended to focus the school and school district annually on the school's performance rate data for the purposes of improving student performance based on data and the performance of students on the state assessment system.

- 8.04 The purpose of ACSIP is to provide equal opportunity for all students, including identifiable subgroups, to meet the expected performance rate levels established by the Board on all State assessments.
- 8.05 Consistent with the No Child Left Behind Act, each school must make adequate yearly progress (AYP), based primarily on the administration of the criterion-referenced assessments described in Section 5.02. In order to make AYP, a school or school district must—
- Demonstrate that at least 95 percent of all students and of students in each applicable subgroup, as provided in Section 8.06, at the tested grade levels, participated in the assessments;
  - Meet or exceed the annual measurable performance levels described in Section 9.0, based on the percentages of students scoring proficient or above on the assessments, overall and for each applicable subgroup; or alternatively, if the total group or any subgroup does not meet the annual measurable performance levels, demonstrate that the percentage of students in that subgroup who did not meet the proficient level for that year decreased by 10 percent of that percentage from the preceding school year and that the subgroup made progress on one additional academic indicator; and
  - Show progress for all students on an additional academic indicator, which shall be graduation rate for high schools and percent attendance for elementary and middle schools.
- 8.06 The following subgroups must be included in the school/school district data disaggregation:
- 8.06.1 Students with Disabilities;
  - 8.06.2 Students who are English Language Learners;
  - 8.06.3 Economically Disadvantaged Students; and
  - 8.06.4 Ethnic Subgroups;
    - 8.06.4.1 Caucasian
    - 8.06.4.2 African American
    - 8.06.4.3 Hispanic
- 8.07 A school must meet AYP criteria overall and for each of these subgroups that meets the minimum group size as determined by the Department of Education and approved by the U.S. Department of Education.
- 8.08 The Department will determine AYP separately for mathematics and literacy, using appropriate statistical treatments. Based on the single

statewide starting point described in this section, annual performance levels assure that ALL students will reach proficient by school year 2013-2014.

- 8.09 The Department will determine for each school in the state the percent of students performing at the proficient or advanced levels. This percentage will be determined by computing the sum of students proficient or advanced for the current year or the most recent three years across each grade for which there is a criterion-referenced assessment. That sum is divided by the total number of students assessed for that year or across those three years and grades. This number shall include students taking alternate assessments. The percentage shall be determined separately for mathematics and reading/literacy.
- 8.10 The AYP starting point regarding percent proficient on state assessments will be determined for grade-level clusters K- 5; 6 – 8; and 9 – 12 and separately for mathematics and reading/literacy.
- 8.11 The AYP starting point will be determined by ranking each school within the grade-level by the percent proficient. Additionally, the ranking will include the total student enrollment for those grades using October 1, 2002, data or October 1 of a subsequent year for which there is a recalculation.
- 8.12 The goal of NCLB is for all students to be proficient in language arts and math by 2014. Therefore, the Department of Education will determine the “starting point” for AYP as set forth in Section 3.44 above.
- 8.13 The following table establishes the starting point and projected performance level for each year of the twelve years addressed by the No Child Left Behind Act.

#### **Calculating AYP and Annual Expected Performance Levels**

	K-5 Math	K-5 Literacy	6-8 Math	6-8 Literacy	9-12 Math	9-12 Literacy
Year 05-06	40.00	42.40	29.10	35.20	29.20	35.50
Year 06-07	47.50	49.60	37.96	43.30	38.05	43.56
Year 07-08	55.00	56.80	46.83	51.40	46.90	51.63



Year 08-09	62.50	64.00	55.69	59.50	55.75	59.69
Year 09-10	70.00	71.20	64.55	67.60	64.60	67.75
Year 10-11	77.50	78.40	73.41	75.70	73.45	75.81
Year 11-12	85.00	85.60	82.28	83.80	82.30	83.88
Year 12-13	92.50	92.80	91.14	91.90	91.15	91.94
Year 13-14	100.00	100.00	100.00	100.00	100.00	100.00

- 8.14 Each year, in determining whether a school has met the target of percent proficient for that school year as listed on the chart, the Department shall compare the school's percent proficient in the appropriate grade-level cluster and content area with the statewide projected goal for that year. A school shall be deemed to have met AYP for a particular year for a particular grade-level cluster and content area as long as the school attains at least the statewide projected goal.
- 8.15 Individual Schools identified by the Department as failing to meet established levels of academic achievement shall be subject to sanctions as specified in school improvement or academic distress.
- 8.16 Schools/School Districts exemplifying exceptional performance levels and/or growth patterns shall be recognized for exemplary performance and will be eligible to participate in the rewards program.

## 9.0 Accountability

NOTE: Consult Section 13.00 of these Rules for applicable ESEA flexibility provisions as approved by the USDOE US Ed on June 29, 2012. Sections 9.13 ~~through 9.24~~ and 9.14 of these Rules continue to apply along with Section 13.00 of these Rules.

Schools failing to meet Adequate Yearly Progress as determined under these Rules shall be classified subject to the following consequences.

- 9.01 A school will be identified in alert status if it has not made AYP in the same subject (Mathematics or Literacy) for one year.
- 9.02 A school will be identified as in Improvement Status if it has not made AYP in the same subject (Mathematics or Literacy) for two consecutive years.
- 9.03 A school in Alert Status or Improvement Status that fails to make AYP, but does not fail to make AYP in the same subject for two consecutive years, will remain in its existing status for the following school year.

- 9.04 The first year a school fails to meet expected performance levels, that school shall be classified as on Alert Status. Any school classified on Alert Status shall be required to review and/or revise the school's ACSIP Plan with special attention given to State designated subgroup(s) which failed to meet expected performance levels.
- 9.05 The local school board president and the superintendent of a public school or school district identified by the Department in school improvement shall be notified in writing by the Department, via certified mail, return receipt requested, and the school district shall have a right to appeal to the Commissioner of the Department. The written appeal must be received in the Office of the Commissioner of Education within thirty (30) calendar days of the receipt of notice.
- 9.06 The second year a school fails to make Adequate Yearly Progress, that school shall be classified as Year 1 of School Improvement. Any school classified in Year 1 of School Improvement shall offer eligible students choice options to another school in the district not in school improvement.
- 9.07 The third year a school fails to make Adequate Yearly Progress, that school shall be classified as Year 2 of School Improvement. Any school classified in Year 2 of School Improvement shall offer eligible students supplementary educational services in keeping with federal guidelines in addition to continued consequences from Year 1 of School Improvement.
- 9.08 Should a school fail to make Adequate Yearly Progress in the fourth year, the Board shall advance that school into corrective action. Schools in corrective action must continue to offer consequences from School Improvement Year 2, and the school must implement a plan, with the approval of the Department, having specified corrective actions.
- 9.09 Should a school fail to make Adequate Yearly Progress in the fifth year, the Board shall advance that school into restructuring. In restructuring the Department may require the school to dismiss staff and administrators, annex the school to another school that is not in school improvement, and/or take other such action as deemed necessary by the Department and the Board.
- 9.10 Once a school has been identified in school improvement, that school must meet the standard(s) for which it failed to meet for two consecutive years to be considered for removal.
- 9.11 Schools that receive Title I funds must meet all funding requirements as specified by federal guidelines. Schools that do not receive Title I funds must implement programming in keeping with the school's ACSIP Plan as revised.
- 9.12 Schools designated in year two or greater of school improvement shall participate in a scholastic audit conducted by the Department of Education (or its designees).

- 9.12.1 Results of the scholastic audit shall be presented to the superintendent within four (4) weeks of completing the scholastic audit. The audit shall make recommendations to improve teaching and learning for inclusion in the comprehensive school improvement plan.

~~9.13—School Performance Rating System and Performance Category Levels~~

- ~~9.13.1 The Department of Education shall prepare an annual report, which shall describe the school rating system. The annual report shall designate two (2) category levels for each school. The first category, annual performance, is based on the performance from the prior year on the criterion-referenced test and end-of-course exams. The second category, growth, shall be based on the schools' improvement gains tracked longitudinally and using value-added calculations on the criterion-referenced assessment~~

- ~~9.13.2 The initial annual report shall identify schools as being in one (1) of the following annual performance category levels, based on the criterion-referenced Benchmark exams, as defined in 6-15-404(g)(1), and defined according to rules of the State Board of Education:~~

- ~~(1) —“Level 5”, schools of excellence;~~
- ~~(2) —“Level 4”, schools exceeding the standards;~~
- ~~(3) —“Level 3”, schools meeting the standards;~~
- ~~(4) —“Level 2”, schools on alert; or~~
- ~~(5) —“Level 1”, schools in need of immediate improvement.~~

- ~~9.14 For the years 2004-2005 through 2008-2009, school will not be assigned annual school performance category levels, unless an annual performance category levels is requested by the school.~~

~~9.15—Annual School Performance Rating: Weighted Average Approach~~

- ~~9.15.1 Since the ACTAAP testing program in Arkansas was designed as a criterion-referenced assessment system with performance standards, the standards for student performance can be used to develop a rating index of school performance.~~

- ~~9.15.2 Numerical values to be used as weighting factors can be assigned to each student's performance category (Advanced = 4; Proficient = 3; Basic = 2; Below Basic = 1)~~

- ~~9.15.3 With these weights assigned to the performance levels, a performance index for the school can be computed by multiplying the weights of the performance levels times the number of students scoring in the performance category.~~

- ~~9.15.4 The sum of the weighted student performance for each subject~~

~~—and grade in the school is divided by the total number of students testing the subjects and grades. The resulting average for the school is an index of performance that will range between 1.0 and 4.0.~~

#### 9.16—Achievement Rating Weighted Average Approach

##### 9.16.1 Assigned the following points:

~~4 points per student scoring in the advanced category,  
3 points per student scoring in the proficient category;  
2 points per student scoring in the basic category,  
1 point per student scoring in the below basic category.~~

~~Points = Number of student scoring in category X points assigned to categories~~

##### 9.16.2 Example

<b>Number of Students</b>	<b>Scoring Category</b>	<b>Points Assigned to Categories</b>	<b>Total</b>
10	Advanced	4	40
30	Proficient	3	90
40	Basic	2	80
20	Below Basic	1	20
Total points for the school for all categories			230

#### 9.17—Achievement Rating: Weighted Average Approach Calculation

~~9.17.1 To calculate the rating score for each school, divide the total point for the school by the number of students in the school.~~

<b>Points Received</b>	<b>Number of Students</b>	<b>Rating</b>
230	100	2.3

~~9.17.2 At the direction of the state board, a panel of stakeholders was convened to review the statewide performance of schools and conduct the standard setting process. In the school standard setting process, stakeholders representing administrators, teachers, business, parents, and school board members served as panelists to decide on the quality level represented by various points within the distribution of school index scores. The state board reviewed and adopted the following standards recommended by the stakeholder's advisory panels for the annual performance rating.~~

<b>Standard Setting Recommendations Stakeholder Advisory Panels</b>				
<b>Cut Scores</b>	<b>Cut 1/2</b>	<b>Cut 2/3</b>	<b>Cut 3/4</b>	<b>Cut 4/5</b>
Administrators	1.7	2.19	2.76	3.02
Teachers	1.6	2.25	3.0	3.5

Business	1.735	2.145	2.7	3.365
Parents	1.75	2.2	2.65	3.0
School Board	1.81	2.30	2.87	3.30
Median	1.735	2.2	2.755	3.300
<b>Average</b>	<b>1.719</b>	<b>2.21</b>	<b>2.79</b>	<b>3.23</b>

9.17.3 After the rating score has been calculated for each school, schools may calculate their annual performance level by locating the established performance standard (cut score) for placing each school in one of five performance categories.

9.17.4 In the example below, if the rating score of the school is between 3.5 and 4.0, it will be in the “schools of excellence” performance category level.

<b>Expert Panel Cut Scores</b>	<b>Performance Categories</b>
3.23 – 4.0	Schools of excellence
2.79 – 3.22	Schools exceeding the standards
2.21 – 2.78	Schools meeting standards
1.719 – 2.20	Schools approaching the standards (alert)
1.0 – 1.718	Schools in need of immediate improvement

9.17.5 The second category, growth shall be based on the schools' improvement gains tracked longitudinally and using value-added calculations on the criterion-referenced assessment. The working taskforce shall continue to assist in the rating system during the establishment of the second category.

#### 9.18 School Choice

9.18.1 For all schools that have received an annual performance category levels of Level 1 for two (2) consecutive years, the students in these schools shall be offered the opportunity public school choice option with transportation provided pursuant to A.C.A. § 6-18-227 et seq.

#### 9.19 Supplemental Educational Services

9.19.1 In addition, the school district board shall provide supplemental educational services, approved by the State Board, to affected students.

#### 9.2013 Recognition Awards

9.2013.1 Schools that receive an annual performance category level of Level 5 or Level 4 are eligible for school recognition awards and performance-based funding pursuant to Ark. Code Ann. §§ 6-15-421 and 6-15-2107. Pursuant to Ark. Code Ann. § 6-15-2107m schools performing at the top twenty percent (20%) of all public schools in Arkansas in combined student performance,

student academic growth, and, for a secondary school, graduate rate, are eligible for Arkansas School Recognition Program rewards and performance-based funding.

#### 9.2414 Sanctions

- 9.2414.1 Any school or district that is involved in substantiated test security violations will not be eligible to receive the “school of excellence” performance rating.

#### 10.0 School District Accountability

NOTE: During the time periods designated by the ~~USDOE~~ US Ed for which the ADE may receive flexibility from certain provisions of ESEA, the school district accountability provisions found in Section 13.00 of these Rules shall apply. Sections 10.04 through 10.08~~7~~ of these Rules shall remain in place even during time periods designated by the ~~USDOE~~ US Ed for which the ADE may receive flexibility from certain provisions of ESEA.

- 10.01 The Department annually reviews each district to determine whether the district is making AYP in the following way.
- 10.01.1 Determine the collective status for all the schools within a district within each grade-level grouping (K-5; 6-8 and 9-12);
  - 10.01.2 Determine the district percent of participation across each grade level group; and
  - 10.01.3 Determine the district status on secondary indicator across each grade-level group.
  - 10.01.4 A district shall be in school improvement when all levels within a district fail to meet performance standards for two consecutive years in the same subject. A district having status of School Improvement shall be removed from that status when any one level meets the performance standard for two consecutive years in that subject.
- 10.02 Before identifying a district for district improvement, the Department will provide the district with an opportunity to review the data on which the identification is based. The district may appeal the identification, and the Department will decide the appeal within 30 days.
- 10.03 Each district identified for district improvement shall within three months of identification develop or revise a district improvement plan that complies with the requirements of the No Child Left Behind Act, including the requirement that it spend not less than 10% of its Part A, Title I funds on professional development for each fiscal year in which the district is identified for improvement. The district shall initiate implementation of the plan expeditiously, but not later than the beginning of the next school year after the school year in which the district was identified for improvement.

The Department will provide technical assistance to districts in developing and implementing improvement plans under this section.

- 10.04 Academic Distress – Procedures for Identification, Classification and Appeal of Public School and Public School Districts in Academic Distress
- 10.04.1 A public school or public school district which meets the definition of “Academic Distress” set forth in Section 3.02 of these rules shall be designated in Academic Distress.
- 10.04.2 Within thirty calendar days (30) after the release of the state assessment results by the Department or upon making a determination that a school district has a Needs Improvement –Priority school within the school district that has not made the progress required under the school’s Priority Improvement Plan (PIP), the Department shall identify all public schools and public school districts in Academic Distress and shall notify in writing each school district superintendent and board president of the public school and public school districts via certified mail, return receipt requested.
- 10.04.3 ~~A school district may appeal a determination of the Department identifying the district as an Academic Distress school district by filing an appeal in writing in the Office of the Commissioner of Education within (30) calendar days after receiving the notification, justifying why the district should not be identified as being in Academic Distress.~~ Any school district identified or in which a public school is identified in academic distress may appeal to the State Board by filing a written appeal with the Commissioner of Education via certified mail, return receipt requested, within thirty (30) calendar days of receipt of the written notice of academic distress status from the Department.
- 10.04.4 ~~The Board shall render a written decision of a classification on a district’s appeal of identification as an Academic Distress school district within sixty (60) calendar days of the district’s written request.~~ The State Board shall hear the appeal of the school district within sixty (60) days of receipt of the written appeal in the Commissioner’s office.
- 10.04.5 ~~The decision of the Board~~ State Board’s determination shall be final with no further right of appeal, except that a school district may appeal to the Circuit Court of Pulaski County pursuant to Pulaski County Circuit Court under the Arkansas Administrative Procedure Act, Ark. Code Ann. § 25-15-201, et seq. ~~the Administrative Procedures Act, A.C. A. §25-15-201 et seq.~~
- 10.04.6 A school district or public school identified by the Department as being in academic distress shall be classified as a school

district or public school in academic distress upon final determination by the State Board.

#### 10.05 Time Limitation of Academic Distress Status

- 10.05.1 A Except as otherwise set forth in these Rules and Ark. Code Ann. § 6-15-429 and § 6-15-430, a public school or public school district identified as in academic distress shall have no more than ~~two (2)~~ five (5) consecutive school years beginning on July 1 following the date of notice of identification to be removed from academic distress status from the date of classification of academic distress status to be removed from academic distress status.
- 10.05.2 The State Board may at any time take enforcement action on any school district in academic distress status including, but not limited to including without limitation, annexation, consolidation, or reconstitution of a school district pursuant to A.C.A. Ark. Code Ann. § 6-13-1401 et seq. and the authority of Title 6, Chapter 15, Subchapter 4 of the Arkansas Code.
- ~~10.05.3 If a public school district fails to be removed from academic distress status within the allowed two (2) year time period, the Board shall annex, consolidate or reconstitute the academic distress school district prior to July 1 of the next school year unless the Board, at its discretion, issues a written finding supported by a majority of the board, explaining in detail that the school district could not remove itself from academic distress during the relevant time period due to external forces beyond the school district's control.~~
- 10.05.3 The State Board may take enforcement action at any time on a public school in academic distress under these Rules and Title 6, Chapter 15, Subchapter 4 of the Arkansas Code.
- 10.05.4 Except as otherwise set forth in these Rules and Ark. Code Ann. § 6-15-429 and §6-15-430(d), a public school or school district shall not be allowed to remain in academic distress status for a time period greater than five (5) consecutive school years from the date of the classification of academic distress status.
- 10.05.5 The State Board may grant additional time for a public school or school district to remove itself from academic distress by issuing a written finding supported by a majority of the State Board explaining in detail that the public school or school district could not remove itself from academic distress during the relevant time period due to impossibility caused by external forces beyond the control of the public school or school district.



10.05.6 If a public school or school district classified as being in academic distress fails to be removed from academic distress status within the allowed five-year time period and has not been granted additional time under these Rules or Ark. Code Ann. § 6-15-429, the State Board shall annex, consolidate, or reconstitute the public school or school district before July 1 of the next school year.

10.06 Procedures for assisting school districts in academic distress

- 10.06.1 Within thirty (30) calendar days of classification by the State Board, each ~~Academic Distress~~ public school and public school district in academic distress shall develop and file with the Department a modified Comprehensive School Improvement Plan (District Plan) to target and address any area in which the public school or public school district is experiencing academic distress.
- 10.06.2 Within fifteen (15) calendar days of classification by the State Board, the Department shall assign a team of educators to evaluate the public school or public school district and determine the need for on-site technical assistance or technical assistance via distance technology.
- 10.06.3 The team of educators shall evaluate and make recommendations to the public school or public school district superintendent within sixty (60) calendar days following the school's or district's classification as an Academic Distress school district being in academic distress.
- 10.06.4 Public schools and public school ~~School~~ districts classified as Academic Distress being in academic distress shall provide access to all school and district assessment, instruction, personnel and academic records and reports to assist the team in the formulation of the recommendations for improvement.
- 10.06.5 The Department, with assistance from the team of educators, shall review the data relative to the academic status and performance of students in the ~~Academic Distress~~ academically distressed public school or public school district.
- 10.06.6 Following the on-site review, the team of educators will submit a written set of recommendations to the ~~Academic Distress school district~~ academically distressed public school or public school district.
- 10.06.7 The Department shall provide relevant technical assistance to each identified public school or public school district based upon the needs identified in the Comprehensive School Improvement Plan.

10.087 Procedures for evaluating and removal of public schools and public school districts from academic distress status

10.087.1 The Department shall review and annually report to the Board the academic conditions existing in each ~~Academic Distress school district~~ academically distressed public school or public school district.

10.087.2 A public school or public school district designated in Academic Distress shall be removed from Academic Distress only upon vote of a majority of the quorum present of the State Board and only after the Department has certified in writing to the State Board that the school district has corrected all criteria for being classified as in academic distress.

11.0 State Board Authority

11.01 The Board shall have the following authority regarding any public school district in academic distress:

~~11.01.1 Require the superintendent of the school district to relinquish all authority with respect to the district and to appoint an individual to administratively operate the school district under the supervision of the Commissioner of Education, with the cost to be paid from school district funding;~~

~~11.01.2 Suspend or remove some or all of the current board of directors and call for the election of a new school board of directors for the school district, in which case the school district shall reimburse the county board of election commissioners for election costs as otherwise required by law.~~

~~11.01.3 Allow the school district to operate without the local school board of directors under the supervision of the local school district administration or an administration chosen by the Commissioner of Education.~~

~~11.01.4 Waive the application of Arkansas law, with the exception of the Teacher Fair Dismissal Act of 1983, A.C.A. § 6-17-1501 et seq., and the Public School Employee Fair Hearing Act, A.C.A. § 6-17-1701 et seq., or Department Rules.~~

~~11.01.5 Require the annexation, consolidation, or reconstitution of the public school district.~~

~~11.01.6 The Board has exclusive jurisdiction to determine the boundary lines of the receiving or resulting school district and to allocate assets and liability of the district.~~

- ~~11.01.7 Take any other necessary and proper action as determined by the Board that is allowed by law.~~
- ~~11.01.8 After providing thirty (30) calendar days written notice, via certified mail return receipt requested, to a school district, the Department may petition the Board or the Board on its own motion, at any time, may take action pursuant to this section 11.0 as allowed by Act 1467 of 2003, in order to secure and protect the best interest of students in the public school district or to secure and protect the best interest of the educational resources of the state.~~
- ~~11.01.9 The School District shall have a right of appeal to a public hearing before the Board after filing a written notice of appeal with the office of the Commissioner of the Department at least thirty (30) calendar days prior to the appeal hearing.~~
- ~~11.01.10 The State Board shall consolidate, annex or reconstitute a school district that fails to remove itself from the classification of a school district in academic distress within two (2) consecutive school years of receipt of notice of identification unless the Board, at its discretion, issues a written finding supported by a majority of the Board, explaining in detail that the school district could not remove itself from academic distress due to impossibility caused by external forces beyond the school district's control.~~
- ~~11.01.11 After a public hearing, the Board shall consolidate, annex, or reconstitute the school district in academic distress to another non-academic distress school district upon a majority vote of a quorum of the members of the Board as permitted or required by this subchapter.~~
- ~~11.01.12 The Board's classification of a school district in Academic Distress shall be final except that the school district shall have a right of appeal to the Circuit Court of Pulaski County pursuant to the Arkansas Administrative Procedures Act, A.C.A. § 25-15-201 et seq.~~
- 11.01.1 Remove permanently, reassign, or suspend on a temporary basis the superintendent of the school district and:
- 11.01.1.1. Appoint an individual in place of the superintendent to administratively operate the school district under the supervision and approval of the Commissioner of Education; and
- 11.01.1.2 Compensate from school district funds the individual appointed to operate the school district;

- 11.01.2 Suspend or remove some or all of the current board of directors and call for the election of a new board of directors for the school district, in which case the school district shall reimburse the county board of election commissioners for election costs as otherwise required by law;
- 11.01.3 Require the school district to operate without a board of directors under the supervision of the superintendent or an individual or panel appointed by the Commissioner of Education;
- 11.01.4 Waive the application of Arkansas law, with the exception of The Teacher Fair Dismissal Act of 1983, Ark. Code Ann. § 6-17-1501 et seq., and the Public School Employee Fair Hearing Act, Ark. Code Ann. § 6-17-1701 et seq., or the corresponding State Board rules and regulations;
- 11.01.5 Require the annexation, consolidation, or reconstitution of the school district;
- 11.01.6 In the absence of a board of directors, direct the Commissioner to assume all authority of the board of directors as may be necessary for the day-to-day governance of the school district;
- 11.01.7 Return the administration of the school district to the former board of directors or to a newly elected board of directors if:
- 11.01.7.1 The Department of Education certifies in writing to the State Board and to the school district that the school district has corrected all issues that caused the classification of academic distress; and
- 11.01.7.2 The State Board determines that the school district has corrected all issues that caused the classification of academic distress; and
- 11.01.8 Take any other necessary and proper action, as determined by the State Board, that is allowed by law.
- 11.02 The State Board shall have the following authority regarding any public school in academic distress:
- 11.02.1 Require the reorganization of the public school or reassignment of the administrative, instructional, or support staff of the public school;
- 11.02.2 Require the public school to institute and fully implement a student curriculum and professional development for teachers and administrators that are based on state academic content

and achievement standards, with the cost to be paid by the school district in which the public school is located;

- 11.02.3 Require the principal of the public school to relinquish all authority with respect to the public school;
- 11.02.4 Waive the application of Arkansas law or the corresponding State Board rules, with the exception of:
- 11.02.4.1 The Teacher Fair Dismissal Act of 1983, Ark. Code Ann. § 6-17-1501 et seq.; and
- 11.02.4.2 The Public School Employee Fair Hearing Act, Ark. Code Ann. § 6-17-1701 et seq.;
- 11.02.5 Under The Teacher Fair Dismissal Act of 1983, Ark. Code Ann. § 6-17-1501 et seq., reassign or remove some or all of the licensed personnel of the public school and replace them with licensed personnel assigned or hired under the supervision of the Commissioner;
- 11.02.6 Remove the public school from the jurisdiction of the school district in which the public school is located and establish alternative public governance and supervision of the public school;
- 11.02.7 Require closure or dissolution of the public school;
- 11.02.8 Remove permanently, reassign, or suspend on a temporary basis the superintendent of the school district in which the public school is located. If the State Board takes an action under Section 11.02.8 of these Rules, it may appoint an individual in place of the superintendent to administratively operate the school district under the supervision and approval of the commissioner and compensate the appointed individual;
- 11.02.9 Take one (1) or more of the actions under Section 11.01 of these Rules concerning the public school district where the school is located;
- 11.02.10 Return the administration of the school district to the former board of directors or to a newly elected board of directors if:
- 11.02.10.1 The Department certifies in writing to the State Board and to the school district that the public school has corrected all issues that caused the classification of academic distress and that no public school within the school district is classified as being in academic distress; and

11.02.10.2 The State Board determines the public school has corrected all issues that caused the classification of academic distress and that no public school within the school district is classified as being in academic distress; and

11.02.11 Take any other appropriate action allowed by law that the State Board determines is needed to assist and address a public school classified as being in academic distress.

11.03 If the State Board or the Commissioner assumes authority over a public school district in academic distress under Sections 11.01 or 11.02 of these Rules, the State Board may pursue the following process for returning a public school district to the local control of its residents:

11.03.1 During the second school year following a public school's or school district's classification of academic distress status, the State Board shall determine the extent of the public school or school district's progress toward correcting all criteria for being classified as in academic distress;

11.03.2 If the State Board determines that sufficient progress has been made by a public school or school district in academic distress toward correcting all issues that caused the classification of academic distress, but the public school or school district has not yet resolved all issues that caused the classification of academic distress, the Commissioner, with the approval of the State Board, may appoint a community advisory board of either five (5) or seven (7) members to serve under the supervision and direction of the Commissioner.

11.03.2.1 The members of the community advisory board shall be residents of the school district and shall serve on a voluntary basis without compensation.

11.03.2.2 The Department shall cause to be provided to the community advisory board technical assistance and training in, at a minimum, the areas required in Ark. Code Ann. § 6-13-629.

11.03.2.3 The duties of a community advisory board include without limitation:

11.03.2.3.1 Meeting monthly during a regularly scheduled public meeting with the state-appointed administrator regarding the progress of the public school or school district toward correcting all issues that caused the classification of academic distress;

- 11.03.2.3.2 Seeking community input from the residents of the school district regarding the progress of the public school or school district toward correcting all issues that caused the classification of academic distress;
- 11.03.2.3.3 Conducting hearings and making recommendations to the Commissioner regarding personnel and student discipline matters under the appropriate district policies;
- 11.03.2.3.4 Working to build community capacity for the continued support of the school district; and
- 11.03.2.3.5 Submitting quarterly reports to the Commissioner and the State Board regarding the progress of the public school or school district toward correcting all issues that caused the classification of academic distress.
- 11.03.2.3.6 The members of the community advisory board shall serve at the pleasure of the Commissioner until the school district is returned to local control and a permanent board of directors is elected and qualified; or the State Board annexes, consolidates, or reconstitutes the school district under Ark. Code Ann. § 6-15-430 or under another provision of law;
- 11.03.2.4 By April 1 of each year following the appointment of a community advisory board under 11.03.2 of these Rules, the State Board shall determine the extent of the public school or school district's progress toward correcting all issues that caused the classification of academic distress and shall:
- 11.03.2.4.1 Allow the community advisory board to remain in place for one (1) additional year;
- 11.03.2.4.2 Return the school district to local control by calling for the election of a newly elected board of directors if the Department certifies in writing to

the State Board and to the school district that the public school or school district has corrected all issues that caused the classification of academic distress and that no public school within the school district is classified as being in academic distress; and the State Board determines the public school or school district has corrected all issues that caused the classification of academic distress and that no public school within the school district is classified as being in academic distress; or

11.03.2.4.3 Annex, consolidate, or reconstitute the school district pursuant to Title 6 of the Arkansas Code.

11.03.2.5 If the State Board calls for an election of a new school district board of directors, the school district shall reimburse the county board of election commissioners for election costs as otherwise required by law.

11.03.2.6 If the State Board calls for an election of a new school district board of directors, the Commissioner, with the approval of the State Board, may appoint an interim board of directors to govern the school district until a permanent school district board of directors is elected and qualified.

11.03.2.6.1 The interim board of directors shall consist of either five (5) or seven (7) members.

11.03.2.6.2 The members of the interim board of directors shall be residents of the school and otherwise eligible to serve as school district board members under applicable law.

11.03.2.6.3 The members of the interim board of directors shall serve on a voluntary basis without compensation.

11.04 If, by the end of the fifth school year following the public school or public school district's classification of academic distress status, the public school or school district in academic distress has not corrected all issues that caused the classification of academic distress, the State Board, after



a public hearing, shall consolidate, annex, or reconstitute the school district pursuant to Ark. Code Ann. § 6-15-430.

11.04.1 The State Board may grant additional time for a public school or school district to remove itself from academic distress by issuing a written finding supported by a majority of the State Board explaining in detail that the public school or school district could not remove itself from academic distress during the relevant time period due to impossibility caused by external forces beyond the control of the public school or school district.

11.05 Nothing in these Rules shall be construed to prevent the Department or the State Board from taking any of the actions listed in these Rules or in Ark. Code Ann. § 6-15-430 at any time to address public schools and school districts in academic distress.

11.026 To transition to and implement the Common Core State Standards, the Board shall have the authority to:

11.026.1 Modify curriculum and assessment requirements;

11.026.2 Adopt new curriculum and assessment requirements; and

11.026.3 Direct the Department of Education to:

11.026.3.1 Propose to the state board rules and procedures; and

11.026.3.2 Develop the professional development needed to train educators on the transition and implementation.

## 12.0 School Choice and Academic Distress

12.01 Any student attending a public school or public school district classified as being in academic distress ~~shall~~ is automatically be eligible and entitled pursuant to ~~A.C.A. § 6-18-206, the "Arkansas Public School Choice Act",~~ under the Public School Choice Act of 2013, Ark. Code Ann. § 6-18-1901 et seq., or the Arkansas Opportunity Public School Choice Act of 2004, Ark. Code Ann. § 6-18-227, to transfer to another ~~geographically contiguous public school or public school district~~ not in academic distress during the time period that ~~a~~ the resident public school or public school district is classified as being in academic distress, ~~and therefore, not be required to file a petition by July 1 but shall meet all other requirements and conditions of the Arkansas Public School Choice Act.~~

12.02 The cost of ~~student transportation~~ transporting the student from the resident district to the nonresident district shall be borne by the cost of the resident district pursuant to under the Arkansas Opportunity Public School Choice Act of 2004, Ark. Code Ann. § 6-18-227.

~~12.03 The nonresident district shall count the student for average daily membership purposes.~~

### 13.00 Elementary and Secondary Education Act (ESEA) Flexibility Provisions

On June 29, 2012, the United States Department of Education (~~USDOE~~ US Ed) approved the Arkansas Department of Education's (ADE) request for flexibility from certain provisions of the ESEA. The approved ESEA flexibility request can be found at:

~~<http://www.arkansased.org/public/userfiles/Flexibility/AR%20Final%206.18.12%20Revised%20.pdf>~~

[http://www.arkansased.org/public/userfiles/ESEA/AR\\_ESEA\\_Flexibility\\_Amended\\_10252012.pdf](http://www.arkansased.org/public/userfiles/ESEA/AR_ESEA_Flexibility_Amended_10252012.pdf)

The ADE's ESEA flexibility request, as it existed on July 9, 2012, is hereby incorporated into these Rules by reference. Key components of the ESEA flexibility requirements are noted below.

#### 13.01 The ~~USDOE~~ US Ed approved the following waivers of ESEA for the State of Arkansas:

- 13.01.1 The requirements in ESEA section 1111(b)(2)(E)-(H) that prescribe how an SEA must establish annual measurable objectives (AMOs) for determining adequate yearly progress (AYP) to ensure that all students meet or exceed the State's proficient level of academic achievement on the State's assessments in reading/language arts and mathematics no later than the end of the 2013–2014 school year. Arkansas requested this waiver to develop new ambitious but achievable AMOs in reading/language arts and mathematics in order to provide meaningful goals that are used to guide support and improvement efforts for the State, LEAs, schools, and student subgroups.
- 13.01.2 The requirements in ESEA section 1116(b) for an LEA to identify for improvement, corrective action, or restructuring, as appropriate, a Title I school that fails, for two consecutive years or more, to make AYP, and for a school so identified and its LEA to take certain improvement actions. Arkansas requested this waiver so that an LEA and its Title I schools need not comply with these requirements.
- 13.01.3 The requirements in ESEA section 1116(c) for an SEA to identify for improvement or corrective action, as appropriate, an LEA that, for two consecutive years or more, fails to make AYP, and for an LEA so identified and its SEA to take certain improvement actions. Arkansas requested this waiver so that it need not comply with these requirements with respect to its LEAs.
- 13.01.4 The requirements in ESEA sections 6213(b) and 6224(e) that limit participation in, and use of funds under the Small, Rural School

Achievement (SRSA) and Rural and Low-Income School (RLIS) programs based on whether an LEA has made AYP and is complying with the requirements in ESEA section 1116. Arkansas requested this waiver so that an LEA that receives SRSA or RLIS funds may use those funds for any authorized purpose regardless of whether the LEA makes AYP.

- 13.01.5 The requirement in ESEA section 1114(a)(1) that a school have a poverty percentage of 40 percent or more in order to operate a schoolwide program. Arkansas requested this waiver so that an LEA may implement interventions consistent with the turnaround principles or interventions that are based on the needs of the students in the school and designed to enhance the entire educational program in a school in any of its priority and focus schools that meet the definitions of “priority schools” and “focus schools,” respectively, set forth in the document titled *ESEA Flexibility*, as appropriate, even if those schools do not have a poverty percentage of 40 percent or more.
- 13.01.6 The requirement in ESEA section 1003(a) for an SEA to distribute funds reserved under that section only to LEAs with schools identified for improvement, corrective action, or restructuring. Arkansas requested this waiver so that it may allocate section 1003(a) funds to its LEAs in order to serve any of the State’s priority and focus schools that meet the definitions of “priority schools” and “focus schools,” respectively, set forth in the document titled *ESEA Flexibility*.
- 13.01.7 The provision in ESEA section 1117(c)(2)(A) that authorizes an SEA to reserve Title I, Part A funds to reward a Title I school that (1) significantly closed the achievement gap between subgroups in the school; or (2) has exceeded AYP for two or more consecutive years. Arkansas requested this waiver so that it may use funds reserved under ESEA section 1117(c)(2)(A) for any of the State’s reward schools that meet the definition of “reward schools” set forth in the document titled *ESEA Flexibility*.
- 13.01.8 The requirements in ESEA section 2141(a), (b), and (c) for an LEA and SEA to comply with certain requirements for improvement plans regarding highly qualified teachers. Arkansas requested this waiver to allow the SEA and its LEAs to focus on developing and implementing more meaningful evaluation and support systems.
- 13.01.9 The limitations in ESEA section 6123 that limit the amount of funds an SEA or LEA may transfer from certain ESEA programs to other ESEA programs. Arkansas requested this waiver so that it and its LEAs may transfer up to 100 percent of the funds it receives under the authorized programs among those programs and into Title I, Part A.

- 13.01.10 The requirements in ESEA section 1003(g)(4) and the definition of a Tier I school in Section I.A.3 of the School Improvement Grants (SIG) final requirements. Arkansas requested this waiver so that it may award SIG funds to an LEA to implement one of the four SIG models in any of the State's priority schools that meet the definition of "priority schools" set forth in the document titled *ESEA Flexibility*.
- 13.02 ~~USDOE~~ US Ed Flexibility Principle 1: College and Career-Ready Expectations for All Students
- 13.02.1 Definition of College and Career Ready: The acquisition of the knowledge and skills a student needs to be successful in all future endeavors including credit-bearing, first-year courses at a postsecondary institution (such as a two- or four-year college, trade school, or technical school) or to embark successfully on a chosen career. The State Board will make its determination of the requisite scale score of student performance on college and career readiness measurements used for college placement in conjunction with the Arkansas Higher Education Coordinating Board.
- 13.02.1 The State Board voted to participate in the Common Core State Standards for English Language Arts (ELA) and Mathematics in July 2010.
- 13.02.2 The following timeline will lead to full implementation of the Common Core State Standards during the 2013-2014 school year:
- 13.02.2.1 Grades K-2 implemented the Common Core State Standards during the 2011-2012 school year.
- 13.02.2.2 Grades 3-8 will implement the Common Core State Standards during the 2012-2013 school year.
- 13.02.2.3 Grades 9-12 will implement the Common Core State Standards during the 2013-2014 school year.
- 13.03 ~~USDOE~~ US Ed Flexibility Principle 2: State-Developed Differentiated Recognition, Accountability and Support
- 13.03.1 The requirements contained within Section 13.03 of these rules shall comprise the Arkansas Differentiated Accountability, Recognition and Tiered-Support System (DARTSS).
- 13.03.2 The goals of DARTSS are, without limitation:
- 13.03.2.1 To move toward a unified federal and state accountability system beginning in 2012-2013; and

- 13.03.2.2 To establish the flexibility and opportunity to direct additional resources to schools with the lowest achieving students.
- 13.03.3 DARTSS differs from the current ESEA accountability system in the following ways:
  - 13.03.3.1 The ESEA goal of 100 percent (100%) proficient by 2013-2014 is hereby replaced with a new goal of reducing proficiency gaps by half by the 2016-2017 school year.
  - 13.03.3.2 Traditional ESEA accountability status labels are replaced by accountability and assistance levels for all schools.
  - 13.03.3.3 Adequate Yearly Progress (AYP) is replaced with accountability levels based upon Annual Measurable Objectives (AMOs) for public schools and school districts.
  - 13.03.3.4 Performance (proficiency), growth and graduation rate indicators will now use a minimum N, or sample size, of 25 students for accountability purposes.
  - 13.03.3.5 DARTSS will place enhanced focus on subgroups through the Targeted Achievement Gap Group (TAGG)
  - 13.03.3.6 Federal SES and school choice requirements are replaced by supports and interventions responsive to identified needs of students and schools.
- 13.04 The following groups of students will be included in DARTSS for the purposes of determining accountability status for school districts and schools:
  - 13.04.1 All Students Group: All students in the school and school district.
  - 13.04.2 Targeted Achievement Gap Group (TAGG), which includes the following students:
    - 13.04.2.1 Economically Disadvantaged;
    - 13.04.2.2 English Learners (EL); and
    - 13.04.2.3 Students with Disabilities (SWD).

- 13.05 The following groups of students will be included in DARTSS for the purposes of ACSIP and ESEA reporting:
- 13.05.1 African-American;
  - 13.05.2 Hispanic;
  - 13.05.3 White;
  - 13.05.4 Economically Disadvantaged;
  - 13.05.5 English Learners; and
  - 13.05.6 Students with Disabilities.
- 13.06 Each group of students shall be measured according to the following Annual Measurable Objectives (AMOs):
- 13.06.1 Math Proficiency;
  - 13.06.2 Math Growth (Grades 4-8);
  - 13.06.3 Literacy Proficiency;
  - 13.06.4 Literacy Growth (Grades 4-8); and
  - 13.06.5 Graduation Rate (High School).
- 13.07 AMO Calculations
- 13.07.1 The ADE shall give schools and school districts full credit for meeting a particular AMO when the growth, performance or graduation rate meets or exceeds ninety-four percent (94%).
  - 13.07.2 The ADE shall initially calculate performance (proficiency) and growth AMOs based upon 2011 test results.
  - 13.07.3 The ADE shall use a lagging graduation rate in its annual accountability determination.
    - 13.07.3.1 The ADE shall calculate graduation rate AMOs using 2010 four-year cohort graduation rates in accordance with its flexibility proposal.
  - 13.07.4 AMO calculations will be based upon a minimum N of 25. For schools with too few students to calculate the AMO in 2011, the AMO calculations shall be based on a two (2)-year weighted average.

13.07.5 In order to be eligible to be classified as Achieving or Exemplary, schools and school districts must test ninety-five percent (95%) of students in the All Students and TAGG groups.

#### 13.08 DARTSS Accountability Labels

13.08.1 School districts shall be broadly classified as either:

13.08.1.1 Achieving; or

13.08.1.2 Needs Improvement.

13.08.1.3 School districts will be broadly classified based upon criteria similar to that used for the classification of individual schools. To be classified as “Achieving,” a school district must meet performance or growth AMOs for math and literacy for All Students and the TAGG, as well as graduation rate AMOs for All Students and the TAGG.

13.08.2 ADE engagement and school district autonomy shall be determined by the extent of the needs identified within the district. The extent of needs will be identified based upon the presence of identified Needs Improvement Focus and Needs Improvement Priority schools in the district, the number and type of AMOs not met for performance, growth, and graduation rate, and the number of district AMOs not met for performance, growth and graduation rate.

13.08.3 Individual schools within school districts shall be classified as one of the following:

13.08.3.1 Exemplary;

13.08.3.2 Achieving;

13.08.3.3 Needs Improvement;

13.08.3.4 Needs Improvement (Focus); or

13.08.3.5 Needs Improvement (Priority).

13.08.3.5.1 Within a time period determined by the ADE, a school classified as a Needs Improvement (Priority) school must develop and file with the ADE a Priority Improvement Plan (PIP) that is integrated into the school’s ACSIP plan.

13.08.3.5.2 A school district with a Needs Improvement (Priority) school that has not made the progress required under the school's Priority Improvement Plan (PIP) may be identified by the ADE as a school district in academic distress.

13.08.4 The following table lists the ADE engagement and district autonomy associated with school accountability status:

Status	Description	ADE Engagement/District Autonomy
<b>Exemplary</b>	<ul style="list-style-type: none"> <li>• High Performance</li> <li>• High Progress</li> <li>• High TAGG high performance</li> <li>• High TAGG high progress</li> </ul>	<ul style="list-style-type: none"> <li>• Very low ADE engagement</li> <li>• Very high district autonomy</li> </ul>
<b>Achieving</b>	<ul style="list-style-type: none"> <li>• Three-year ACSIP – Meet all performance, graduate rate and growth AMOs for All Students Group and TAGG</li> <li>• One-year ACSIP – Meet all performance and graduation rate AMOs for All Students Group and TAGG, but miss growth AMOs for All Students Group or TAGG</li> </ul>	<ul style="list-style-type: none"> <li>• Very low ADE engagement</li> <li>• High district autonomy</li> </ul>
<b>Needs Improvement</b>	<ul style="list-style-type: none"> <li>• Does not meet performance, graduation rate or growth AMOs for All Students and TAGG</li> </ul>	<ul style="list-style-type: none"> <li>• Low to moderate ADE engagement</li> <li>• Moderate district autonomy</li> </ul>
<b>Needs Improvement – Focus</b>	<ul style="list-style-type: none"> <li>• Schools with largest, persistent gaps between non-TAGG and TAGG students</li> <li>• Graduation rates less than sixty percent (60%) over a period of several years and</li> </ul>	<ul style="list-style-type: none"> <li>• High ADE engagement</li> <li>• Low district autonomy</li> </ul>



	which are not classified as Needs Improvement – Priority schools.	
<b>Needs Improvement – Priority</b>	<ul style="list-style-type: none"> <li>Schools with persistently lowest achievement in math and literacy over three years for the All Students Group</li> <li>Graduation rates less than sixty percent (60%) over a period of several years.</li> </ul>	<ul style="list-style-type: none"> <li>Very high ADE engagement</li> <li>Low district autonomy</li> </ul>

### 13.09 Strategic Use of Title I Funds

- 13.09.1 School districts may use the flexibility granted by the USDOE US Ed to help lowest performing schools make targets by:
- 13.09.1.1 Serving the lowest performing schools with Title I and/or NSLA funding using the most appropriate methods aligned to identified student and adult learning needs;
- 13.09.1.2 Designating any Needs Improvement (Focus) or Needs Improvement (Priority) school as a Title I schoolwide program school, even if the school does not have a poverty percentage of forty percent (40%) or more; and
- 13.09.1.3 Transferring up to one hundred percent (100%) of the school district's Title II-A funds into Title I and using them for Title I purposes.
- 13.09.2 School districts have the following continuing obligations for the use of Title I-A Funds:
- 13.09.2.1 Prioritize the school district's lowest achieving students in its lowest performing schools;
- 13.09.2.2 Allocate Title I-A funds equal to the scope of the problem; and
- 13.09.2.3 Demonstrate alignment of federal and NSLA allocations sufficient to support implementation of interventions.

### 13.10 Process for Notification and Review

- 13.10.1 Prior to the first possible day of school, as defined by Ark. Code Ann. § 6-10-106, the Arkansas Department of Education shall notify the school board president and superintendent of each public school district of the following in writing, via certified mail, return receipt requested:
- 13.10.1.1 The school district's preliminary classification under Section 13.08.1 of these rules; and
  - 13.10.1.2 The preliminary classification of each individual school within a school district under Section 13.08.3 of these rules.
- 13.10.2 Contemporaneous with the notice required by Section 13.10.1 of these rules, the Arkansas Department of Education shall make available to the school board president and superintendent the data upon which the preliminary classifications of school districts and individual public schools were based.
- 13.10.3 School districts shall have thirty (30) days from receipt of the notification required by Section 13.10.1 of these rules to review the data upon which the preliminary classifications of school districts and individual public schools were based, to submit to the Arkansas Department of Education any requests for corrections to the data, and to submit any other reason(s) for which the preliminary classifications should be modified. School districts may request revisions to the preliminary classifications for school districts and individual public schools during the same thirty (30) day period.
- 13.10.4 Prior to January 1 of each school year, the Arkansas Department of Education shall review the information submitted by school districts pursuant to Section 13.10.3 of these rules and publish a final classification for each school district and individual public school.

### 13.11 ~~USDOE~~ US Ed Flexibility Principle 3: Supporting Effective Instruction and Leadership

Arkansas's requirements for supporting effective instruction and leadership may be found in the Teacher Excellence and Support System (Ark. Code Ann. § 6-17-2801 et seq.) and the Arkansas Department of Education Rules Governing the Teacher Excellence and Support System.

**ARKANSAS DEPARTMENT OF EDUCATION  
RULES IDENTIFYING AND GOVERNING  
THE ARKANSAS FISCAL ASSESSMENT AND ACCOUNTABILITY PROGRAM  
March 2014**

**1.00 AUTHORITY**

- 1.01 The Arkansas State Board of Education enacted these rules pursuant to Ark. Code Ann. § 6-11-105, Ark. Code Ann. § 6-20-1901 et seq., ~~and~~ Ark. Code Ann. § 25-15-201 et seq. and Act 600 of 2013.
- 1.02 These rules shall be known as the Arkansas Department of Education Rules Governing the Arkansas Fiscal Assessment and Accountability Program.

**2.00 PURPOSE**

- 2.01 The purpose of these rules is to establish how the Department and State Board will evaluate, assess, identify, classify and address school districts in fiscal distress.

**3.00 DEFINITIONS**

- 3.01 “Annexation”– the joining of an affected school district or part of an affected school district with a receiving district pursuant to Ark. Code Ann. § 6-13-1401 et seq.
- 3.02 “Capital Outlay Expenditures” – land, land improvements, buildings, infrastructure and equipment having a unit value of \$1,000 or more and a life expectancy of more than one year.
- 3.03 “Consolidation” - the joining of two (2) or more school districts or parts of the districts to create a new single school district pursuant to Ark. Code Ann. § 6-13-1401 et seq.
- 3.04 “Current Year Expenditures” - the total expenditures accruing to the combined teacher salary, operating, and debt service funds, excluding restricted funds.
- 3.05 “Current Year Revenues” - the total revenues accruing to the combined teacher salary, operating, and debt service funds, excluding restricted funds.

- 3.06 “Day” – unless otherwise set forth in these rules, a calendar day, regardless of whether it is a day the Department conducts official governmental business.
- 3.07 “Debt” – a legal liability, encumbrance or contract, including employment contracts, to be paid out of future revenues or current reserves of the district.
- 3.08 “Declining Balance” – balance resulting when current year expenditures exceed current year revenues.
- 3.09 “Department” - the Arkansas Department of Education.
- 3.10 “The Fiscal Distress Financial Improvement Plan (Plan)” - the written plan submitted by a district classified in fiscal distress and approved by the Department to be implemented by the district addressing each indicator of fiscal distress identified by the Department and the State Board with a specific corrective action plan and timeline.
- 3.11 “Fiscal Distress Status” – the status of a public school district determined (identified) by the Arkansas Department of Education and classified by the State Board as being placed in fiscal distress status pursuant to Ark. Code Ann. § 6-20-1901 et seq. and these rules.
- 3.12 “Fiscal Integrity” - to comply with financial management, accounting, auditing, and reporting procedures and facilities management procedures as required by state and federal laws and regulations in a forthright and timely manner.
- 3.13 “Jeopardize” - to expose to loss or injury or peril.
- 3.14 “Material Failure, Violation, Default, or Discrepancies” – an act, omission, event, circumstances or combination thereof that directly jeopardizes the fiscal integrity of a school district.
- 3.15 “Non-Material Failure, Violation, Default, or Discrepancies” – an act, omission, event, circumstance, or combination thereof, that does not directly jeopardize the fiscal integrity of a school district, but without intervention could place the school district in fiscal distress.
- 3.16 “Public School or School District” - a public school or school district created or established pursuant to Title 6 of the Arkansas Code and subject to the Arkansas Comprehensive Testing Assessment and Accountability Program except specifically excluding those schools or educational programs created by or receiving authority to exist pursuant to Ark. Code Ann. § 6-15-501; Ark. Code Ann. § 9-28-205 and Ark. Code Ann. § 12-29-301 et seq., or other provisions of Arkansas law.

- 3.17 “Reconstitution” – the reorganization of the administrative unit or the governing school board of directors of a school district, including, but not limited to, the replacement or removal of a current superintendent or the removal or replacement of a current school board of directors or both;
- 3.18 “Restricted Funds” – funds accruing to the teacher salary, operating and debt service funds that can be used only for specific purposes as stated in law or in accordance with a grant award (such as NSLA, ALE, ELL, Professional Development).
- 3.19 “School Year” - a school year beginning July 1 of one calendar year and ending June 30 of the following calendar year.
- 3.20 “State Board” - the Arkansas State Board of Education.

#### **4.00 INDICATORS OF FISCAL DISTRESS**

- 4.01 A school district meeting any of the following criteria may be identified by the Department to be a school district in fiscal distress upon final approval by the State Board:
- 4.01.1 A declining balance determined to jeopardize the fiscal integrity of a school district. However, capital outlay expenditures for academic facilities from a school district balance shall not be used to put the school district in fiscal distress.
- 4.01.2 An act or violation determined to jeopardize the fiscal integrity of a school district, including without limitation:
- 4.01.2.1 Material failure to properly maintain school facilities;
- 4.01.2.2 Material violation of local, state, or federal fire, health, or safety code provisions or law;
- 4.01.2.3 Material violation of local, state, or federal construction code provisions or law;
- 4.01.2.4 Material state or federal audit exceptions or violations;
- 4.01.2.5 Material failure to provide timely and accurate legally required financial reports to the Department, the Division of Legislative Audit, the General Assembly, or the Internal Revenue Service;
- 4.01.2.6 Insufficient funds to cover payroll, salary, employment benefits, or legal tax obligations;

- 4.01.2.7 Material failure to meet legally binding minimum teacher salary schedule obligations;
  - 4.01.2.8 Material failure to comply with state law governing purchasing or bid requirements;
  - 4.01.2.9 Material default on any school district debt obligation;
  - 4.01.2.10 Material discrepancies between budgeted and actual school district expenditures;
  - 4.01.2.11 Material failure to comply with audit requirements; or
  - 4.01.2.12 Material failure to comply with any provision of the Arkansas Code that specifically places a school district in fiscal distress based on noncompliance; or
- 4.01.3 Any other fiscal condition of a school district deemed to have a material detrimental negative impact on the continuation of educational services by that school district.

## **5.00 CLASSIFICATION OF FISCAL DISTRESS STATUS**

- 5.01 Those school districts identified by the Department as being in fiscal distress shall be classified as school districts in fiscal distress upon final determination (classification) by the State Board.
- 5.02 Any school district classified as in fiscal distress shall be required to publish at least one (1) time for two (2) consecutive weeks in a newspaper of general circulation in the school district the school district's classification as a school district in fiscal distress and the reasons why the school district was classified as being in fiscal distress.
  - 5.02.1 The district shall publish this announcement within 30 days of the final classification by the State Board.
  - 5.02.2 The newspaper of general circulation may be either a daily or weekly newspaper.
- 5.03 The provisions of subsections 5.01 and 5.02 of these rules are effective after the school district's appeal rights in Ark. Code Ann. § 6-20-1905 and section 6.00 of these rules have been exhausted.

**6.00 NOTIFICATION AND APPEAL**

- 6.01 The Department shall provide written notice, via certified mail, return receipt requested, to the president of the school board of directors and the superintendent of each school district identified as being in fiscal distress.
- 6.01.1 The Department shall provide the notice on or before March 30 of each year.
- 6.01.2 At any time after March 30, the Department may identify a school district as being in fiscal distress if the Department discovers that a fiscal condition of a school district negatively impacts the continuation of educational services by the school district. If this identification occurs, the Department shall immediately provide the same notice described in section 6.01 of these rules.
- 6.02 Any school district identified in fiscal distress status may appeal to the State Board by filing a written appeal with the Office of the Commissioner of Education, by certified mail return receipt requested, within thirty (30) days of receipt of notice of being identified in fiscal distress status from the Department.
- 6.03 The State Board shall hear the appeal within sixty (60) days of receipt of the written notice of appeal from the school district.
- 6.04 The written appeal shall state in clear terms the reason why the school should not be classified as in fiscal distress.
- 6.05 Notwithstanding any appeal rights in Ark. Code Ann. § 6-20-1901 et seq. and these rules, no appeal shall stay the Department's authority to take action to protect the fiscal integrity of any school district identified as in fiscal distress.
- 6.06 The following procedures shall apply to State Board hearings involving school districts that appeal a fiscal distress identification by the Department:
- 6.06.1 All persons wishing to testify before the State Board shall first be placed under oath by the Chairperson of the State Board.
- 6.06.2 The Department shall have up to thirty (30) minutes to present its case to the State Board as to why the school district identified as a district in fiscal distress should be classified as a school district in fiscal distress. The Chairperson of the State Board may allow additional time if necessary.
- 6.06.3 The appealing school district shall have up to thirty (30) minutes to present its case to the State Board as to why the school district should not be classified as a school district in fiscal distress. The Chairperson of the State Board may allow additional time if necessary.

- 6.06.4 The State Board may pose questions to any party at any time during the hearing.
- 6.06.5 The State Board shall then discuss, deliberate and vote upon the matter of the classification of fiscal distress.
- 6.06.6 If it deems necessary, the State Board may take the matter under advisement and announce its decision at a later date, provided that all discussions, deliberations and votes upon the matter take place in a public hearing.
- 6.06.7 The State Board shall issue a written order concerning the matter.
- 6.07 The decision of the State Board shall be a final order, and there is no further right of appeal except that the school district may appeal to Pulaski County Circuit Court pursuant to the Arkansas Administrative Procedure Act, Ark. Code Ann. § 25-15-201 et seq.

## **7.00 FISCAL DISTRESS IMPROVEMENT PLAN**

- 7.01 Those school districts classified by the State Board as being in fiscal distress shall file, with the Department within ten (10) days after the final classification, a written fiscal distress financial improvement plan to address any area in which the school district is experiencing fiscal distress as identified by the Department.
  - 7.01.1 The plan shall contain, at a minimum, the following elements:
    - 7.01.1.1 Identification of each indicator of fiscal distress;
    - 7.01.1.2 Specific corrective action steps for each indicator of fiscal distress;
    - 7.01.1.3 A timeline for the completion of each corrective action step;
    - 7.01.1.4 Additional corrective action steps the school district proposes to take; and
    - 7.01.1.5 A timeline for each additional corrective action step proposed by the school district.
  - 7.01.2 The Department is authorized to review and amend the plan submitted by the school district.
  - 7.01.3 The Department may edit, amend, update, or replace the plan at any time deemed appropriate.



- 7.01.4 The school district shall be given notice of the edited, amended, updated, or replacement plan criteria.
- 7.01.5 The district may appeal any edit, amendment or replacement of a plan by filing its written notice of appeal (which must include an explanation of its concerns) with the Commissioner of Education's Office within ten (10) days of receipt of the notice required in subsection 7.01.4. The appeal shall be heard at the next State Board meeting, and the State Board's decision shall be final.
- 7.02 Each school district shall seek and obtain approval of its plan from the Department and shall describe how the school district will remedy those areas in which the school district is experiencing fiscal distress and shall establish the time period by which the school district will remedy all criteria which placed the school district in fiscal distress status.
- 7.03 A school district in fiscal distress may only petition the State Board for removal from fiscal distress status after the Department has certified in writing that the school district has corrected all criteria for being classified as in fiscal distress and has complied with all Department recommendations and requirements for removal from fiscal distress.
- 7.04 Except as set forth in Ark. Code Ann. § 6-20-1910(d) and Section 10.05 of these Rules, a No school district shall not be allowed to remain in fiscal distress status for more than ~~two (2)~~ five (5) consecutive school years from the date that the school district was classified as being in fiscal distress status.
- 7.05 Any school district classified as being in fiscal distress status shall be required to receive on-site technical evaluation and assistance from the Department.
- 7.06 The Department shall evaluate and make written recommendations to the district superintendent regarding staffing and fiscal practices of the school district.
- 7.07 The written recommendations of the Department shall be binding on the school district, the superintendent and the school district board of directors.
- 7.08 Every six (6) months, the Department shall submit a written evaluation on the status of each school district in fiscal distress to the State Board.
- 7.09 The Department may petition the State Board at any time for the consolidation, annexation, or reconstitution of a school district in fiscal distress or take other appropriate action as allowed by Ark. Code Ann. § 6-20-1901 et seq. and these rules in order to secure and protect the best interest of the educational resources of the state or to provide for the best interests of students in the school district. The State Board may approve the petition or take other appropriate action as allowed by Ark. Code Ann. § 6-20-1901 et seq. and these rules.

- 7.10 Except as set forth in Ark. Code Ann. § 6-20-1910(d) and Section 10.05 of these Rules, The the State Board shall consolidate, annex, or reconstitute any school district that fails to remove itself from the classification of a school district in fiscal distress within ~~two (2)~~ five (5) consecutive school years of receipt of notice of identification classification of fiscal distress status by the Department unless the State Board, at its discretion, issues a written finding supported by a majority of the State Board, explaining in detail that the school district could not remove itself from fiscal distress due to impossibility caused by external forces beyond the school district's control.

## **8.00 DEBT ISSUANCE**

- 8.01 No school district identified in fiscal distress may incur any debt without the prior written approval of the Department.

## **9.00 DEPARTMENT FISCAL DISTRESS ACTIONS**

- 9.01 In addressing school districts in fiscal distress, the ~~Department~~ Commissioner of Education may take any number of the following actions:

- 9.01.1 ~~Require the superintendent to relinquish all administrative authority with respect to the school district~~ Remove permanently, reassign, or suspend on a temporary basis the superintendent of the school district and;

9.01.1.1 Appoint an individual in place of the superintendent to administratively operate the school district under the supervision and approval of the Commissioner; and

9.01.1.2 Compensate nondepartment agents operating the school district from school district funding;

- ~~9.01.2 Appoint an individual in place of the superintendent to administratively operate the school district under the supervision and approval of the Commissioner of Education, and to compensate non-department agents operating the school district from school district funding;~~

- ~~9.01.3 Call for the temporary suspension of the local school board of directors;~~

9.01.2 Suspend or remove some or all of the current board of directors and call for the election of a new board of directors for the school district, in which case the school district shall reimburse the county board of election commissioners for election costs as otherwise recognized by law;

- ~~9.01.43~~ Require the school district to operate without a local school board of directors under the supervision of the local superintendent or an individual or panel appointed by the Commissioner of Education;

9.01.4 Waive the application of Arkansas law or the corresponding State Board of Education rules with the exception of:

9.01.4.1 The Teacher Fair Dismissal Act of 1983, Ark. Code Ann. § 6-17-1501 et seq.; and

9.01.4.2 The Public School Employee Fair Hearing Act, Ark. Code Ann. § 6-17-1701 et seq;

9.01.5 Petition the State Board of Education for the annexation, consolidation, or reconstruction of the school district;

9.01.6 In the absence of a school district board of directors, assume all authority of the board of directors as designated by the State Board of Education as may be necessary for the day-to-day operation of the school district;

9.01.57 ~~Place~~ Return the administration of the school district ~~over~~ to the former board of directors or to a newly elected ~~school~~ board of directors; ~~or~~ if:

9.01.7.1 The Department certifies in writing to the State Board of Education and to the school district that the school district has corrected all issues that caused the classification of fiscal distress; and

9.01.7.2 The State Board of Education determines the school district has corrected all issues that caused the classification of fiscal distress.

9.01.7.3 If the Commissioner calls for an election of a new school district board of directors, the school district shall reimburse the county board of election commissioners for election costs as otherwise required by law;

9.01.8 Otherwise reconstitute the school district; or

9.01.69 Take any other action allowed by law that is deemed necessary to assist a school district in removing ~~criteria~~ the classification of fiscal distress.

9.02 The Department may impose various reporting requirements on the school district. The Department may review any and all school district records and documents.

9.03 The Department shall monitor the fiscal operations and accounts of the school district.

9.04 The Department shall require school district staff and employees to obtain fiscal instruction or training in areas of fiscal concern for the school district.

**10.00 STATE BOARD ACTIONS**

- 10.01 After a public hearing, the State Board of Education shall consolidate, annex, or reconstitute the school district in fiscal distress to another school district or school districts upon a majority vote of a quorum of the members of the State Board as permitted or required by Ark. Code Ann. § 6-20-1901 et seq. and these rules.
- 10.01.1 After providing thirty (30) days written notice, via certified mail, return receipt requested, to the superintendent and the president of the school board of directors, the Department may petition the State Board for the consolidation, annexation, or reconstitution of a school district in fiscal distress pursuant to Ark. Code Ann. § 6-20-1908 and subsection 7.09 of these rules.
- 10.01.2 After providing thirty (30) days written notice, via certified mail, return receipt requested, to the superintendent and the president of the school board of directors, the State Board, on its own motion, may consolidate, annex, or reconstitute the school district in fiscal distress as set forth in Ark. Code Ann. § 6-20-1910 and subsection 10.01 of these rules.
- 10.02 The following procedures shall apply to State Board hearings concerning the consolidation, annexation or reconstitution of a school district in fiscal distress:
- 10.02.1 All persons wishing to testify before the State Board shall first be placed under oath by the Chairperson of the State Board.
- 10.02.2 The Department shall have up to thirty (30) minutes to present its case to the State Board as to why the school district classified as a district in fiscal distress should be consolidated, annexed or reconstituted. The Chairperson of the State Board may allow additional time if necessary.
- 10.02.3 School districts and citizens' groups opposing the consolidation, annexation or reconstitution shall have up to a combined thirty (30) minutes to present their cases to the State Board as to why the school district classified as a district in fiscal distress should not be consolidated, annexed or reconstituted. The Chairperson of the State Board may allow additional time if necessary.
- 10.02.4 The State Board may pose questions to any party at any time during the hearing.
- 10.02.5 The State Board shall then discuss, deliberate and vote upon the matter of the consolidation, annexation or reconstitution of the school district classified as a district in fiscal distress.

- 10.02.6 If it deems necessary, the State Board may take the matter under advisement and announce its decision at a later date, provided that all discussions, deliberations and votes upon the matter take place in a public hearing.
- 10.02.7 The State Board shall issue a written order concerning the matter.
- 10.02.8 If the State Board of Education orders the annexation or consolidation of a school district in fiscal distress, the order shall, as appropriate, dissolve existing school districts and establish receiving or resulting school districts. The order shall also establish the boundary lines of the receiving or resulting school district or school districts. The State Board shall file the order with:
- 10.02.8.1 The county clerk of each county where a receiving or resulting district is located. The county clerk shall make a permanent record of the order;
- 10.02.8.2 The Secretary of State; and
- 10.02.8.3 The Arkansas Geographic Information Office.
- 10.02.9 It shall be the duty of the Department to make changes in the maps of the school districts to properly show the boundary lines of the receiving or resulting districts.
- 10.03 The State Board has exclusive jurisdiction to determine the boundary lines of the receiving or resulting school district and to allocate assets and liabilities of the school district.
- 10.04 The decision of the State Board shall be final with no further right of appeal except that a school district may appeal to Pulaski County Circuit Court pursuant to the Arkansas Administrative Procedure Act, Ark. Code Ann. § 25-15-201 et seq.
- 10.05 If the Commissioner of Education assumes authority over a public school district in fiscal distress as set forth in Ark. Code Ann. § 6-20-1910(a) or Section 9.00 of these Rules, the State Board of Education may pursue the following process for returning a public school district to the local control of its residents.
- 10.05.1 During the second school year following a school district's classification as being in fiscal distress status, the State Board shall determine the extent of the school district's progress toward correcting all issues that caused the classification of fiscal distress;

10.05.2 If the State Board determines that sufficient progress has been made by a school district toward correcting all issues that caused the classification of fiscal distress, but the school district has not yet resolved all issues that caused the classification of fiscal distress, the Commissioner, with the approval of the State Board, may appoint a community advisory board of either five (5) or seven (7) members to serve under the supervision and direction of the commissioner.

10.05.2.1 The members of the community advisory board shall be residents of the school district and shall serve on a voluntary basis without compensation.

10.05.2.2 The Department of Education shall cause to be provided to the community advisory board technical assistance and training in, at a minimum, the areas required in Ark. Code Ann. § 6-13-629.

10.05.2.3 The duties of the community advisory board include without limitation:

10.05.2.3.1 Meeting monthly during a regularly scheduled public meeting with the state-appointed administrator regarding the progress of the public school or school district toward correcting all issues that caused the classification of fiscal distress;

10.05.2.3.2 Seeking community input from the patrons of the school district regarding the progress of the public school or school district toward correcting all issues that caused the classification of fiscal distress;

10.05.2.3.3 Conducting hearings and making recommendations to the Commissioner regarding personnel and student discipline matters under the appropriate district policies;

10.05.2.3.4 Working to build community capacity for the continued support of the school district; and

- 10.05.2.3.5 Submitting quarterly reports to the Commissioner and the State Board regarding the progress of the public school or school district toward correcting all issues that caused the classification of fiscal distress.
- 10.05.2.4 The members of the community advisory board shall serve at the pleasure of the Commissioner until:
- 10.05.2.5 The school district is returned to local control and a permanent board of directors is elected and qualified;  
or
- 10.05.2.6 The State Board annexes, consolidates, or reconstitutes the school district under Ark. Code Ann. § 6-20-1910 or under another provision of law;
- 10.05.2.5 By April 1 of each year following the appointment of a community advisory board under Ark. Code Ann. § 6-20-1910(d)(2) and Section 10.05 of these Rules, the State Board shall determine the extent of the school district's progress toward correcting all issues that caused the classification of fiscal distress and shall:
- 10.05.2.6 Allow the community advisory board to remain in place for one (1) additional year;
- 10.05.2.7 Return the school district to local control by calling for the election of a newly elected board of directors if the Department of Education certifies in writing to the State Board and to the school district that the school district has corrected all criteria for being placed into fiscal distress; and the State Board determines the school district has corrected all criteria for being placed into fiscal distress; or

- 10.05.2.8 Annex, consolidate, or reconstitute the school district pursuant to Title 6 of the Arkansas Code.
- 10.05.2.6 If the State Board or Commissioner calls for an election of a new school district board of directors, the school district shall reimburse the county board of election commissioners for election costs as otherwise required by law;
- 10.05.2.7 If the State Board calls for an election of a new school district board of directors pursuant to Ark. Code Ann. § 6-20-1910 (d)(3)(A)(ii) or these Rules, the Commissioner, with the approval of the State Board, may appoint an interim board of directors to govern the school district until a permanent school district board of directors is elected and qualified.
- 10.05.2.7.1 The interim board of directors shall consist of either five (5) or seven (7) members.
- 10.05.2.7.2 The members of the interim board of directors shall be residents of the school district and otherwise eligible to serve as school district board members under applicable law.
- 10.05.2.7.3 The members of the interim board of directors shall serve on a voluntary basis without compensation.
- 10.05.3 If, by the end of the fifth school year following the school district's classification of fiscal distress status, the school district in fiscal distress has not corrected all issues that caused the classification of fiscal distress, the State Board, after a public hearing, shall consolidate, annex, or reconstitute the school district under Ark. Code Ann. § 6-20-1910 and these Rules.
- 10.05.3.1 The State Board may grant additional time for a public school or school district to remove itself from fiscal distress by issuing a written finding supported by a majority of the State Board explaining in detail that the



public school or school district could not remove itself from fiscal distress during the relevant time period due to impossibility caused by external forces beyond the control of the public school or school district.

10.05.4 Nothing in Ark. Code Ann. § 6-20-1910 or these Rules shall be construed to prevent the Department of Education or the State Board from taking any of the actions listed in Ark. Code Ann. § 6-20-1909 or Ark. Code Ann. § 6-20-1910 at any time to address a school district in fiscal distress.

## **12.00 EARLY INDICATORS OF FISCAL DISTRESS**

- 12.01 By August 31 of each year, the Department shall report to the superintendent of a school district if the Department is aware that the district has experienced two (2) or more indicators of fiscal distress in one (1) school year that the Department deems to be at a nonmaterial level, but that without intervention could place the district in fiscal distress.
- 12.02 By August 31 of each year, the superintendent of a school district shall report to the Department if the superintendent is aware the school district has experienced two (2) or more indicators of fiscal distress in one (1) school year that the superintendent deems to be at a nonmaterial level, but that without intervention could place the district in fiscal distress.
- 12.03 The Department and the superintendent shall review all data related to the nonmaterial indicators of fiscal distress.
- 12.03.1 Within thirty (30) days of the Department's determination that the school district may be experiencing fiscal distress at a nonmaterial level, the Department shall provide a notice to the school district's superintendent and board of directors that:
- 12.03.1.1 Describes the nonmaterial indicators of fiscal distress that could jeopardize the fiscal integrity of the school district if not addressed; and
- 12.03.1.2 Identifies the support available from the Department to address each nonmaterial indicator of fiscal distress.
- 12.03.2 The board of directors shall place on the agenda for the next regularly scheduled meeting of the board of directors a discussion of the notice of nonmaterial indicators of fiscal distress.

**ARKANSAS DEPARTMENT OF EDUCATION  
RULES IDENTIFYING AND GOVERNING  
THE ARKANSAS FISCAL ASSESSMENT AND ACCOUNTABILITY PROGRAM  
March 2014**

**1.00 AUTHORITY**

- 1.01 The Arkansas State Board of Education enacted these rules pursuant to Ark. Code Ann. § 6-11-105, Ark. Code Ann. § 6-20-1901 et seq., ~~and~~ Ark. Code Ann. § 25-15-201 et seq. and Act 600 of 2013.
- 1.02 These rules shall be known as the Arkansas Department of Education Rules Governing the Arkansas Fiscal Assessment and Accountability Program.

**2.00 PURPOSE**

- 2.01 The purpose of these rules is to establish how the Department and State Board will evaluate, assess, identify, classify and address school districts in fiscal distress.

**3.00 DEFINITIONS**

- 3.01 “Annexation”– the joining of an affected school district or part of an affected school district with a receiving district pursuant to Ark. Code Ann. § 6-13-1401 et seq.
- 3.02 “Capital Outlay Expenditures” – land, land improvements, buildings, infrastructure and equipment having a unit value of \$1,000 or more and a life expectancy of more than one year.
- 3.03 “Consolidation” - the joining of two (2) or more school districts or parts of the districts to create a new single school district pursuant to Ark. Code Ann. § 6-13-1401 et seq.
- 3.04 “Current Year Expenditures” - the total expenditures accruing to the combined teacher salary, operating, and debt service funds, excluding restricted funds.
- 3.05 “Current Year Revenues” - the total revenues accruing to the combined teacher salary, operating, and debt service funds, excluding restricted funds.

- 3.06 “Day” – unless otherwise set forth in these rules, a calendar day, regardless of whether it is a day the Department conducts official governmental business.
- 3.07 “Debt” – a legal liability, encumbrance or contract, including employment contracts, to be paid out of future revenues or current reserves of the district.
- 3.08 “Declining Balance” – balance resulting when current year expenditures exceed current year revenues.
- 3.09 “Department” - the Arkansas Department of Education.
- 3.10 “The Fiscal Distress Financial Improvement Plan (Plan)” - the written plan submitted by a district classified in fiscal distress and approved by the Department to be implemented by the district addressing each indicator of fiscal distress identified by the Department and the State Board with a specific corrective action plan and timeline.
- 3.11 “Fiscal Distress Status” – the status of a public school district determined (identified) by the Arkansas Department of Education and classified by the State Board as being placed in fiscal distress status pursuant to Ark. Code Ann. § 6-20-1901 et seq. and these rules.
- 3.12 “Fiscal Integrity” - to comply with financial management, accounting, auditing, and reporting procedures and facilities management procedures as required by state and federal laws and regulations in a forthright and timely manner.
- 3.13 “Jeopardize” - to expose to loss or injury or peril.
- 3.14 “Material Failure, Violation, Default, or Discrepancies” – an act, omission, event, circumstances or combination thereof that directly jeopardizes the fiscal integrity of a school district.
- 3.15 “Non-Material Failure, Violation, Default, or Discrepancies” – an act, omission, event, circumstance, or combination thereof, that does not directly jeopardize the fiscal integrity of a school district, but without intervention could place the school district in fiscal distress.
- 3.16 “Public School or School District” - a public school or school district created or established pursuant to Title 6 of the Arkansas Code and subject to the Arkansas Comprehensive Testing Assessment and Accountability Program except specifically excluding those schools or educational programs created by or receiving authority to exist pursuant to Ark. Code Ann. § 6-15-501; Ark. Code Ann. § 9-28-205 and Ark. Code Ann. § 12-29-301 et seq., or other provisions of Arkansas law.

- 3.17 “Reconstitution” – the reorganization of the administrative unit or the governing school board of directors of a school district, including, but not limited to, the replacement or removal of a current superintendent or the removal or replacement of a current school board of directors or both;
- 3.18 “Restricted Funds” – funds accruing to the teacher salary, operating and debt service funds that can be used only for specific purposes as stated in law or in accordance with a grant award (such as NSLA, ALE, ELL, Professional Development).
- 3.19 “School Year” - a school year beginning July 1 of one calendar year and ending June 30 of the following calendar year.
- 3.20 “State Board” - the Arkansas State Board of Education.

#### **4.00 INDICATORS OF FISCAL DISTRESS**

- 4.01 A school district meeting any of the following criteria may be identified by the Department to be a school district in fiscal distress upon final approval by the State Board:
- 4.01.1 A declining balance determined to jeopardize the fiscal integrity of a school district. However, capital outlay expenditures for academic facilities from a school district balance shall not be used to put the school district in fiscal distress.
- 4.01.2 An act or violation determined to jeopardize the fiscal integrity of a school district, including without limitation:
- 4.01.2.1 Material failure to properly maintain school facilities;
- 4.01.2.2 Material violation of local, state, or federal fire, health, or safety code provisions or law;
- 4.01.2.3 Material violation of local, state, or federal construction code provisions or law;
- 4.01.2.4 Material state or federal audit exceptions or violations;
- 4.01.2.5 Material failure to provide timely and accurate legally required financial reports to the Department, the Division of Legislative Audit, the General Assembly, or the Internal Revenue Service;
- 4.01.2.6 Insufficient funds to cover payroll, salary, employment benefits, or legal tax obligations;

- 4.01.2.7 Material failure to meet legally binding minimum teacher salary schedule obligations;
  - 4.01.2.8 Material failure to comply with state law governing purchasing or bid requirements;
  - 4.01.2.9 Material default on any school district debt obligation;
  - 4.01.2.10 Material discrepancies between budgeted and actual school district expenditures;
  - 4.01.2.11 Material failure to comply with audit requirements; or
  - 4.01.2.12 Material failure to comply with any provision of the Arkansas Code that specifically places a school district in fiscal distress based on noncompliance; or
- 4.01.3 Any other fiscal condition of a school district deemed to have a material detrimental negative impact on the continuation of educational services by that school district.

## **5.00 CLASSIFICATION OF FISCAL DISTRESS STATUS**

- 5.01 Those school districts identified by the Department as being in fiscal distress shall be classified as school districts in fiscal distress upon final determination (classification) by the State Board.
- 5.02 Any school district classified as in fiscal distress shall be required to publish at least one (1) time for two (2) consecutive weeks in a newspaper of general circulation in the school district the school district's classification as a school district in fiscal distress and the reasons why the school district was classified as being in fiscal distress.
  - 5.02.1 The district shall publish this announcement within 30 days of the final classification by the State Board.
  - 5.02.2 The newspaper of general circulation may be either a daily or weekly newspaper.
- 5.03 The provisions of subsections 5.01 and 5.02 of these rules are effective after the school district's appeal rights in Ark. Code Ann. § 6-20-1905 and section 6.00 of these rules have been exhausted.

**6.00 NOTIFICATION AND APPEAL**

- 6.01 The Department shall provide written notice, via certified mail, return receipt requested, to the president of the school board of directors and the superintendent of each school district identified as being in fiscal distress.
- 6.01.1 The Department shall provide the notice on or before March 30 of each year.
- 6.01.2 At any time after March 30, the Department may identify a school district as being in fiscal distress if the Department discovers that a fiscal condition of a school district negatively impacts the continuation of educational services by the school district. If this identification occurs, the Department shall immediately provide the same notice described in section 6.01 of these rules.
- 6.02 Any school district identified in fiscal distress status may appeal to the State Board by filing a written appeal with the Office of the Commissioner of Education, by certified mail return receipt requested, within thirty (30) days of receipt of notice of being identified in fiscal distress status from the Department.
- 6.03 The State Board shall hear the appeal within sixty (60) days of receipt of the written notice of appeal from the school district.
- 6.04 The written appeal shall state in clear terms the reason why the school should not be classified as in fiscal distress.
- 6.05 Notwithstanding any appeal rights in Ark. Code Ann. § 6-20-1901 et seq. and these rules, no appeal shall stay the Department's authority to take action to protect the fiscal integrity of any school district identified as in fiscal distress.
- 6.06 The following procedures shall apply to State Board hearings involving school districts that appeal a fiscal distress identification by the Department:
- 6.06.1 All persons wishing to testify before the State Board shall first be placed under oath by the Chairperson of the State Board.
- 6.06.2 The Department shall have up to thirty (30) minutes to present its case to the State Board as to why the school district identified as a district in fiscal distress should be classified as a school district in fiscal distress. The Chairperson of the State Board may allow additional time if necessary.
- 6.06.3 The appealing school district shall have up to thirty (30) minutes to present its case to the State Board as to why the school district should not be classified as a school district in fiscal distress. The Chairperson of the State Board may allow additional time if necessary.

- 6.06.4 The State Board may pose questions to any party at any time during the hearing.
- 6.06.5 The State Board shall then discuss, deliberate and vote upon the matter of the classification of fiscal distress.
- 6.06.6 If it deems necessary, the State Board may take the matter under advisement and announce its decision at a later date, provided that all discussions, deliberations and votes upon the matter take place in a public hearing.
- 6.06.7 The State Board shall issue a written order concerning the matter.
- 6.07 The decision of the State Board shall be a final order, and there is no further right of appeal except that the school district may appeal to Pulaski County Circuit Court pursuant to the Arkansas Administrative Procedure Act, Ark. Code Ann. § 25-15-201 et seq.

## **7.00 FISCAL DISTRESS IMPROVEMENT PLAN**

- 7.01 Those school districts classified by the State Board as being in fiscal distress shall file, with the Department within ten (10) days after the final classification, a written fiscal distress financial improvement plan to address any area in which the school district is experiencing fiscal distress as identified by the Department.
  - 7.01.1 The plan shall contain, at a minimum, the following elements:
    - 7.01.1.1 Identification of each indicator of fiscal distress;
    - 7.01.1.2 Specific corrective action steps for each indicator of fiscal distress;
    - 7.01.1.3 A timeline for the completion of each corrective action step;
    - 7.01.1.4 Additional corrective action steps the school district proposes to take; and
    - 7.01.1.5 A timeline for each additional corrective action step proposed by the school district.
  - 7.01.2 The Department is authorized to review and amend the plan submitted by the school district.
  - 7.01.3 The Department may edit, amend, update, or replace the plan at any time deemed appropriate.

- 7.01.4 The school district shall be given notice of the edited, amended, updated, or replacement plan criteria.
- 7.01.5 The district may appeal any edit, amendment or replacement of a plan by filing its written notice of appeal (which must include an explanation of its concerns) with the Commissioner of Education's Office within ten (10) days of receipt of the notice required in subsection 7.01.4. The appeal shall be heard at the next State Board meeting, and the State Board's decision shall be final.
- 7.02 Each school district shall seek and obtain approval of its plan from the Department and shall describe how the school district will remedy those areas in which the school district is experiencing fiscal distress and shall establish the time period by which the school district will remedy all criteria which placed the school district in fiscal distress status.
- 7.03 A school district in fiscal distress may only petition the State Board for removal from fiscal distress status after the Department has certified in writing that the school district has corrected all criteria for being classified as in fiscal distress and has complied with all Department recommendations and requirements for removal from fiscal distress.
- 7.04 Except as set forth in Ark. Code Ann. § 6-20-1910(d) and Section 10.05 of these Rules, a ~~No~~ school district shall not be allowed to remain in fiscal distress status for more than ~~two (2)~~ five (5) consecutive school years from the date that the school district was classified as being in fiscal distress status.
- 7.05 Any school district classified as being in fiscal distress status shall be required to receive on-site technical evaluation and assistance from the Department.
- 7.06 The Department shall evaluate and make written recommendations to the district superintendent regarding staffing and fiscal practices of the school district.
- 7.07 The written recommendations of the Department shall be binding on the school district, the superintendent and the school district board of directors.
- 7.08 Every six (6) months, the Department shall submit a written evaluation on the status of each school district in fiscal distress to the State Board.
- 7.09 The Department may petition the State Board at any time for the consolidation, annexation, or reconstitution of a school district in fiscal distress or take other appropriate action as allowed by Ark. Code Ann. § 6-20-1901 et seq. and these rules in order to secure and protect the best interest of the educational resources of the state or to provide for the best interests of students in the school district. The State Board may approve the petition or take other appropriate action as allowed by Ark. Code Ann. § 6-20-1901 et seq. and these rules.



- 7.10 Except as set forth in Ark. Code Ann. § 6-20-1910(d) and Section 10.05 of these Rules, The the State Board shall consolidate, annex, or reconstitute any school district that fails to remove itself from the classification of a school district in fiscal distress within ~~two (2)~~ five (5) consecutive school years of receipt of notice of identification classification of fiscal distress status by the Department unless the State Board, at its discretion, issues a written finding supported by a majority of the State Board, explaining in detail that the school district could not remove itself from fiscal distress due to impossibility caused by external forces beyond the school district's control.

## **8.00 DEBT ISSUANCE**

- 8.01 No school district identified in fiscal distress may incur any debt without the prior written approval of the Department.

## **9.00 DEPARTMENT FISCAL DISTRESS ACTIONS**

- 9.01 In addressing school districts in fiscal distress, the ~~Department~~ Commissioner of Education may take any number of the following actions:

- 9.01.1 ~~Require the superintendent to relinquish all administrative authority with respect to the school district~~ Remove permanently, reassign, or suspend on a temporary basis the superintendent of the school district and;

9.01.1.1 Appoint an individual in place of the superintendent to administratively operate the school district under the supervision and approval of the Commissioner; and

9.01.1.2 Compensate nondepartment agents operating the school district from school district funding;

- ~~9.01.2 Appoint an individual in place of the superintendent to administratively operate the school district under the supervision and approval of the Commissioner of Education, and to compensate non-department agents operating the school district from school district funding;~~

- ~~9.01.3 Call for the temporary suspension of the local school board of directors;~~

9.01.2 Suspend or remove some or all of the current board of directors and call for the election of a new board of directors for the school district, in which case the school district shall reimburse the county board of election commissioners for election costs as otherwise recognized by law;

- ~~9.01.43~~ Require the school district to operate without a local school board of directors under the supervision of the local superintendent or an individual or panel appointed by the Commissioner of Education;

9.01.4 Waive the application of Arkansas law or the corresponding State Board of Education rules with the exception of:

9.01.4.1 The Teacher Fair Dismissal Act of 1983, Ark. Code Ann. § 6-17-1501 et seq.; and

9.01.4.2 The Public School Employee Fair Hearing Act, Ark. Code Ann. § 6-17-1701 et seq;

9.01.5 Petition the State Board of Education for the annexation, consolidation, or reconstruction of the school district;

9.01.6 In the absence of a school district board of directors, assume all authority of the board of directors as designated by the State Board of Education as may be necessary for the day-to-day operation of the school district;

9.01.57 ~~Place~~ Return the administration of the school district ~~over~~ to the former board of directors or to a newly elected ~~school~~ board of directors; ~~or~~ if:

9.01.7.1 The Department certifies in writing to the State Board of Education and to the school district that the school district has corrected all issues that caused the classification of fiscal distress; and

9.01.7.2 The State Board of Education determines the school district has corrected all issues that caused the classification of fiscal distress.

9.01.7.3 If the Commissioner calls for an election of a new school district board of directors, the school district shall reimburse the county board of election commissioners for election costs as otherwise required by law;

9.01.8 Otherwise reconstitute the school district; or

9.01.69 Take any other action allowed by law that is deemed necessary to assist a school district in removing ~~criteria~~ the classification of fiscal distress.

9.02 The Department may impose various reporting requirements on the school district. The Department may review any and all school district records and documents.

9.03 The Department shall monitor the fiscal operations and accounts of the school district.

9.04 The Department shall require school district staff and employees to obtain fiscal instruction or training in areas of fiscal concern for the school district.

**10.00 STATE BOARD ACTIONS**

- 10.01 After a public hearing, the State Board of Education shall consolidate, annex, or reconstitute the school district in fiscal distress to another school district or school districts upon a majority vote of a quorum of the members of the State Board as permitted or required by Ark. Code Ann. § 6-20-1901 et seq. and these rules.
- 10.01.1 After providing thirty (30) days written notice, via certified mail, return receipt requested, to the superintendent and the president of the school board of directors, the Department may petition the State Board for the consolidation, annexation, or reconstitution of a school district in fiscal distress pursuant to Ark. Code Ann. § 6-20-1908 and subsection 7.09 of these rules.
- 10.01.2 After providing thirty (30) days written notice, via certified mail, return receipt requested, to the superintendent and the president of the school board of directors, the State Board, on its own motion, may consolidate, annex, or reconstitute the school district in fiscal distress as set forth in Ark. Code Ann. § 6-20-1910 and subsection 10.01 of these rules.
- 10.02 The following procedures shall apply to State Board hearings concerning the consolidation, annexation or reconstitution of a school district in fiscal distress:
- 10.02.1 All persons wishing to testify before the State Board shall first be placed under oath by the Chairperson of the State Board.
- 10.02.2 The Department shall have up to thirty (30) minutes to present its case to the State Board as to why the school district classified as a district in fiscal distress should be consolidated, annexed or reconstituted. The Chairperson of the State Board may allow additional time if necessary.
- 10.02.3 School districts and citizens' groups opposing the consolidation, annexation or reconstitution shall have up to a combined thirty (30) minutes to present their cases to the State Board as to why the school district classified as a district in fiscal distress should not be consolidated, annexed or reconstituted. The Chairperson of the State Board may allow additional time if necessary.
- 10.02.4 The State Board may pose questions to any party at any time during the hearing.
- 10.02.5 The State Board shall then discuss, deliberate and vote upon the matter of the consolidation, annexation or reconstitution of the school district classified as a district in fiscal distress.

- 10.02.6 If it deems necessary, the State Board may take the matter under advisement and announce its decision at a later date, provided that all discussions, deliberations and votes upon the matter take place in a public hearing.
- 10.02.7 The State Board shall issue a written order concerning the matter.
- 10.02.8 If the State Board of Education orders the annexation or consolidation of a school district in fiscal distress, the order shall, as appropriate, dissolve existing school districts and establish receiving or resulting school districts. The order shall also establish the boundary lines of the receiving or resulting school district or school districts. The State Board shall file the order with:
- 10.02.8.1 The county clerk of each county where a receiving or resulting district is located. The county clerk shall make a permanent record of the order;
- 10.02.8.2 The Secretary of State; and
- 10.02.8.3 The Arkansas Geographic Information Office.
- 10.02.9 It shall be the duty of the Department to make changes in the maps of the school districts to properly show the boundary lines of the receiving or resulting districts.
- 10.03 The State Board has exclusive jurisdiction to determine the boundary lines of the receiving or resulting school district and to allocate assets and liabilities of the school district.
- 10.04 The decision of the State Board shall be final with no further right of appeal except that a school district may appeal to Pulaski County Circuit Court pursuant to the Arkansas Administrative Procedure Act, Ark. Code Ann. § 25-15-201 et seq.
- 10.05 If the Commissioner of Education assumes authority over a public school district in fiscal distress as set forth in Ark. Code Ann. § 6-20-1910(a) or Section 9.00 of these Rules, the State Board of Education may pursue the following process for returning a public school district to the local control of its residents.
- 10.05.1 During the second school year following a school district's classification as being in fiscal distress status, the State Board shall determine the extent of the school district's progress toward correcting all issues that caused the classification of fiscal distress;

10.05.2 If the State Board determines that sufficient progress has been made by a school district toward correcting all issues that caused the classification of fiscal distress, but the school district has not yet resolved all issues that caused the classification of fiscal distress, the Commissioner, with the approval of the State Board, may appoint a community advisory board of either five (5) or seven (7) members to serve under the supervision and direction of the commissioner.

10.05.2.1 The members of the community advisory board shall be residents of the school district and shall serve on a voluntary basis without compensation.

10.05.2.2 The Department of Education shall cause to be provided to the community advisory board technical assistance and training in, at a minimum, the areas required in Ark. Code Ann. § 6-13-629.

10.05.2.3 The duties of the community advisory board include without limitation:

10.05.2.3.1 Meeting monthly during a regularly scheduled public meeting with the state-appointed administrator regarding the progress of the public school or school district toward correcting all issues that caused the classification of fiscal distress;

10.05.2.3.2 Seeking community input from the patrons of the school district regarding the progress of the public school or school district toward correcting all issues that caused the classification of fiscal distress;

10.05.2.3.3 Conducting hearings and making recommendations to the Commissioner regarding personnel and student discipline matters under the appropriate district policies;

10.05.2.3.4 Working to build community capacity for the continued support of the school district; and

- 10.05.2.3.5 Submitting quarterly reports to the Commissioner and the State Board regarding the progress of the public school or school district toward correcting all issues that caused the classification of fiscal distress.
- 10.05.2.4 The members of the community advisory board shall serve at the pleasure of the Commissioner until:
- 10.05.2.5 The school district is returned to local control and a permanent board of directors is elected and qualified;  
or
- 10.05.2.6 The State Board annexes, consolidates, or reconstitutes the school district under Ark. Code Ann. § 6-20-1910 or under another provision of law;
- 10.05.2.5 By April 1 of each year following the appointment of a community advisory board under Ark. Code Ann. § 6-20-1910(d)(2) and Section 10.05 of these Rules, the State Board shall determine the extent of the school district's progress toward correcting all issues that caused the classification of fiscal distress and shall:
- 10.05.2.6 Allow the community advisory board to remain in place for one (1) additional year;
- 10.05.2.7 Return the school district to local control by calling for the election of a newly elected board of directors if the Department of Education certifies in writing to the State Board and to the school district that the school district has corrected all criteria for being placed into fiscal distress; and the State Board determines the school district has corrected all criteria for being placed into fiscal distress; or

- 10.05.2.8 Annex, consolidate, or reconstitute the school district pursuant to Title 6 of the Arkansas Code.
- 10.05.2.6 If the State Board or Commissioner calls for an election of a new school district board of directors, the school district shall reimburse the county board of election commissioners for election costs as otherwise required by law;
- 10.05.2.7 If the State Board calls for an election of a new school district board of directors pursuant to Ark. Code Ann. § 6-20-1910 (d)(3)(A)(ii) or these Rules, the Commissioner, with the approval of the State Board, may appoint an interim board of directors to govern the school district until a permanent school district board of directors is elected and qualified.
- 10.05.2.7.1 The interim board of directors shall consist of either five (5) or seven (7) members.
- 10.05.2.7.2 The members of the interim board of directors shall be residents of the school district and otherwise eligible to serve as school district board members under applicable law.
- 10.05.2.7.3 The members of the interim board of directors shall serve on a voluntary basis without compensation.
- 10.05.3 If, by the end of the fifth school year following the school district's classification of fiscal distress status, the school district in fiscal distress has not corrected all issues that caused the classification of fiscal distress, the State Board, after a public hearing, shall consolidate, annex, or reconstitute the school district under Ark. Code Ann. § 6-20-1910 and these Rules.
- 10.05.3.1 The State Board may grant additional time for a public school or school district to remove itself from fiscal distress by issuing a written finding supported by a majority of the State Board explaining in detail that the

public school or school district could not remove itself from fiscal distress during the relevant time period due to impossibility caused by external forces beyond the control of the public school or school district.

10.05.4 Nothing in Ark. Code Ann. § 6-20-1910 or these Rules shall be construed to prevent the Department of Education or the State Board from taking any of the actions listed in Ark. Code Ann. § 6-20-1909 or Ark. Code Ann. § 6-20-1910 at any time to address a school district in fiscal distress.

## **12.00 EARLY INDICATORS OF FISCAL DISTRESS**

- 12.01 By August 31 of each year, the Department shall report to the superintendent of a school district if the Department is aware that the district has experienced two (2) or more indicators of fiscal distress in one (1) school year that the Department deems to be at a nonmaterial level, but that without intervention could place the district in fiscal distress.
- 12.02 By August 31 of each year, the superintendent of a school district shall report to the Department if the superintendent is aware the school district has experienced two (2) or more indicators of fiscal distress in one (1) school year that the superintendent deems to be at a nonmaterial level, but that without intervention could place the district in fiscal distress.
- 12.03 The Department and the superintendent shall review all data related to the nonmaterial indicators of fiscal distress.
- 12.03.1 Within thirty (30) days of the Department's determination that the school district may be experiencing fiscal distress at a nonmaterial level, the Department shall provide a notice to the school district's superintendent and board of directors that:
- 12.03.1.1 Describes the nonmaterial indicators of fiscal distress that could jeopardize the fiscal integrity of the school district if not addressed; and
- 12.03.1.2 Identifies the support available from the Department to address each nonmaterial indicator of fiscal distress.
- 12.03.2 The board of directors shall place on the agenda for the next regularly scheduled meeting of the board of directors a discussion of the notice of nonmaterial indicators of fiscal distress.