

SUMMARY OF THE PROPOSED CHANGES TO THE ARKANSAS DEPARTMENT
OF EDUCATION RULES GOVERNING THE CODE OF ETHIC FOR ARKANSAS
EDUCATORS

Arkansas Code Annotated § 6-17-428 states that the administrative procedures act applies to the ADE's Rules Governing the Code of Ethics for Arkansas Educators. The rule was amended to conform to Ark. Code Ann. § 25-15-210's administrative adjudication process. Minor changes in the language were made throughout the rule to conform to the new process.

ARKANSAS DEPARTMENT OF EDUCATION
RULES GOVERNING THE CODE OF ETHICS FOR ARKANSAS EDUCATORS
May 14, 2012

1.00 Title

- 1.01 These rules shall be known as the Arkansas Department of Education Rules Governing the Code of Ethics for Arkansas Educators.

2.00 Regulatory Authority

- 2.01 These rules are promulgated pursuant to the State Board of Education's authority under Ark. Code Ann. §§ 6-11-105, 6-17-401, 6-17-410, 6-17-422, 6-17-425, 6-17-426, 6-17-428, and 25-15-201 et seq.
- 2.02 All rules, procedures, hearings and appeals relating to the Code of Ethics complaints shall be promulgated and implemented under the Arkansas Administrative Procedures Act, Ark. Code Ann. § 25-15-201 et seq.

3.00 Purpose

- 3.01 The purpose of the Rules Governing the Code of Ethics for Arkansas Educators (Code) is to define standards of ethical conduct and to outline procedures for receiving complaints, authorizing and conducting investigations, and recommending enforcement of the Code of Ethics.
- 3.02 The professional, ethical educator contributes to the development and maintenance of a supportive student-centered learning community that values and promotes human dignity, fairness, care, the greater good and individual rights. These values are the ethical premises for the standards of professional behavior and ethical decision-making established in this *Code of Ethics for Arkansas Educators*. By establishing standards of ethical conduct, this code promotes the health, safety, and general welfare of students and educators and ensures the citizens of Arkansas a degree of accountability within the education profession.

4.00 Applicability

- 4.01 The valid Arkansas teaching license of any person shall be subject to the conditions, requirements, and mandates of the code of ethics, procedures, and recommendations for enforcement.

5.00 Definitions

- 5.01 **An Authorized Ethics Complaint Investigation** is an ethics complaint that has been: (1) verified by the Chief Investigator of the Professional Licensure Standards Board as being submitted by an identifiable person; and (2) authorized for investigation based upon reasonable belief by the Ethics Subcommittee of the PLSB that if the allegation is true, it would constitute a violation of the Code as set forth in

these rules committed by an Arkansas educator after September 1, 2008. The Ethics Subcommittee of the PLSB shall investigate an ethics complaint that it determines is credible. (Ark. Code Ann. § 6-17-428)

- 5.02 **Code of Ethics or Code** means the code of ethics for educators established by the Professional Licensure Standards Board under Ark. Code. Ann. § 6-17-422.
- 5.03 **Conviction** includes a plea of guilty or a plea of *nolo contendere*, or a finding or verdict of guilty, regardless of whether an appeal of the conviction has been sought, or a criminal conviction has been sealed or expunged; a situation where first offender treatment without adjudication of guilt pursuant to the charge was granted; and a situation where an adjudication of guilt or sentence was otherwise withheld or not entered on the charge or the charge was otherwise disposed of in a similar manner in any jurisdiction.
- 5.04 **Denial** is the refusal to grant a teaching license to an applicant for a teaching license.
- 5.05 **Dispositions** are the values, commitments, and professional ethics that influence behaviors toward students, families, colleagues and communities and affect student learning, motivation, and development as well as the educator's own professional growth. Dispositions are guided by beliefs and attitudes related to values such as caring, fairness, honesty, responsibility and social justice.
- 5.06 **Educator** means a person holding a valid Arkansas teacher's or administrator's license issued by the State Board of Education.
- 5.07 **Ethics Complaint** means a document that states facts constituting an alleged ethics violation of the code of ethics and is signed under penalty of perjury by the person filing the ethics complaint. An ethics complaint may also be a finding made in an audit report forwarded to the ADE by the Arkansas Joint Legislative Auditing Committee under Ark. Code Ann. § 6-17-426.
- 5.08 **Ethics Subcommittee** means the subcommittee established by the Professional Licensure Standards Board to receive and investigate ethics complaints, enforce the Code of Ethics, including making recommendations to the State Board of Education for a written warning, a written reprimand, or the placement of conditions or restrictions on the activities of the educator or the revocation, suspension, or probation or nonrenewal of a license. The Ethics Subcommittee may issue a Private Letter of Caution. The Ethics Subcommittee may also dismiss an ethics complaint if it finds there is no ethics violation.
- 5.09 **Ethics Violation** is an act or omission on the part of an educator, when the educator knew, or reasonably should have known, that such acts or omissions were in violation of the Code of Ethics as set forth in these rules. An ethics violation does not include a reasonable mistake made in good faith, or acts or omissions taken in accordance with the reasonable instructions of a supervisor or, an act or omission under circumstances in which the educator had a reasonable belief that failure to

follow the instructions of a supervisor would result in an adverse job action against the educator.

- 5.10 **Filed** means the document has been stamped with a date acknowledging when the document arrived at the offices of the PLSB staff.
- 5.11 **Private Letter of Caution** is a non-punitive communication from the Ethics Subcommittee to an educator in response to an ethics complaint against the educator. Private Letters of Caution may be provided to an educator by the Ethics Subcommittee of the PLSB in lieu of recommending other discipline. Private Letters of Caution do not make any factual findings but inform the educator that the conduct alleged in the complaint or its investigation falls within the broad range of the Code of Ethics but that the circumstances and mitigating factors do not warrant disciplinary action. Private Letters of Caution remain in the files retained by the PLSB staff, but are not placed in an educator's licensure file at the ADE. A Private Letter of Caution is not submitted to the State Board of Education for approval and it does not constitute a sanction for the purposes of the Code of Ethics for Arkansas Educators. As a result, Private Letters of Caution cannot be basis for a request for an evidentiary hearing before the Ethics Subcommittee or the State Board of Education..
- 5.12 **Monitoring Conditions or Restrictions** may include any actions or alternative sanctions allowed under the Administrative Procedures Act, including at a minimum a semi-annual appraisal of the educator's conduct by the PLSB staff through contact with the educator and his or her employer or other appropriate persons. Such conditions or restrictions may include, but are not limited to requiring that an educator submit a new criminal background check or submit other requested information such as current employment, compliance with recommended counseling, treatment, education or training. The Subcommittee may recommend to the length of the monitoring period to the State Board of Education.
- 5.13 **Preponderance of Evidence** is the greater weight of the relevant evidence; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to include a fair and impartial mind to one side of the issue rather than the other. It is determined by considering all of the relevant evidence and deciding which evidence is more credible. A preponderance of the evidence is not necessarily determined by the greater number of witnesses or documents presented. If, on any allegation against an educator, it cannot be determined whether the allegation is more likely true than not true, the allegation cannot be considered to have been proved.
- 5.14 **Probation** is the placing of conditions, requirements or circumstances on the status of a teaching license for a period of time established by the State Board. Generally, an educator whose license is under probation must sufficiently satisfy such conditions, requirements or circumstances in order to maintain or be reinstated to the original non-probationary teaching license status.

- 5.15 **Public Information** for the purpose of these rules is information coming from news media or public record.
- 5.16 **Reasonable belief** is a belief based upon knowledge of facts and circumstances that are reasonably trustworthy, and that would justify a reasonable person's belief that: (1) a violation of the Code as set forth in these rules has been committed; and (2) that the named educator committed such a violation. A reasonable belief is not based upon mere suspicion or conjecture.
- 5.17 **Received** means the date the ethics complaint was presented to the Subcommittee for authorization of an investigation.
- 5.18 **Relevant evidence** (or material evidence) is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the matter more probable or less probable than it would be without the evidence.
- 5.19 **Reprimand** is a written admonishment from the State Board to the named educator for his or her conduct. The written reprimand cautions that further unethical conduct will lead to a more severe action and is associated with a monetary fine of the educator. In the absence of further unethical conduct, a reprimand will remain in the licensure file of the educator for a period of two (2) years from the date the reprimand is imposed by the State Board. The reprimand will remain permanently in the files retained by PLSB staff.
- 5.20 **Revocation** is the permanent invalidation of any teaching or administrator's license held by the educator.
- 5.21 **School-sponsored activity** is any event or activity sponsored by the school or school system which includes but is not limited to athletic events, booster clubs, parent-teacher organizations, or any activity designed to enhance the school curriculum (i.e., foreign language trips, etc.) whether on school-campus or not.
- 5.22 **Student** is any individual enrolled in the state's public or Private schools from pre-kindergarten through grade 12.
- 5.23 **Supervisor** under these rules mean an administrator authorized by the district or school board to administer professional employee discipline up to and including recommending termination or nonrenewal.
- 5.24 **Suspension** is the temporary invalidation of any teaching license for a period of time specified by the State Board.
- 5.25 **Teaching License** refers to any teaching, service, or leadership certificate, license, or permit issued by the State Board.
- 5.26 **Warning** is a written communication from the State Board to the named educator that his or her conduct is unethical. The warning cautions that further unethical conduct will lead to a more severe action. In the absence of further unethical

conduct, a warning will remain in the licensure file of the educator for a period of two (2) years from the date the warning is imposed by the State Board. The warning will remain permanently in the files retained by PLSB staff.

6.00 The Code of Ethics for Arkansas Educators

The Standards of Ethical Conduct are set forth as follows:

- 6.01 **Standard 1: An educator maintains a professional relationship with each student, both in and outside the classroom.**
- 6.02 **Standard 2: An educator maintains competence regarding skills, knowledge, and dispositions relating to his/her organizational position, subject matter, and/or pedagogical practice.**
- 6.03 **Standard 3: An educator honestly fulfills reporting obligations associated with professional practices.**
- 6.04 **Standard 4: An educator entrusted with public funds and property, including school sponsored activity funds, honors that trust with honest, responsible stewardship.**
- 6.05 **Standard 5: An educator maintains integrity regarding the acceptance of any gratuity, gift, compensation or favor that might impair or appear to influence professional decisions or actions and shall refrain from using the educator's position for personal gain.**
- 6.06 **Standard 6: An educator keeps in confidence information about students and colleagues obtained in the course of professional service, including secure standardized test materials and results, unless disclosure serves a professional purpose or is allowed by law.**
- 6.07 **Standard 7: An educator refrains from using, possessing and/or being under the influence of alcohol, tobacco, or unauthorized drugs or substances while on school premises or at school-sponsored activities involving students.**

7.00 Recommended Disciplinary Action

- 7.01 The PLSB Ethics Subcommittee is authorized to recommend to the State Board probation, suspension, revocation or nonrenewal of a teaching license or the issuance of a reprimand or warning. The PLSB Ethics Subcommittee is also authorized to recommend the placement of conditions or restrictions on the activities of the educator that would assist the educator via training, coursework or rehabilitative treatment. (All costs would be paid by the educator.) The State Board may direct the ADE to monitor progress toward the completion of any corrective action. Any of the following shall be considered cause for recommendation of disciplinary action against the holder of a license:

- a. An initial determination by the Ethics Subcommittee that there is a reasonable belief that a violation of the Code of Ethics as set forth in these rules has occurred.
 - b. Following an evidentiary hearing before the Ethics Subcommittee, the Subcommittee finds, by a preponderance of the evidence, that there is a reasonable belief that an educator violated the Code of Ethics as set forth in these rules.
 - c. A failure to comply with the payment of any imposed fines, fees, or other conditions or restrictions imposed by the State Board of Education.
 - d. Audit reports forwarded to the ADE by the Arkansas Legislative Joint Auditing Committee pursuant to Ark. Code Ann. § 6-17-426.
 - e. Disciplinary action against a teaching license/certificate in another state on grounds inconsistent with ethical conduct specified in Section 6.00 or as stated in this section.
- 7.02 An individual whose license has been revoked, denied or suspended may not serve as a volunteer or be employed as an educator, paraprofessional, aide, substitute teacher, official and/or judge of a school-sponsored activity or be employed in any other position during the period of his or her revocation, suspension or denial for a violation of the Arkansas Code of Ethics for Educators.
- 7.03 Suspensions and revocations are reported by the ADE to national officials, including the National Association of State Directors of Teacher Education and Certification (NASDTEC) Clearinghouse.
- 7.04 In lieu of imposing a disciplinary action as set forth above, the PLSB Ethics Subcommittee may provide the accused educator with a Private Letter of Caution.

8.00 Procedures for the Investigative Process and Final Determination of Alleged Ethics Violations

- 8.01 In considering and investigating complaints brought before it, the Subcommittee shall follow the procedures set forth in *Appendix A* to these rules, which are hereby fully incorporated into these rules as if fully set forth herein.

9.00 Fines and Fees

- 9.01 The State Board, for violations of the Code in all areas and as authorized by Ark. Code Ann. §§ 6-17-422(h)(3)(c) and 6-17-428:
- a. May impose fines up the amounts listed in *Appendix B* to these rules, which is attached and is hereby fully incorporated into these rules as if fully set forth herein.
 - b. May impose fees for action taken pertaining to an educator's license as set forth in the attachment *Appendix B*.

- c. Shall use the revenue collected by the State Board of Education from the fees and fines imposed per *Appendix B* of these Rules for the operation of the Professional Licensure Standards Board.
- d. Failure to pay fines and fees may result in the Subcommittee recommending that the State Board suspend the educator's license pursuant to Ark. Code Ann. § 25-15-217. The Department will not renew a license until all fines and fees have been paid.

10.00 Disclosure of Records

- 10.01 When the State Board has disciplined an educator for violation of the Code of Ethics by placing the educator on probation, suspension, or non-renewing, or revoking the educator's license, these actions will be reported by the Office of Professional Licensure and may be posted in its electronic database such that the records are viewable to school districts and other authorized personnel. In addition, these actions may be reported to other national education organizations or agencies such as the NASTDEC clearinghouse.
- 10.02 When the State Board has issued a warning or reprimand for violation of the Code of Ethics, these will be reported to the Office of Professional Licensure but are not posted in its electronic database. The Office of Professional Licensure will report reprimands or warnings if requested.
- 10.03 Records of the PLSB Ethics Subcommittee shall be retained in accordance with the Arkansas General Records Retention Schedule.
- 10.04 In accordance with Ark. Code Ann. § 6-17-428, all records and all hearings, meetings, and deliberations of the Professional Licensure Standards Board and its Ethics Subcommittee relating to an ethics complaint are confidential and exempt from the Freedom of Information Act of 1967, Ark. Code Ann. § 25-19-101 et seq.
- 10.05 In accordance with Ark. Code Ann. § 25-15-208, disclosure shall not be required of the research or records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the attorney for the agency or members of his or her staff or other state agents.

**Procedures for the Investigative Process
and Final Recommendation for Disposition of an Ethics Complaint**

1. Applicability of the Administrative Procedure Act

All rules, procedures, hearings and appeals relating to the Code of Ethics shall be promulgated and implemented under the Arkansas Administrative Procedure Act, Ark. Code Ann. § 25-15-201 et seq.

2. Freedom of Information Act (FOIA):

All records, hearings, meetings, and deliberations of the PLSB relating to an ethics complaint against an administrator or teacher are confidential and exempt from the Freedom of Information Act. All records pertaining to an ethics complaint are open for inspection and copying by the person against whom the complaint is lodged. The person against whom the complaint is lodged and his or her representative are entitled to be present during all hearings. A hearing before the State Board to consider the possible revocation, suspension, or other sanction of an administrator's or a teacher's license based on a recommendation of the PLSB for enforcement of an alleged ethics violation, including without limitation an informal disposition by the State Board of an ethics complaint by stipulation, settlement, consent order, or default is open to the public. All records on which the State Board relies during such a hearing to make its decision are subject to public disclosure under the Freedom of Information Act.

3. Allegations:

Any person or party wishing to submit an allegation must use the appropriate allegation of violation form as developed by the PLSB. It may be filed with the PLSB through the Department of Education, a public school district, or a public school superintendent. If an allegation form is filed with a public school district or a public school superintendent, the public school district or superintendent must forward all signed allegations directly to the Department of Education. Failure to forward an allegation of violation form may be considered a violation of the Code of Ethics.

4. Allegations Received by the PLSB Ethics Subcommittee:

An allegation will become a complaint once it has been: (1) verified by the Chief Investigator of the PLSB as being submitted by an identifiable person; and (2) is credible and if true, would constitute a violation of the Code as set forth in these rules, committed by an Arkansas educator after September 1, 2008. An allegation shall be processed as follows:

- i. Initial Review: The Chief Investigator of the PLSB will thoroughly review the allegation and verify that the allegation has been submitted by an identifiable person and was signed under penalty of perjury.
- ii. Authority to Investigate: The Ethics Subcommittee will determine whether to grant authority to the PLSB investigative staff to investigate the allegation. Authority to investigate the allegation will be based upon a reasonable belief that the allegation, if

true, constitutes a violation of the Code as set forth in these rules and was committed by the alleged educator after September 1, 2008. Any member of the Ethics Subcommittee of the PLSB who works with or for the educator against whom the allegation is submitted shall recuse himself/herself from any discussion, hearing, or deliberations concerning the accused educator. The Subcommittee is not limited to the standard alleged on the form but may consider all of the evidence submitted with the allegation in determining which, if any, standard may have been violated

- a) Authority to Investigate Denied: If the Ethics Subcommittee votes not to authorize investigation, the allegation shall be dismissed and the matter shall be closed without further action against the educator.
 - b) Authority to Investigate Granted: If the Ethics Subcommittee votes to authorize investigation of the allegation, the allegation becomes an authorized ethics complaint. The PLSB staff shall notify the named educator in writing concerning the initiation of the investigation and provide the educator with a copy of the complaint within ten (10) calendar days of authorization. The PLSB staff shall provide to the educator under investigation 1) written notice of the investigation and nature of the alleged ethics violation and, 2) a copy of the documents and evidence concerning the facts alleged in the ethics complaint, provisions of Ark. Code Ann. § 6-17-428 or other state statutory law applicable to an ethics violation and the applicable rules in effect at the time the ethics complaint is filed.
 - c) Automatic Investigation: The following will automatically go to the Ethics Sub-Committee of the PLSB for the opening of an investigation:
 - (1) Public information that an educator may have committed a violation the Code of Ethics. In the event that PLSB staff or PLSB Subcommittee members discover public information that an educator may have committed a violation of the Code of Ethics, the PLSB staff or any member of the Subcommittee may request that the Subcommittee Chair file an allegation form with the Department. If the Subcommittee votes that the Chair should file an allegation form, the Chair will recuse herself or himself from any further consideration of the newly filed complaint. If necessary, the PLSB may appoint a board member to the Subcommittee for the limited purpose of resolving the newly filed complaint.
 - (2) Audit reports forwarded to the ADE by the Arkansas Joint Auditing Committee pursuant to Ark. Code Ann. § 6-17-426.
- iii. Requesting additional authority to investigate: If, in the course of an authorized investigation, PLSB staff discovers credible information that the named educator has committed additional violations of the Code, the PLSB staff may request additional authority to investigate from the Subcommittee. In the event that PLSB staff discovers credible information that another educator has violated the Code of Ethics, the PLSB staff may request that the Subcommittee Chair file an allegation form with

the Department. If the Subcommittee votes that the Chair should file an allegation form, the Chair will recuse herself or himself from any further consideration of the newly filed complaint. If necessary, the PLSB may appoint a board member to the Subcommittee for the limited purpose of resolving the newly filed complaint.

- iv Completion of the Investigation: The Ethics Subcommittee shall complete its investigation of an ethics complaint and take action within one hundred fifty (150) days of authorizing the investigation. Upon completion of the investigation and final report of investigation, the PLSB staff will send the final report of investigation to the accused educator or his/her attorney via certified and regular mail. The educator shall be provided with:
- (1) A copy of the documents and evidence concerning the investigation of the ethics complaint and,
 - (2) Written notice that the Ethics Subcommittee will consider taking action against the named educator and,
 - (3) A copy of Ark. Code Ann. § 6-17-428 or other state statutory law applicable to the ethics violation authorized for investigation, and
 - (4) A copy of the rules in effect at the time the ethics complaint is filed.
 - (5) The named educator or his/her attorney will be allowed thirty (30) calendar days from receipt of the notice, documentation, and evidence from the Ethics Subcommittee or its staff to submit any further response in writing. At the conclusion of the thirty (30) calendar days or upon receiving the written response from the educator, the PLSB staff will send the final report of investigation and educator's response to the members of the Ethics Subcommittee.
- v. Initial Recommendation of the Ethics Subcommittee: At the next scheduled meeting of the Ethics Subcommittee, the Subcommittee shall review the results of the investigation including the PLSB staff's final report of investigation and any written response from the educator who is the subject of the ethics complaint. Following such a review, if the Ethics Subcommittee finds that a reasonable belief exists that the educator violated the Code as set forth in these rules, the Subcommittee shall issue an initial decision and may recommend any appropriate action as set forth in Appendix B. The initial recommendation shall be considered a proposal for decision under Ark. Code Ann. § 25-15-210 and shall contain a statement of the reasons for the decision and each issue of fact or law necessary for the decision.
- a) Notification of the Educator: The PLSB staff will notify the named educator in writing of the recommendation of the Ethics Subcommittee. The named educator may accept in writing the recommendation of the Ethics Subcommittee of the PLSB or request in writing an evidentiary hearing before the Ethics Subcommittee. The PLSB staff will inform the educator that following an evidentiary hearing, the Ethics Subcommittee may find that no reasonable belief that a violation of the Code exists, or could find that a

reasonable belief that violation of the Code exists and recommend any appropriate action as set forth in Appendix B.

- b) **Private Letter of Caution:** The Ethics Sub-Committee of the PLSB may also issue a Private Letter of Caution in lieu of recommending an action set forth in Appendix B.
- vi. **Waiver of Evidentiary Hearing:** If an educator fails to respond to notification of the initial recommendation of the Ethics Subcommittee within thirty (30) days, the initial recommendation will become a final recommendation without an evidentiary hearing and will be forwarded to the State Board for consideration.
- vii. If the educator accepts the Subcommittee's recommendation or waives a response, the PLSB staff shall notify the educator that the final recommendation will be submitted to the State Board as part of its consent agenda.

5. Waiver or Request of a Subcommittee Evidentiary Hearing

- i. If the educator requests a hearing, an evidentiary hearing will be held before the Ethics Subcommittee within one hundred eighty (180) days of receiving the complaint as is defined in these rules. Either party may request additional time. Such a request shall be in writing and shall set forth the reason(s) for which additional time is needed. The time limitations may be waived when reasonable under the circumstances, including without limitation, inclement weather, state or national emergencies, or other unforeseeable events by the:
 - a. Educator if the time limitation is imposed upon the Ethics Subcommittee; or
 - b. Ethics Subcommittee if the time limitation is imposed upon the educator; or
 - c. A written stipulation between the educator and the PLSB staff attorney with the approval of the Subcommittee.
- ii. Within ten (10) calendar days following the findings and recommendation of the Ethics Subcommittee, the PLSB staff will notify the educator in writing of the Subcommittee's evidentiary hearing findings and recommendations. The educator may accept the evidentiary recommendation or object and request a hearing before review by the State Board pursuant to Section 9 of this Appendix. The evidentiary hearing recommendation shall be considered a proposal for decision under Ark. Code Ann. § 25-15-210 and shall contain a statement of the reasons for the decision and each issue of fact or law necessary for the decision.
- iii. **Waiver of State Board Evidentiary Hearing Review:** If an educator fails to respond to notification of the Subcommittee's evidentiary hearing recommendation within fourteen (14) days, the evidentiary hearing recommendation will become a final recommendation and will be forwarded to the State Board.

6. Motions

- a. An educator or his or her representative who has requested an evidentiary hearing may file a motion by serving it on the attorney for the PLSB who shall record the date it is

received and promptly transmit the motion(s) to the Subcommittee for its consideration at the next available Subcommittee meeting.

- b. Filing a motion that requests that the Subcommittee take action prior to the requested or scheduled evidentiary hearing tolls the time limits set out in these rules and Ark. Code Ann. § 6-17-428.
- c. Requests regarding procedural matters, including requests for additional time for the hearing or for continuation of a hearing or proposed stipulated settlements, may be considered on the motions or papers submitted. The PLSB attorney and the educator may enter a stipulation to dispose of any procedural or substantive matters at any time subject to final approval by the Subcommittee.

7. **Evidentiary Hearing Procedures of the PLSB Ethics Subcommittee**

- i. The educator and the PLSB may be represented by representatives of their choosing.
- ii. The educator shall be notified in writing of the date, time and location of the Ethics Subcommittee meeting at which his/her case will be considered. The notice will also state a deadline by which the educator must submit items to the Subcommittee for consideration. Items submitted may be rejected if not timely. Educators and PLSB staff are encouraged to submit all documentary evidence by the deadline so that the Subcommittee will be prepared to expeditiously address the case at the evidentiary hearing.
- iii. A representative of the PLSB and the educator (or his/her attorney) shall have up to twenty-five (25) minutes each to present their cases to the Subcommittee. The chairperson of the Subcommittee may grant additional time to either or both parties, if necessary.
- iv. Each party will have the opportunity, should it so choose, to make an opening statement. The statement shall be no longer than five (5) minutes in length. The chairperson of the Subcommittee may grant additional time to either or both parties, if necessary.
- v. The representative of the PLSB shall present its case (and opening statement, if it so chooses) to the Subcommittee first.
- vi. Any written documents, photographs or any other items of evidence may be presented to the hearing Subcommittee with the permission of the chairperson. The items of evidence shall be marked as either "PLSB Exhibit Number 1(et seq.)" or "Educator's Exhibit Number 1 (et seq.)" After an item of evidence has been allowed to be presented to the Sub-committee by the chairperson, the introducing party shall give one (1) copy to the court reporter for the record and one (1) copy to the chairperson.

- vii. After one party has questioned a witness, the other party shall have the same opportunity.
- viii. Members of the hearing Subcommittee shall also have the opportunity to ask questions of any witness or any party at any time.
- ix. While the scope of each party's presentation ultimately lies within the chairperson's discretion, case presentation should be arranged in such a way as to avoid redundant testimony.
- x. After the educator has presented his/her case, the chairperson may allow each party to present limited rebuttal testimony.
- xi. After the rebuttal evidence has been presented, the educator shall have up to five (5) minutes to present a closing statement, if desired. The chairperson of the Subcommittee may grant additional time if necessary.
- xii. After the educator has made a closing statement, or waived the opportunity for the same, the representative of the PLSB shall have up to five (5) minutes to make his/her closing statement, if desired. The chairperson of the Subcommittee may grant additional time if necessary.
- xiii. After closing statements have been made (or the opportunity to make them has been waived), the hearing Subcommittee may orally announce its decision. Alternatively, the hearing Subcommittee may take the case under advisement and render a written decision at a later time.
- xiv. During an evidentiary hearing, the "preponderance of the evidence" standard shall be used by the Ethics Subcommittee to determine whether a violation of the Code occurred. If the Ethics Subcommittee finds that a violation occurred, it may issue a recommendation for appropriate sanction to the Arkansas State Board of Education. The representative of the PLSB will have the burden of proving each fact of consequence to the determination by a preponderance of the evidence. The Ethics Sub may also issue a non-punitive Private Letter of Caution Letter.
- xv. A written decision reflecting the hearing Subcommittee's final findings and recommendation shall be promptly prepared by the PLSB staff attorney for the chairperson's signature. A copy of the findings and recommendations shall be transmitted in a timely manner to the educator. The evidentiary hearing recommendation shall be considered a proposal for decision under Ark. Code Ann. § 25-15-210 and shall contain a statement of the reasons for the decision and each issue of fact or law necessary for the decision.
- xvi. The educator shall have fourteen (14) days from the receipt of the final findings and recommendation to object and request a State Board hearing Review pursuant to Section 9 of this Appendix. Should the educator not request a hearing review before by the State Board within the above-referenced fourteen (14) day time period, the findings and recommendations of the Subcommittee shall become final.

8. Subpoena Power:

- i. At the request of a party to a proceeding pending before the PLSB or the Ethics Subcommittee or the State Board of Education, the Chair of the PLSB or the Ethics Subcommittee or the State Board of Education may, as appropriate, issue a subpoena and bring before the PLSB, the Ethics Subcommittee or the State Board as a witness any person in this state. The PLSB, the Ethics Subcommittee or the State Board may, on their own motion, issue a subpoena at any time.
- ii. A party requesting a subpoena must make the request in writing to either the PLSB staff attorney or the State Board attorney, as appropriate. Requests for subpoenas made to the PLSB shall be delivered to the Office of the PLSB Attorney no later than ten (10) calendar days prior to the PLSB hearing for which the subpoena is requested. Requests for subpoenas made to the State Board shall be delivered to the Office of General Counsel of the ADE no later than ten (10) calendar days prior to the State Board hearing for which the subpoena is requested.
- iii. The subpoena shall:
 - a) Be in the name of either the PLSB, the Ethics Subcommittee, or the State Board;
 - b) State the name of the proceeding; and
 - c) Command each person to whom it is directed to give testimony at the time and place specified in the subpoena in one (1) of the following ways:
 - (i) In person;
 - (ii) Before a certified court reporter under oath at the place of the witness' residence or employment;
 - (iii) By video-taped deposition at the place of the witness' residence or employment; or
 - (iv) By live video communications from the witness' residence, place of employment, or a nearby facility capable of providing video transmission to the board that has subpoenaed the witness.
 - d) The manner of providing testimony under the subpoena shall be conducted by video conference testimony unless another manner is agreed upon by the board or commission and the person who is the subject of the subpoena.
- iv. The subpoena may require the witness to bring with him or her any book, writing, or other thing under his or her control that he or she is bound by law to produce in evidence.

- v. Service of the subpoena shall be in the manner as provided by law or rule for the service of subpoenas in civil cases.
- vi. A witness who has been served by subpoena and who appears in person to testify at the trial or case pending before the PLSB, the Ethics Subcommittee or the State Board shall be reimbursed for travel and attendance as provided by law.
- vii. If a witness is served with a subpoena and fails to provide testimony in obedience to the subpoena, the PLSB, the Ethics Subcommittee or the State Board may apply to the circuit court of the county in which the PLSB, the Ethics Subcommittee or the State Board is holding the proceeding for an order causing the arrest of the witness and directing that the witness be brought before the court.
- viii. The court will have the power to punish the disobedient witness for contempt as provided by the Arkansas Rules of Civil Procedure.
- ix. A witness who has been served with a subpoena may challenge the validity of the subpoena in the circuit court of the county in which the witness resides or is employed.

9. ~~Hearing Procedures of the Arkansas State Board of Education~~

- ~~i. The agenda item will be introduced by staff of the PLSB or the ADE, as appropriate.~~
- ~~ii. The representative of the PLSB staff will present an opening statement.~~
- ~~iii. The educator or the educator's representative will present an opening statement.~~
- ~~iv. The representative of the PLSB staff will present its case in chief.~~
- ~~v. The educator or the educator's representative will present its case in chief.~~
- ~~vi. The representative of the PLSB staff will present a closing argument.~~
- ~~vii. The educator or the educator's representative will present a closing argument.~~
- ~~viii. The State Board will discuss the matter. During the discussion phase, any member of the State Board may question any party, any party's representative, any witness, or any other person whose testimony may be found useful by the State Board in determining an appropriate resolution of the case.~~
- ~~viii. The State Board will vote on whether to accept, reject, or modify the recommendation of the PLSB. The State Board may vote to approve no sanction at all, the same sanction recommended by the PLSB, a lesser sanction than that recommended by the PLSB, or a more severe sanction than that recommended by the PLSB. Any vote of the State Board must be by a majority of the quorum present.~~
- ~~ix. Other Procedures Applicable to the State Board Hearing~~

- a) ~~The Chair of the State Board shall serve as presiding officer for the hearing.~~
- b) ~~All members of the State Board shall conduct themselves in an impartial manner and may at any time withdraw from the proceedings if they deem themselves disqualified.~~
- e) ~~The representative of the PLSB staff will have the burden of proving each fact of consequence to the determination by a preponderance of the evidence.~~
- d) ~~Irrelevant, immaterial, and unduly repetitious evidence shall be excluded.~~
- e) ~~No less than ten days prior to the public hearing, the educator must submit all documents and other exhibits that they wish the Board to consider at the hearing. Documents should be clearly identified, e.g., PLSB Ex and the PLSB Exhibit 1, Educator Exhibit 1. It should be noted that all records upon which the State Board relies at a hearing to make its decision under Ark. Code Ann. § 6-17-428(o)(2) are subject to public disclosure under the Arkansas Freedom of Information Act of 1967, Ark. Code Ann. §25-19-101 et seq. As a result, the exhibits must be redacted to protect the privacy of students and minors and to protect other sensitive personal data.~~
- e) ~~Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs.~~
- f) ~~Objections to evidentiary offers may be made and shall be noted of record. When a hearing will be expedited and the interests of the parties will not be substantially prejudiced, any part of the evidence may be received in written form.~~
- g) ~~Parties shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts.~~
- h) ~~Official notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties must be notified of material so noticed, including any staff memoranda or data, and shall be afforded a reasonable opportunity to show the contrary.~~

9. State Board Review

- a. When an educator objects to the Subcommittee's evidentiary hearing findings and recommendation, the educator may request a review by the State Board of Education by notifying the attorney for the PLSB in writing within fourteen (14) days.
- b. Within ten (10) days of requesting a review, the educator will have an opportunity to file written exceptions and briefs regarding the Subcommittee's evidentiary hearing findings and recommendation.

- c. The PLSB attorney may file a written response to the educator's exceptions and brief within ten (10) days of receipt of the educator's exceptions and brief.
- d. The PLSB attorney shall prepare a redacted copy of the Ethics Subcommittee hearing transcript and hearing exhibits to be filed with State Board of Education.
- e. The PLSB's findings and recommendations, the educator's exceptions and brief, and the PLSB's response, and the redacted transcript will be submitted to the State Board of Education at the next available meeting date.
- f. Either the PLSB or the educator may request oral argument. If oral argument is requested, the PLSB attorney shall introduce the item on the agenda, then the educator will then have ten (10) minutes to present an oral argument in opposition to the findings and recommendations. The PLSB's attorney will then have (10) minutes for oral argument in support of the findings and recommendations. Upon good cause shown, the Chairperson of the State Board may grant either party additional time for oral argument.
- g. After consideration of the findings and recommendations, the records, exceptions, briefs, and arguments, the State Board of Education shall issue a final decision or order in writing or stated on the record. The final decision shall include findings of fact and conclusions of law, separately stated.

MARK UP

LIST OF ACTIONS & APPLICABLE FINES

Action Taken	Maximum Fine Amount
Complaint is not substantiated – No action taken; Case closed.	\$0
Educators who violate testing procedures of the state and for whom the Ethics Sub-Committee of the PLSB believes the violation does not rise to the level of an ethics violation may be recommended for additional training in the approved testing procedures by the state.	All expenses paid by the educator.
Compliance with conditions or restrictions or recommended treatment or rehabilitation with periodic monitoring.	All expenses paid by the educator.
Private Letter of Caution	\$0
Written Warning	\$0
Written Reprimand	\$50
Probation of License	\$75
Suspension of License	\$100
Permanent Revocation of License	\$0

LIST OF APPLICABLE FEES

License Issued	New or Renewal	Fee Amount
One-Year Provisional Teacher's License	New	\$0.00
	Renewal	\$0.00
Three-Year Initial Teacher's License	New	\$0.00
Five-Year Standard or Advanced Teacher's License	New	\$100.00
	Renewal	\$100.00
Five-Year Vocational Permit	New	\$100.00
	Renewal	\$100.00
One-Year Professional Teaching Permit	New	\$35.00
Lifetime Teacher's License (Must be 62 years of age.)	New	\$0.00
Adding Area or Level to Existing License	Not Applicable	\$0.00
Adding Degrees to Existing License (If not occurring at the time of renewal)	Not Applicable	\$50.00
Duplicate License	Not Applicable	\$50.00

Explanations and Guidelines to Clarify the Intent of The Code of Ethics

The purpose of Appendix C is to provide greater clarity and intent of each ethical standard listed in Section 6.00 of this rule. Therefore, Appendix C is not designed to supersede the required standard of ethical conduct but rather to provide some rationale of the intent and purpose and thus the proper application of each ethical standard of conduct. It is recognized that Appendix C is a general application of the intent and purpose of each ethical standard and is considered a guide and not all inclusive of each and every interpretation and application of the Code as required in Section 6.00.

Moreover, it is recognized that unless specifically stated in a standard of conduct listed in Section 6.00 of these rules or specifically required in Appendix C's interpretation of a particular standard of conduct, the alleged unethical conduct by a licensed educator may be considered by the Professional Licensure Standards Board regardless of the mental intent related to the alleged unethical action or omission. However, the Professional Licensure Standards Board may consider the mental intent or capacity of the licensed educator, along with other relevant factors, when determining whether a violation exists and what, if any, disciplinary action to recommend to the Arkansas State Board of Education for alleged violations of this Code of Ethics.

Furthermore, it is recognized that the Code of Ethics is designed as a model of minimum standards for maintaining the public's respect for, and support of, those holding a license issued by the State Board of Education. It is not intended to regulate the employer/employee or contract relationship between any public school district and its educators. The Code is an overarching and superior set of standards and rules intended to establish and contribute to the development and maintenance of a supportive student-centered learning community that values and promotes human dignity, fairness, care, the greater good, and individual rights.

Standard 1 An educator maintains a professional relationship with each student, both in and outside the classroom.

This standard goes to the core of a professional educator's expected conduct and relationship with all students and transcends criminal behavior or other actions which violate law. The professional relationship with students is such behavior and action which promotes at all times the mental, emotional, and physical health and safety of students. An educator should show respect for and not demean, embarrass, or harass students absent some reasonable educational or disciplinary purpose and never as prohibited by law. A professional relationship is one where the educator maintains a position of educator/student authority with students even while expressing concern, empathy, and encouragement for students. In that position of authority, an educator may nurture the student's intellectual, physical, emotional, social and civic potential. An educator may display concern and compassion for a student's personal problems and, when appropriate, refer the student for school counseling or other help.

Standard 2 An educator maintains competence regarding skills, knowledge, and dispositions relating to his/her organizational position, subject matter, and/or pedagogical practice.

This standard addresses the professional educator's obligation to implement best practices and maintain competence in skills and knowledge. An educator has many dispositions that are required in the course of instruction such as ensuring that students have access to varying points of view and that instruction reflects current subject matter.

Standard 3 An educator honestly fulfills reporting obligations associated with professional practices.

This standard covers those situations where there is an intentional or knowing attempt to deceive or mislead an educational entity. Honest errors or mistakes or inaccuracies are not intended to be encompassed by this standard. To uphold this standard an educator should be honest when reporting data and information to the Arkansas Department of Education, the Arkansas Bureau of Legislative Audit, the Arkansas State Board of Education, and other state and federal governmental agencies. Honestly reporting grades is also a part of this standard. It is also important that an educator honor this standard when giving information to recommend an individual for employment promotion or licensure as well as when reporting professional qualifications, criminal history, college credits and degrees, awards, and employment history. Similarly the failure to timely submit information covers those situations where there is a knowing failure to submit or provide information. The State Board of Education may take direct action to revoke, suspend, or place on probation an educator whose conduct violates Ark. Code Ann. § 6-17-410(d)(1)(A)(vii) and (viii) without submission of an ethics complaint. It is important to note that noncompliance with mandated child abuse reporting laws also falls with this standard.

Standard 4 An educator entrusted with public funds and property, including school sponsored activity funds, honors that trust with honest, responsible stewardship.

An educator must be a good steward of public funds, personnel and property dedicated to school related purposes. The use and accounting for these resources under the educator's control must comply with state and federal laws that regulate the use of public funds and property. The use of such resources for personal gain, other than incidental personal benefit for which there is no public education purpose would not be in keeping with the intent of this standard.

Standard 5 An educator maintains integrity regarding acceptance of any gratuity, gifts, compensation or favor that might impair or appear to influence professional decision or actions and shall refrain from using the educator's position for personal gain.

The standard is intended to prohibit that conduct which is solely for personal gain and creates an appearance of a conflict of interest in the role as an educator. The standard of conduct called for by this section involves an examination of the total circumstances surrounding the gratuity, gift, compensation, or favor. Factors to consider include the value of the gratuity, gift or favor, the reasonableness of any compensation; the timing of the gratuity, gift, compensation, or favor; and the relationship between the educator and the person from whom the gratuity, gift, compensation, or favor comes. Pursuant to Ark. Code Ann. § 6-24-113 an educator may accept awards and grants as provided for therein. Ark. Code Ann. § 6-24-112 contains some specific prohibited transactions involving gratuities or offers of employment. The second part of this standard requires that the educator does not use the position for personal gain.

Standard 6 An educator keeps in confidence information about students and colleagues obtained in the course of professional service, including secure standardized test materials and results, unless disclosure serves a professional purpose or is allowed or required by law.

At times educators are entitled to and/or for professional reasons need access to certain student records, other educators' records, and standardized testing materials. Much of this information is confidential, and the educator should maintain that confidence unless the disclosure serves some legitimate educational purpose as allowed or required by law. The Federal Education Rights and Privacy Act (FERPA) addresses the confidentiality of certain student records. Such federal and state laws permit disclosure of some student information and restrict the disclosure of other student information. Educators should respect and comply with these and other similar confidentiality laws. Confidential student information may include student academic and disciplinary records, health and medical information, family status and/or income, assessment/testing results, and Social Security information. When standardized tests are administered, educators should maintain the confidentiality of those parts of the standardized test materials that are to remain confidential such as actual test items and test booklets in accordance with state law, regulation, and testing policy. Supervisors may be entitled to access to other educators' personnel records and should maintain the confidentiality of those records. Educators should be reminded that this standard is in addition to conduct prohibited under Ark. Code Ann. §§ 6-15-438, 6-17-410(d)(1)(A)(iii) and the Arkansas Department of Education Rules Governing Testing Improprieties. The State Board may take direct action against an educator to revoke, suspend, or place on probation, the license of an educator whose conduct violates this section without the filing of an ethics complaint.

Standard 7 An educator refrains from using, possessing and/or being under the influence of alcohol, tobacco, or unauthorized drugs or substances while on school premises or at school-sponsored activities involving students.

This standard sets forth the expectation of the professional educator concerning using, possessing, or being under the influence of the listed substances while on school premises or at school-sponsored activities involving students or being in violation of state law governing the using, possessing or being under the influence of alcohol, tobacco, or unauthorized/illegal drugs while on school property or at school-sponsored activities involving students.

Notice of Rulemaking

Pursuant to Arkansas Code Annotated § 25-15-201 et seq., notice is hereby given that the Arkansas State Board of Education and the Arkansas Department of Education are considering implementing proposed revisions to the following Arkansas Department of Education Rules: ADE Rules Governing the Teacher Excellence and Support System-June 2012-revisions pertain to student growth measures to be used in the summative evaluation process; ADE Rules Governing Educator Licensure-proposed revisions include Regulatory Authority and Purpose, Definitions, Instructional License Requirements, Ancillary License Requirements, Endorsements, Areas and Levels of Licensure, Administrator License Requirements, License Renewal, General Provisions for All Licenses, Waivers for Public Schools and School Districts, and Conversion of Existing Initial or Provisional Licenses; ADE Rules Governing the Code of Ethics for Arkansas Educators-revisions include changes to the review procedures of the State Board; Proposed Open-Enrollment Public Charter School New Application and District Conversion or Limited Public Charter School New Application-revisions include changes to the application forms used to apply for new open-enrollment, district conversion, or limited public charter schools; ADE Rules Governing Public School Student Services-revisions include grammatical changes and reformatting; ADE Rules Governing Technology Training Centers in Education Service Cooperatives-revisions include grammatical changes and reformatting; ADE Rules Identifying and Governing the Arkansas Fiscal Assessment and Accountability Program-revisions include grammatical changes and reformatting. The Arkansas State Board of Education and the Arkansas Department of Education are considering repealing the following Rules: ADE Rules Governing Addition of Areas of Licensure or Endorsement; ADE Rules Governing Initial and Standard/Advanced Level School Administrator Licensure; ADE Rules Governing Initial, Standard/Advanced Level and Provisional Teacher Licensure; ADE Rules Governing Licensure of Speech Language Pathologists by the State Board of Education; ADE Rules Governing Requirements and Procedures for Renewing a Standard/Professional Arkansas Teaching License; ADE Rules Governing Parental Notification of an Assignment of a Non-Licensed Teacher to Teach a Class for More than Thirty (30) Consecutive School Days During a School Year and Granting Waivers; ADE Rules Governing Teacher Licensure by Reciprocity. The rules proposed for repeal are revised and incorporated in the revisions to the ADE Rules Governing Educator --

Licensure. A public hearing will be held on July 11, 2012 at 1 p.m. in the Auditorium of the Arch Ford Education Building, Four Capitol Mall, Little Rock. Written comments may be mailed to the Office of Legal Services at Four Capitol Mall, Room 404-A, Little Rock, AR 72201. Comments may be emailed to ADE.RulesComments@arkansas.gov or submitted online at <http://www.arkansased.org/about/rules/pending.html>. Copies of the proposed revisions may be obtained at the Arkansas Department of Education, Office of Legal Services, Four Capitol Mall, Room 404-A, Little Rock, AR 72201 or by accessing the Department's website at <http://arkansased.org>.