

ARKANSAS DEPARTMENT OF EDUCATION
RULES GOVERNING
BACKGROUND CHECKS AND LICENSE REVOCATION

1.00 REGULATORY AUTHORITY AND PURPOSE

- 1.01 These rules shall be known as Arkansas Department of Education Rules Governing Background Checks and License Revocation.
- 1.02 The State Board of Education enacts these Rules pursuant to its authority as set forth in Ark. Code Ann. §§ 6-11-105, 6-17-410, 6-17-411, 6-17-414, 6-17-421, and 25-15-201 *et seq.*
- 1.03 It is the purpose of these rules to set forth the requirements for a criminal background check and a Child Maltreatment Central Registry check for:
- 1.03.1 Each first-time applicant for a license issued by the State Board of Education;
- 1.03.2 Each applicant for his or her first license renewal after July 1, 1997;
- 1.03.3 Each applicant for initial employment in a licensed staff position with a public school district or open-enrollment public charter school; and
- 1.03.4 Each applicant for initial employment or non-continuous reemployment in a non-licensed staff position with a public school district, open-enrollment public charter school, or education service cooperative.
- 1.04 It is further the purpose of these rules to prescribe the procedure for revocation, suspension, or placing on probation of an educational license.
- 1.05 It is further the purpose of these rules to clarify whose criminal records check and Child Maltreatment Central Registry check fees shall be paid by the Department of Education.
- 1.06 It is further the purpose of these rules to clarify that superintendents and charter school directors shall have the responsibility of reporting licensure violations of teachers and fraudulent acts by Fiscal Officers to the State Board.

2.00 DEFINITIONS

For the purposes of these rules:

2.01 “Affected District” – A public school district that loses territory or students as a result of annexation, consolidation, or detachment.

2.02 “Applicant” – Includes any individual:

2.02.1 Applying for his or her first license to be issued by the State Board of Education;

2.02.2 Applying for his or her first license renewal;

2.02.3 Seeking initial employment in a licensed staff position with a public school district or open-enrollment public charter school;

2.02.4 Seeking initial employment or non-continuous reemployment in a non-licensed staff position with a public school district, open-enrollment public charter school, or education service cooperative;

2.02.5 Seeking initial employment as a Fiscal Officer of a public school district or open-enrollment public charter school; or

2.02.6 Seeking registered volunteer status pursuant to the Arkansas Registered Volunteers Program Act, Ark. Code Ann. § 6-22-101 *et seq.*

2.03 “Breach of Fiduciary Trust” – the wrongful misappropriation by a person of any fund or property, which had lawfully been committed to him or her in a fiduciary character.

2.04 “Department” – Arkansas Department of Education.

2.05 “Employment” – Includes any contract of hire, whether written or oral, whether express or implied, for any type of work on behalf of an educational entity, whether full-time or part-time, and whether permanent or temporary.

2.05.1 “Employment” also specifically includes without limitation:

2.05.1.1 Service as a substitute teacher, whether paid or unpaid;

2.05.1.2 Student teacher internships, whether paid or unpaid; and

2.05.1.3 Volunteer work pursuant to the Arkansas Registered Volunteers Program Act, Ark. Code Ann. § 6-22-101 et seq.

2.06 “Fiscal Officer” – Any licensed or non-licensed employee of a public school district, open-enrollment public charter school, or education service cooperative who has any right, duty, or responsibility to access funds of a school district in excess of two hundred dollars (\$200), specifically including without limitation superintendents, Fiscal Officers and bookkeepers.

2.07 “Fraud” – All acts, omissions and concealments involving a breach of a legal or equitable duty and resulting in damage to another.

2.08 “Fraudulent Act” – An act involving fraud, or breach of fiduciary trust, which is punishable under the criminal code in the jurisdiction within which the act occurred.

2.09 “Initial employment” means the first time that an applicant has been employed by a public school district, open-enrollment public charter school, or education service cooperative.

2.10 “Law enforcement officer” – A state police officer, a city police officer, a sheriff or a deputy sheriff.

2.11 “Letter of provisional eligibility” – A six-month, non-renewable letter of provisional eligibility for licensure issued by the State Board of Education to an applicant for first-time licensure during the period that a criminal records check and Child Maltreatment Central Registry check are being conducted.

2.12 “Non-continuous reemployment” means employment in a public school district, open-enrollment public charter school, or education service cooperative by an applicant who was previously employed by the same entity but not at any point during the immediately preceding school year.

2.13 “Non-licensed staff position” means a position with a public school district, open-enrollment public charter school, or education service cooperative, which position does not require the holder of the position to possess an Arkansas teacher’s license.

2.14 “Receiving or resulting public school district” – A public school district that is created or gains territory or students as the result of a consolidation, annexation, or detachment.

2.15 “State Board” – Arkansas State Board of Education.

3.00 LICENSURE, LICENSE RENEWALS, AND LICENSE REVOCATION

3.01 Unless a waiver is granted pursuant to this Section 3.0, the State Board shall not issue a license or license renewal to, and shall revoke, suspend, or place on probation the existing license of, any individual who:

3.01.1 Has pled guilty, pled nolo contendere to, or been found guilty of any offense that will or may result in license revocation under Ark. Code Ann. § 6-17-410;

3.01.2 Has an expunged or a pardoned conviction for any sexual or physical abuse offense committed against a child or any offense that will or may result in license revocation under Ark. Code Ann. § 6-17-410;

3.01.3 Has a true report in the Child Maltreatment Central Registry;

3.01.4 Holds a teaching or similar license obtained by fraudulent means;

3.01.5 Has had a teaching or similar license revoked in another state;

3.01.6 Intentionally compromises the validity or security of any student test or testing program administered by or required by the state board or the Department of Education;

3.01.7 Has the completed examination test score of any testing program required by the state board for teacher licensure declared invalid by the testing program company and so reported to the Department of Education by the testing company;

3.01.8 Fails to establish or maintain the necessary requirements and standards set forth in Arkansas law or state board rules and regulations for teacher licensure;

3.01.9 Knowingly submits or provides false or misleading information or knowingly failing to submit or provide information

requested or required by law to the Department of Education, the state board, or the Division of Legislative Audit; or

3.01.10 Knowingly falsifies or directs another to falsify any grade given to a student, whether the grade was given for an individual assignment or examination or at the conclusion of a regular grading period.

3.02 Before denying an application for licensure or renewal, the Department shall provide to the Applicant or licensee a written notice of the reason for the action and shall afford the Applicant or licensee the opportunity to request a hearing before the State Board.

3.02.1 A written request for hearing by the Applicant or local public school district board of directors must be received by the Department's Office of Legal Services no more than thirty (30) days after the receipt of the notice of denial or nonrenewal by the Applicant.

3.02.2 Upon written notice that an application for licensure or license renewal is being denied for a cause set forth, a person may:

3.02.2.1 Decline to answer the notice, in which case the application for licensure or license renewal will be deemed denied no less than thirty (30) days after the receipt of the notice of denial or nonrenewal by the Applicant;

3.02.2.2 Contest the allegations of fact and request a hearing in writing, in which case the person shall be given an evidentiary hearing before the state board if one is requested;

3.02.2.3 Admit the allegations of fact and request a hearing before the state board to request a waiver; or

3.02.2.4 Stipulate or reach a negotiated agreement, which must be approved by the state board.

3.02.2.5 If the person requesting a hearing fails to appear at the hearing, the hearing shall proceed in the manner described in Section 3.02.2.1 above.

3.03 Before taking action against an existing license, the State Board shall provide by certified mail to the licensee a written notice of the reason for

the action and the time, date, and location when the State Board will consider revocation.

3.03.1 A written request for hearing by a licensee or a local public school district's board of directors must be received by the Department's Office of Legal Services no more than thirty (30) days after the receipt of the notice of revocation by the licensee.

3.03.2 Upon written notice that a revocation, suspension, or probation is being sought by the State Board for a cause set forth, a person may:

3.03.2.1 Decline to answer the notice, in which case the State Board may take action based upon proof submitted by the Department, if the State Board determines by a preponderance of the evidence that cause for the proposed action exists;

3.03.2.2 Contest the allegations of fact and request a hearing in writing, in which case the person shall be given an evidentiary hearing before the state board if one is requested;

3.03.2.3 Admit the allegations of fact and request a hearing before the State Board in mitigation of any penalty that may be assessed; or

3.03.2.4 Stipulate or reach a negotiated agreement, which must be approved by the State Board.

3.03.2.5 If the person requesting the hearing fails to appear at the hearing, the hearing shall proceed in the manner described in Section 3.03.2.1 above.

3.04 Circumstances for which a waiver may be granted after a hearing pursuant to Sections 3.02 or 3.03 shall include without limitation the following:

3.04.1 The age at which the crime or incident was committed;

3.04.2 The circumstances surrounding the crime or incident;

3.04.3 The length of time since the crime or incident;

3.04.4 Subsequent work history;

3.04.5 Employment references;

3.04.6 Character references; and

3.04.7 Other evidence demonstrating that the applicant does not pose a threat to the health or safety of school children or school personnel.

3.05 After a hearing, the State Board may choose to:

3.05.1 Revoke a license permanently;

3.05.2 Suspend a license for a terminable period of time or indefinitely;

3.05.3 Place or grant a license on probationary status for a terminable period of time with the license to be revoked or suspended if the probationary period is not successfully completed;

3.05.4 Impose a monetary penalty not to exceed five hundred dollars (\$500.00) for each violation;

3.05.5 Require a licensee to complete appropriate professional development programs, education courses, or both;

3.05.6 Require a licensee to successfully complete a licensing examination, credentialing examination, or any other examination required by law or rule to obtain a permit, license, endorsement, or licensure area;

3.05.7 Impose conditions or restrictions on the teaching or educational activities of the licensee;

3.05.8 Impose any other requirement or penalty as may be appropriate under the circumstances of the case and which would achieve the Board's desired disciplinary purposes, but which would not impair the public health or welfare; or

3.05.9 Take no action against a license.

3.06 Any hearing shall comply with the procedures set forth in Section 8.00 herein.

4.00 BACKGROUND CHECKS REQUIRED FOR LICENSURE AND SCHOOL EMPLOYMENT

4.01 Except as otherwise provided herein, no Applicant may be issued a first-time license or first-time license renewal, nor may an Applicant be employed by a public school district or open-enrollment public charter school, without the successful completion of a criminal records check and the successful completion of a Child Maltreatment Central Registry check as required by these Rules.

4.02 Applicants for a first-time license issued by the State Board:

4.02.1 Each first-time Applicant for a license issued by the State Board shall be required to apply to:

4.02.1.1 The Identification Bureau of the Department of Arkansas State Police for a criminal records check; and

4.02.1.2 The Department of Human Services for a Child Maltreatment Central Registry check.

4.02.2 The State Board may issue a six-month, non-renewable letter of provisional eligibility for licensure to a first-time applicant meeting all other qualifications, pending the results of the nationwide criminal records and Child Maltreatment Central Registry checks.

4.02.3 The Commissioner of Education may extend the period of provisional eligibility to the end of the contract year if:

4.02.3.1 The applicant is employed by a public school district or open-enrollment public charter school; and

4.02.3.2 Results of the nationwide criminal records check or Child Maltreatment Central Registry check are delayed.

4.02.4 The letter of provisional eligibility will immediately become invalid upon receipt of information obtained from the criminal records check from the Arkansas State Police or the FBI, or other eligibility information, indicating that the applicant has pled guilty or nolo contendere to, or has been found guilty of, any offense that will or may result in license revocation under Ark. Code Ann. § 6-17-410.

- 4.02.5 The Applicant shall be responsible for the payment of any fees associated with the criminal records check and Child Maltreatment Central Registry check.

4.03 Applicants for a first-time license renewal:

- 4.03.1 Each Applicant for his or her first license renewal after July 1, 1997, shall be required to apply to:
- 4.03.1.1 The Identification Bureau of the Department of Arkansas State Police for a criminal records check; and
- 4.03.1.2 The Department of Human Services for a Child Maltreatment Central Registry check.
- 4.03.2 The Department shall pay from the Public School Fund any fee associated with the criminal records check at the time of first-time license renewal for employees of:
- 4.03.2.1 Arkansas public school districts;
- 4.03.2.2 Arkansas open-enrollment public charter schools;
- 4.03.2.3 Other public education institutions located in Arkansas; and
- 4.03.2.4 The Arkansas Department of Education.
- 4.03.3 For all other Applicants, the Applicant shall be responsible for the payment of any fees associated with the criminal records check and Child Maltreatment Central Registry check.

4.04 Applicants for employment in a licensed staff position:

- 4.04.1 Each Applicant for initial employment or non-continuous reemployment in a licensed staff position for a public school district or open-enrollment public charter school shall be required as a condition of employment to apply to:
- 4.04.1.1 The Identification Bureau of the Department of Arkansas State Police for a criminal records check; and

4.04.1.2 The Department of Human Services for a Child Maltreatment Central Registry check.

4.04.2 The board of directors of a receiving or resulting public school district in a consolidation, annexation, or detachment may waive the requirements of this Section 4.04 for personnel who were employed by an affected district immediately prior to the annexation, consolidation, or detachment and who had a complete criminal records check conducted as a condition of the person's most recent employment with the affected district as required under this section.

4.04.3 A public school district or open-enrollment public charter school shall not employ in a licensed staff position any individual who has a true report in the Child Maltreatment Central Registry, unless the State Board granted a waiver by awarding a license or renewal under Section 3.00 herein.

4.04.4 A public school district or open-enrollment public charter school shall not employ in a licensed staff position any individual who has pled guilty, pled nolo contendere to, or been found guilty of any offense that will or may result in license revocation under Ark. Code Ann. § 6-17-410, unless the State Board granted a waiver by awarding a license or renewal under Section 3.00 herein.

4.04.5 A public school district or open-enrollment public charter school may offer provisional employment to an affected Applicant pending receipt of the results of the nationwide criminal records or Child Maltreatment Central Registry checks.

4.04.6 The Applicant shall be responsible for the payment of any fees associated with the criminal records check and Child Maltreatment Central Registry check, unless the employing public school district or open-enrollment public charter school's board of directors chooses to pay the fees.

4.05 Applicants for employment in a non-licensed staff position:

4.05.1 Each Applicant for initial employment or non-continuous reemployment in a non-licensed staff position for a public school district, open-enrollment public charter school, or education service cooperative, shall be required as a condition of employment to apply to:

4.05.1.1 The Identification Bureau of the Department of Arkansas State Police for a criminal records check; and

4.05.1.2 The Department of Human Services for a Child Maltreatment Central Registry check.

4.05.2 The board of directors of a receiving or resulting public school district in a consolidation, annexation, or detachment may waive the requirements of this Section 4.05 for personnel who were employed by an affected district immediately prior to the annexation, consolidation, or detachment and who had a complete criminal records check conducted as a condition of the person's most recent employment with the affected district as required under this section.

4.05.3 A public school district, open-enrollment public charter school, or education service cooperative shall not employ in a non-licensed staff position any individual who has a true report in the Child Maltreatment Central Registry.

4.05.3.1 If an applicant for employment has been determined ineligible for employment because the applicant has a true report in the Child Maltreatment Central Registry, the local school board of directors shall provide a written notice to the applicant and shall afford the applicant the opportunity to request a waiver.

4.05.3.2 The waiver shall be requested no more than thirty (30) days after receipt of the notice of the denial of employment.

4.05.3.3 The waiver may be requested by:

4.05.3.3.1 The hiring official;

4.05.3.3.2 The affected applicant; or

4.05.3.3.3 The person subject to dismissal.

4.05.3.4 Circumstances for which a waiver may be granted shall include without limitation the following:

4.05.3.4.1 The age at which the incident was committed;

4.05.3.4.2 The circumstances surrounding the incident;

4.05.3.4.3 The length of time since the incident;

4.05.3.4.4 Subsequent work history;

4.05.3.4.5 Employment references;

4.05.3.4.6 Character references; and

4.05.3.4.7 Other evidence demonstrating that the applicant does not pose a threat to the health or safety of school children or school personnel.

4.05.4 A public school district, open-enrollment public charter school, or education service cooperative shall not employ in a non-licensed staff position any individual who has pled guilty or nolo contendere to, or has been found guilty of, any offense identified in Ark. Code Ann. § 6-17-414(b).

4.05.5 A public school district, open-enrollment public charter school, or education service cooperative may offer provisional employment to an affected Applicant pending receipt of the results of the nationwide criminal records or Child Maltreatment Central Registry checks.

4.05.6 The Applicant shall be responsible for the payment of any fees associated with the criminal records check and Child Maltreatment Central Registry check, unless the board of directors of the employing public school district, open-enrollment public charter school, or education service cooperative chooses to pay the fees.

4.05.7 Notwithstanding the provisions of Section 4.05.6, a public school district or open-enrollment public charter school may at its discretion require criminal records checks and Child Maltreatment Central Registry checks of existing non-licensed employees in the same manner as set forth herein, so long as the district or school pays the full cost of the criminal records checks and Child Maltreatment Central Registry checks.

5.00 BACKGROUND CHECK PROCEDURES

- 5.01 The criminal records check and Child Maltreatment Central Registry check required by these Rules shall be initiated by the submission to the Department of a release of information signed by the Applicant.
- 5.01.1 For the purposes of these Rules, a criminal records check shall consist of a statewide criminal records check to be conducted by the Department of Arkansas State Police and a nationwide criminal records check to be conducted by the Federal Bureau of Investigation.
- 5.01.2 Criminal records checks shall conform to the applicable federal or state standards and shall include the taking of fingerprints. The Identification Bureau of the Department of Arkansas State Police may maintain these fingerprints in the automated fingerprint identification system.
- 5.01.3 Each applicant shall complete the State Police fingerprint card in the presence of a law enforcement officer, and shall have the law enforcement officer sign the fingerprint card and give his/her jurisdiction, the date and his/her badge number.
- 5.01.4 If a legible set of fingerprints, as determined by the Identification Bureau of the Department of Arkansas State Police, cannot be obtained after a minimum of three (3) attempts, the Department or the local public school district shall determine eligibility for licensure or employment based upon a name check by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.
- 5.01.5 To be valid for consideration, a criminal records check or Child Maltreatment Central Registry check must have been completed no earlier than twelve (12) months prior to the application for licensure, renewal, or employment.
- 5.02 Any information received by the Department from the Department of Arkansas State Police, the Department of Human Services, or the Federal Bureau of Investigation pursuant to these Rules shall not be available for examination except by the affected applicant or his or her duly authorized representative, and no record, file, or document shall be removed from the custody of the Department of Education.

- 5.02.1 Any information made available to the affected applicant for licensure or the person whose license is subject to revocation shall be information pertaining to that applicant only.
- 5.02.2 Rights of privilege and confidentiality established under this section shall not extend to any document created for purposes other than this background check.
- 5.02.3 For Applicants seeking employment, the Department may disclose to the employing public school district, open-enrollment public charter school, or education service cooperative only whether the Applicant is eligible for employment.
- 5.03 Employees of a public school district, open-enrollment public charter school, or education service cooperative, whether new or existing, who have a contract with or work for more than one (1) school district in one (1) school year shall be required to have only one (1) criminal records check and one (1) Child Maltreatment Central Registry check to satisfy the requirements of all employing school districts for that year.

6.00 REPORTING REQUIREMENTS FOR SUPERINTENDENTS AND CHARTER SCHOOL DIRECTORS

- 6.01 The superintendent of each public school district and the director of each open-enrollment public charter school shall report in writing by certified mail to the Department's Office of Legal Services the name of any employee of the district or school, whether currently employed or previously employed at any time during the two (2) preceding school years, who:
 - 6.01.1 Has pled guilty or nolo contendere, or has been found guilty, of any offense listed in Ark. Code Ann. §§ 6-17-410(c) or 6-17-414(b);
 - 6.01.2 Holds a teaching or similar license obtained by fraudulent means;
 - 6.01.3 Has had a teaching or similar license revoked in another state;
 - 6.01.4 Has intentionally compromised the validity or security of any student test or testing program administered or required by the Department;

6.01.5 Has knowingly submitted falsified information or failed to submit information requested or required by law to the Department, the State Board, or the Division of Legislative Audit; or

6.01.6 Has a true report in the Child Maltreatment Central Registry.

6.02 The superintendent of each public school district and the director of each open-enrollment public charter school shall report in writing by certified mail to the Department's Office of Legal Services the name of any Fiscal Officer of the district or school, whether currently employed or previously employed at any time during the two (2) preceding school years, who has pled guilty or nolo contendere to, or has been found guilty of, a fraudulent act.

6.03 Failure of a superintendent to report a violation by certified mail within five (5) calendar days of knowledge as listed in Section 6.01 may result in sanctions imposed by the State Board, including but not limited to loss of accreditation.

7.00 FISCAL OFFICERS

7.01 In addition to the requirements of Section 4.00, a public school district, open-enrollment public charter school, or education service cooperative shall not employ as a Fiscal Officer any individual who has pled guilty or nolo contendere to, or has been found guilty of, a fraudulent act.

7.02 A currently-employed Fiscal Officer of a public school district or open-enrollment public charter school who has pled guilty or nolo contendere to, or has been found guilty of, a fraudulent act shall be dismissed from employment with the district or school.

7.02.1 Within five (5) days of knowledge of the plea or conviction, the district or school shall serve written notice of termination on the Fiscal Officer in person or by certified mail. The notice shall advise the Fiscal Officer of his or her right to a hearing before the State Board.

7.02.2 The Fiscal Officer may, within thirty (30) days of service of the written notice of termination, request a hearing before the State Board by sending a written request via certified mail to the Department's Office of Legal Services.

7.02.3 If the Fiscal Officer does not timely request a hearing before the State Board, termination shall become effective thirty (30)

days after the date of service of the written notice of termination.

7.02.4 Termination of employment pursuant to this subsection shall not be subject to the requirements of the Teacher Fair Dismissal Act, Ark. Code Ann. § 6-17-1501 et seq. or the Public School Employee Fair Hearing Act, Ark. Code Ann. § 6-17-1701 et seq.

7.03 Any individual found ineligible for employment or dismissed from employment under Section 7.00 may, within thirty (30) days of service of the written notice of denial of employment or written notice of termination, request a hearing before the State Board by sending a written request via certified mail to the Department's Office of Legal Services.

7.04 Circumstances for which a waiver may be granted shall include without limitation the following:

7.04.1 The age of the Fiscal Officer at the time the criminal act occurred;

7.04.2 The length of time since the conviction;

7.04.3 Whether the Fiscal Officer has pled guilty or nolo contendere to, or has been found guilty of, any other criminal violations since the original conviction;

7.04.4 Whether the original conviction was expunged or pardoned; and

7.04.5 Any other relevant facts.

7.05 The hearing shall follow the procedures set forth in Section 8.00 of these Rules.

7.06 After making its decision, the State Board shall reduce its decision to writing and shall mail copies of the decision to the Fiscal Officer or Applicant and the Superintendent of the affected school district.

8.00 STATE BOARD HEARING PROCEDURES

8.01 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 may, only for

good cause shown and upon the request of either party, allow either party additional time to present their opening statements.

- 8.02 Each party will be given forty (40) minutes to present their cases, beginning with the representative of the Department of Education. The Chairperson of the State Board may, only for good cause shown and upon the request of either party, allow either party additional time to present their cases.
- 8.03 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.
- 8.04 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).
- 8.05 For the purposes of the record, documents offered during the hearing by the appealing public school district, open-enrollment public charter school, Applicant, or licensee shall be clearly marked in sequential, alphabetic letters (A, B, C).
- 8.06 The Department of Education shall have the burden of proving, by a preponderance of the evidence, that cause for the proposed licensure action exists, and that the recommended disposition from the Department be adopted.
- 8.07 While the scope of each party's presentation ultimately lies within the Board Chairperson's discretion, case presentation should be arranged in such a way as to avoid redundant testimony.
- 8.08 After both parties have presented their cases, the State Board may allow each party to present limited rebuttal testimony.
- 8.09 After making its decision, the State Board shall reduce its decision to writing and shall mail copies of the decision to each party, each party's attorney, and the superintendent or director of any interested public school district or open-enrollment public charter school.
- 8.10 The Board's written decision shall constitute the final agency action for purposes of judicial review pursuant to the Arkansas Administrative Procedure Act, Ark. Code Ann. § 25-15-201 et seq.

~~ARKANSAS DEPARTMENT OF EDUCATION
RULES GOVERNING CRIMINAL BACKGROUND CHECKS
FOR SUBSTITUTE TEACHERS~~

~~April 2008~~

~~1.00—AUTHORITY~~

~~1.01—The Arkansas State Board of Education’s authority for promulgating these rules is pursuant to Ark. Code Ann. § 6-11-105.~~

~~1.02—These rules shall be known as the Arkansas Department of Education Rules Governing Criminal Background Checks for Substitute Teachers.~~

~~2.00—DEFINITIONS~~

~~—For the purpose of these rules, the following terms shall mean as follows:~~

~~2.01—“Applicant” means an individual who is being considered for employment as a substitute teacher by a local school district.~~

~~2.02—“Initial employment” means the first time that an applicant has been considered for employment by a local school district.~~

~~2.03—“Non-licensed staff position” means a position with a local school district which does not require the holder of the position to possess an Arkansas teacher’s license pursuant to Ark. Code Ann. § 6-17-401 *et seq.*~~

~~2.04—“Non-continuous employment” means consideration for employment as a substitute teacher in a local school district by an applicant who has been previously employed by the same local school district in a non-licensed staff position and the last previous employment of the applicant by the district was no earlier than the previous school year.~~

~~2.05—“Substitute teacher” means an individual who does not hold an Arkansas teacher’s license who is employed by a local school district to provide classroom teaching services on an occasional or temporary basis.~~

~~3.00—CRIMINAL BACKGROUND CHECKS FOR SUBSTITUTE TEACHERS~~

~~3.01—The board of directors of a local school district or an education service cooperative shall require, as a condition for initial employment or non-continuous employment as a substitute teacher, that an individual apply to the Identification Bureau of the Arkansas State Police for statewide and national criminal records checks.~~

- 3.02 — ~~The Identification Bureau of the Arkansas State Police shall forward the information necessary for the processing of the nationwide criminal records check to the Federal Bureau of Investigation for the completion of the criminal records check.~~
- 3.03 — ~~The applicant shall sign a release of information permitting the completed statewide and nationwide criminal records checks to be submitted to the Arkansas Department of Education.~~
- 3.04 — ~~Upon completion of the criminal records check, the Identification Bureau of the Arkansas State Police shall forward all releaseable information obtained concerning the applicant to the Department of Education.~~
- 3.05 — ~~The Department of Education shall promptly inform the board of directors of the local school district or education service cooperative whether or not the applicant is eligible for employment pursuant to Ark. Code Ann. § 6-17-414(b).~~
- 3.06 — ~~No non-licensed applicant shall be eligible for employment as a substitute teacher by a local school district or education service cooperative if the applicant has pleaded guilty or *nolo contendere* to or has been found guilty of any offense listed under Ark. Code Ann. § 6-17-414(b) by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court.~~
- 3.07 — ~~The board of directors of a local school district or education service cooperative may offer provisional employment to a substitute teacher pending receipt of eligibility information from the Department of Education.~~
- 3.08 — ~~Any information received by the Department of Education from the Identification Bureau of the Arkansas State Police pursuant to this section shall not be available for examination except by the affected applicant for employment or his or her duly authorized representative, and no record, file or document shall be removed from the custody of the Department of Education.~~
- 3.08.1 — ~~Any information made available to the affected applicant for employment shall be information pertaining to that applicant only.~~
- 4.00 — ~~NON LICENSED SUBSTITUTE TEACHERS WORKING FOR MORE THAN ONE (1) SCHOOL DISTRICT~~
- 4.01 — ~~Any non-licensed individual who has successfully completed the statewide and nationwide criminal records checks referenced in Section 3.00 of these rules, and who is employed as a substitute teacher for a local school~~

~~district for a given school year, may also be concurrently employed by one (1) or more other local school districts during the same school year without the necessity of completing another statewide and nationwide criminal records check.~~

- ~~4.02 — Local school districts who wish to hire an applicant covered under Section 4.01 of these rules may, upon verifying that the applicant is employed as a substitute teacher for a local school district, contact the Department of Education's Office of Professional Licensure to ascertain the applicant's eligibility for employment.~~
- ~~4.03 — Under no circumstances shall the Department of Education release information received from the Identification Bureau of the Arkansas State Police on any applicant to any local school district.~~

ARKANSAS DEPARTMENT OF EDUCATION
RULES GOVERNING THE REQUIREMENT OF A CRIMINAL BACKGROUND
CHECK FOR THE EMPLOYMENT OF PERSONNEL IN SCHOOL DISTRICTS
April 2008

1.00 — REGULATORY AUTHORITY

1.01 — ~~These rules shall be known as Arkansas Department of Education Rules Governing the Requirement of Criminal Background Checks for the Employment of Personnel in School Districts and Requirement of Criminal Background Checks for All First-Time Applicants, Each Applicant for His or Her First License Renewal, and the Revocation Procedures for Such Licenses.~~

1.02 — ~~These rules are enacted pursuant to the State Board of Education's authority under Ark. Code Ann. §§ 6-11-105, 6-17-410, 6-17-414 and 6-17-421 and Act 1573 of 2007.~~

2.00 — PURPOSE

2.01 — ~~It is the purpose of these rules to set forth the requirements for a criminal background check for each first-time applicant for a license issued by the State Board of Education and each applicant for his or her first license renewal on or after July 1, 1997.~~

2.02 — ~~It is further the purpose of these rules to prescribe the procedure for revocation of an educational license.~~

2.03 — ~~It is further the purpose of these rules to clarify whose criminal background check fees shall be paid by the Department of Education.~~

2.04 — ~~It is further the purpose of these rules to clarify that the superintendent shall have the responsibility of reporting licensure violations of teachers to the State Board.~~

2.05 — ~~It is further the purpose of these rules to add provisions concerning the requirement of criminal background checks for the employment of noncertified personnel in school districts, and fraudulent acts by fiscal officers of public school districts.~~

3.00 — DEFINITIONS/ACRONYMS

For the purposes of these rules and regulations:

3.01 — ~~ADE: Arkansas Department of Education.~~

- 3.02 — ~~Applicant: An individual that is a first time applicant for a license issued by the State Board of Education; an individual applying for his or her first license renewal on or after July 1, 1997, and an individual applying for initial employment as a fiscal officer of a school district.~~
- 3.03 — ~~Breach of fiduciary trust: means the wrongful misappropriation by a person of any fund or property, which had lawfully been committed to him or her in a fiduciary character.~~
- 3.04 — ~~Criminal background check: a state and nationwide criminal records check conducted by the Arkansas State Police and the Federal Bureau of Investigation, including the taking of fingerprints.~~
- 3.05 — ~~FBI: Federal Bureau of Investigation.~~
- 3.06 — ~~First time applicant: initial or first license issued to each applicant by the State Board of Education.~~
- 3.07 — ~~Fiscal Officer: any certified or non-certified employee of a school district or education service cooperative who has any right, duty, or responsibility to access funds of a school district in excess of two hundred dollars (\$200), specifically including, but not limited to, superintendents, fiscal officers and bookkeepers.~~
- 3.08 — ~~Fraud: means all acts, omissions and concealments involving a breach of a legal or equitable duty and resulting in damage to another.~~
- 3.09 — ~~Fraudulent Act: An act involving fraud, or breach of fiduciary trust, which is punishable under the criminal code in the jurisdiction within which the act occurred.~~
- 3.10 — ~~License renewal applicant for purposes of payment by the Department of Education: employees of Arkansas public school districts, employees of other public education institutions located in Arkansas, and employees of the Department of Education for his or her first license renewal on or after July 1, 1997.~~
- 3.11 — ~~Law enforcement officer: a state police officer, a city police officer, a sheriff or a deputy sheriff.~~
- 3.12 — ~~Letter of provisional eligibility: a six month, non-renewable letter of provisional eligibility for licensure issued by the State Board of Education to a first-time applicant during the period that the criminal background check is being conducted by the Arkansas State Police and the FBI.~~

~~3.13 — OPL: Office of Professional Licensure of the ADE.~~

~~3.14 — SBE: State Board of Education.~~

~~4.00 — THE CRIMINAL BACKGROUND CHECK~~

~~4.01 — Each applicant for an initial license issued by the SBE and each first time license renewal applicant will submit the following to the Office of Professional Licensure:~~

~~4.01.1 — Completed application form including program of studies verification (if applicable)~~

~~4.01.2 — Official transcripts (must bear college seal)~~

~~4.01.3 — Satisfactory scores of on the Praxis Series Examinations including:~~

~~4.01.3.1 Praxis I~~

~~4.01.3.2 PPST/Praxis II~~

~~4.01.3.3 Principles of Learning and Teaching~~

~~4.01.3.4 Specialty area test~~

~~4.01.4 — Effective July 1, 1996, no application for issuance of a first time license will be considered without a criminal background check by the Arkansas State Police and the FBI.~~

~~4.01.5 — Effective July 1, 1997, no application for issuance of a license renewal will be considered without a criminal background check by the Arkansas State Police and the FBI.~~

~~4.01.6 — Effective April 10, 1997, no applicant for initial employment as a certified employee shall be hired by a school district without a criminal background check by the Arkansas State Police and FBI.~~

~~4.01.7 — Effective February 6, 2004, the board of directors of a school district shall require an applicant for initial employment as a fiscal officer to have performed a criminal background check by the Arkansas State Police and the FBI, along with other background checks required by these Rules and/or Arkansas law due to the applicant's noncertified or certified employee status.~~

- 4.02 — ~~Each applicant shall complete the State Police fingerprint card in the presence of a law enforcement officer, and shall have the law enforcement officer sign the fingerprint card and give his/her jurisdiction, the date and his/her badge number.~~
- 4.03 — ~~Each applicant must sign a release of information and submit it to the ADE and shall be solely responsible for the payment of any fee associated with the criminal background check to the Arkansas State Police.~~
- 4.04 — ~~The Department of Education shall be responsible to the Department of Arkansas State Police for the payment of any fee associated with the criminal record check of each applicant as defined in Section 3.06 for his or her first license renewal after July 1, 1997.~~
- 4.05 — ~~Upon completion of the criminal background check, the Identification Bureau of the Arkansas State Police shall forward all information obtained concerning the applicant in the commission of any offense listed in Ark. Code Ann. § 6-17-410 (c) or referenced in Ark. Code Ann. § 6-17-410 (d)(1)(A)(v) to the Attorney's Office of the ADE.~~
- 4.06 — ~~The criminal background check conducted by the Arkansas State Police and the FBI shall have been completed no earlier than twelve (12) months prior to the application for an initial license issued by the SBE.~~
- 4.07 — ~~SBE shall be authorized to issue a six-month, non-renewable letter of provisional eligibility for licensure to a first-time applicant pending the results of the criminal records check. This letter of provisional eligibility for licensure shall be issued only to those applicants who meet all other qualifications for licensure by the SBE, and who have submitted the Arkansas State Police background check showing no violations listed in either Ark. Code Ann. § 6-17-410 (c) or referenced in Ark. Code Ann. § 6-17-410(d)(1)(A)(v).~~
- 4.08 — ~~The Commissioner of the Department of Education shall be authorized to extend the period of provisional eligibility to the end of the contract year if:~~
- 4.08.1 ~~The applicant is employed by a local school district; and~~
- 4.08.2 ~~Results of the criminal records check are delayed.~~
- 4.09 — ~~The letter of provisional eligibility will immediately become invalid upon receipt of information obtained from the criminal background check from the Arkansas State Police and the FBI and other eligibility information indicating that the applicant has pleaded guilty or nolo contendere to, or has been found guilty of, any offense listed in Ark. Code Ann. § 6-17-410(c) or referenced in Ark. Code Ann. § 6-17-410(d)(1)(A)(v).~~

- 4.10 ~~The ADE will not issue a first time teaching license nor a license renewal until the criminal background check conducted by the Arkansas State Police and the FBI has been completed.~~
- 4.11 ~~The ADE shall promptly inform the board of directors of the local school district whether or not the affected employment applicant for a fiscal officer position is eligible for employment.~~
- 4.12 ~~In addition to any ineligibility for employment due to the results of criminal background checks required due to the applicant's certified or non-certified employee status, no person shall be eligible for employment as a fiscal officer by a local school district if the results of the criminal records check released to the ADE by the applicant reveals that the applicant has pleaded guilty or nolo contendere to, or has been found guilty of, a fraudulent act, only after an opportunity for a hearing before the SBE upon reasonable notice in writing.~~
- 4.13 ~~The board of directors of a local school district is authorized to offer provisional employment to an affected applicant for employment as a fiscal officer pending receipt of eligibility information from the ADE.~~

~~5.00 REQUEST FOR WAIVER~~

- 5.01 ~~A request to waive the provisions of Ark. Code Ann. § 6-17-410(c) can be made to the SBE. A request for waiver of provisions of the aforementioned statutes may be made by:~~
 - 5.01.1 ~~the board of a local school district,~~
 - 5.01.2 ~~the affected applicant for licensure (Ark. Code Ann. § 6-17-410(c)), or~~
 - 5.01.3 ~~the person holding a license subject to revocation (Ark. Code Ann. § 6-17-410 (c)(1)).~~
- 5.02 ~~The request must be made in writing to the ADE's Attorney's Office within thirty (30) calendar days after notification of denial of a license. The request for a waiver shall include, but not be limited to, the following:~~
 - 5.02.1 ~~a copy of court records indicating a plea of guilty or nolo contendere or a conviction,~~
 - 5.02.2 ~~any other pertinent documentation to indicate surrounding circumstances.~~
- 5.03 ~~If an individual notifies ADE in writing that he/she desires a hearing, the SBE will hold a hearing.~~

- ~~5.04 — If the individual does not notify the ADE that he/she desires a hearing, the SBE will not hold a hearing and may take action based upon proof submitted by the ADE's Attorney's Office.~~
- ~~5.05 — Circumstances for which a waiver may be granted shall include, but not be limited to, the following:~~
- ~~5.05.1 The age at which the crime was committed.~~
 - ~~5.05.2 The circumstances surrounding the crime.~~
 - ~~5.05.3 The length of time since the crime.~~
 - ~~5.05.4 Subsequent work history.~~
 - ~~5.05.5 Employment references.~~
 - ~~5.05.6 Character references; and~~
 - ~~5.05.7 Other evidence demonstrating that the applicant does not pose a threat to the health or safety of school children or school personnel.~~
- ~~5.06 — Individuals falling under the provisions of Ark. Code Ann. § 6-17-414 are not entitled to request a waiver.~~

~~6.00 — SCHOOL DISTRICT RESPONSIBILITIES~~

- ~~6.01 — The superintendent of each school district shall report to the SBE through the Coordinator of OPL or the ADE's Attorney's Office the name of any licensed or classified personnel currently employed, or employed during the two (2) previous school years, by the local district who has pleaded guilty, nolo contendere, or has been found guilty of any offense listed in Ark. Code Ann. §§ 6-17-410(c) or 6-17-414(b), who holds a license obtained by fraudulent means, who has had a similar license revoked in another state, who has intentionally compromised the validity or security of any student test or testing program administered or required by the ADE, or has submitted falsified information requested or required by the ADE.~~
- ~~6.02 — The superintendent of each school district shall report to the SBE the name of any fiscal officer who is currently employed or who was employed during the two (2) previous years by the local school district who has pleaded guilty or nolo contendere to, or has been found guilty of, a fraudulent act.~~
- ~~6.03 — The superintendent with knowledge shall report, in writing to the SBE through the Coordinator of OPL or the ADE's Attorney's Office, any information contained in Section 6.01. The complaint does not have to be made in any specific form, but it should contain enough information about the person holding a license issued by the SBE to warrant starting an investigation.~~

- ~~6.04 — Failure of a superintendent to report a violation by certified mail within five (5) calendar days of knowledge, as listed in Section 6.01 may result in sanctions imposed by the SBE, including but not limited to loss of accreditation.~~

~~7.00 — LICENSE REVOCATION PROCEDURES~~

- ~~7.01 — A complaint is filed with OPL or the ADE's Attorney's Office, or the ADE receives information from the criminal background check and any other eligibility information reflecting that the individual pled guilty, nolo contendere, or has been found guilty of an offense or offenses listed in Ark. Code Ann. § 6-17-410 (c) or is referenced in Ark. Code Ann. § 6-17-410(d)(1)(A)(v).~~
- ~~7.02 — The ADE's Attorney's Office investigates the complaint and determines whether the individual's educational license must or may be revoked.~~
- ~~7.03 — If the ADE's Attorney's Office determines revocation of a license is appropriate, OPL or the ADE's Attorney's Office notifies the individual who has plead guilty, nolo contendere, or been found guilty of the offense(s) listed in Ark. Code Ann. § 6-17-410 in writing by certified mail of the date, time and location that the SBE will consider revocation. The letter shall also provide the individual reasonable notice of the cause to be considered.~~
- ~~7.04 — If the individual notifies ADE in writing within thirty (30) days after notice of the cause is received by the individual that he/she desires a hearing, the SBE will hold a hearing.~~
- ~~7.05 — If the individual does not notify the ADE that he/she desires a hearing within the time frame stated in Section 7.04, the SBE will not hold a hearing and may take action based upon proof submitted by the ADE.~~

~~8.00 — CURRENTLY EMPLOYED FISCAL OFFICERS AND APPLICANTS~~

- ~~8.01 — (i) A fiscal officer that pleads guilty or nolo contendere to, or has been found guilty of, a fraudulent act, shall be dismissed from employment with the school district, but only after an opportunity for a hearing before the SBE upon reasonable notice in writing.~~
- ~~(ii) The SBE, after conducting a hearing, shall determine either:~~
- ~~(a) — that the applicant is eligible for employment and that the applicant should be denied employment and/or a license that the applicant's employment and licensure status should be terminated should be prevented or that the termination of employment of the~~

~~currently employed fiscal officer should be required, or~~

~~(b) — that the applicant is eligible for employment and/or a license or that the applicant's employment and licensure status should not be terminated.~~

~~8.02 — The SBE shall be entitled to consider:~~

~~8.02.1 The age of the fiscal officer at the time the criminal act occurred;~~

~~8.02.2 The length of time since the conviction;~~

~~8.02.3 Whether the fiscal officer has pleaded guilty, nolo contendere, or has been found guilty of any other criminal violation since the original conviction;~~

~~8.02.4 Whether the original conviction was expunged or pardoned; and~~

~~8.02.5 Any other relevant facts.~~

~~8.03 — After making its decision, the SBE shall reduce its decision to writing and shall mail copies of the decision to the fiscal officer applicant or currently employed fiscal officer and the Superintendent of the affected school district.~~

**~~ARKANSAS STATE BOARD OF EDUCATION
POLICY AND PROCEDURES CONCERNING
TEACHER LICENSURE HEARINGS~~**

1. ~~The Department and the teacher (or his or her attorney) shall have up to forty five (45) minutes each to present their cases to the State Board. The Chairperson of the State Board, at his or her discretion, may grant additional time to either or both parties, if necessary.~~
2. ~~Each party will have the opportunity, should it so choose to make an opening statement. The statement shall be no longer than ten (10) minutes in length; any such times used for an opening statement shall be deducted from the time allowed for case presentation listed in 1. above.~~
3. ~~As the Department bears the burden of establishing to the State Board by a preponderance of the evidence that cause for the proposed licensure action exists, the Department shall present its case (and opening statement, if it so chooses) to the State Board first.~~
4. ~~Any potential witnesses for each party shall be duly sworn in by the court reporter before the presentation of evidence.~~
5. ~~Any written documents, photographs or any other items of evidence may be presented to the State Board with the permission of the Chairperson. The items of evidence shall be marked as either "Department's Exhibit Number 1 (et seq.);" or "Teacher's Exhibit Number 1 (et seq.)." After an item of evidence has been allowed to be presented to the State Board 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.~~
6. ~~After one party has questioned a witness, the other party shall have the same opportunity.~~
7. ~~Members of the State Board shall also have the opportunity to ask questions of any witness or any party.~~
8. ~~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.~~
9. ~~After the teacher has presented his or her case, the State Board may allow each party to present limited rebuttal testimony.~~

10. ~~After the rebuttal evidence has been presented, the teacher shall have up to ten (10) minutes to present a closing statement, if desired.~~
11. ~~After the teacher has made a closing statement, or waived the opportunity for same, the Department shall have up to ten (10) minutes to make its closing statement, if desired.~~
12. ~~After closing statements have been made (or the opportunity to make them has been waived), the State Board may orally announce its decision. Alternatively, the State Board may take the case under advisement and render a written decision at a later time.~~
13. ~~Pursuant to State law, the teacher shall have thirty (30) days after service upon him or her of the State Board's final decision to file a petition with an appropriate Circuit court (pursuant to Ark. Code Ann. 25-15-212) for the judicial review of the State Board's decision.~~