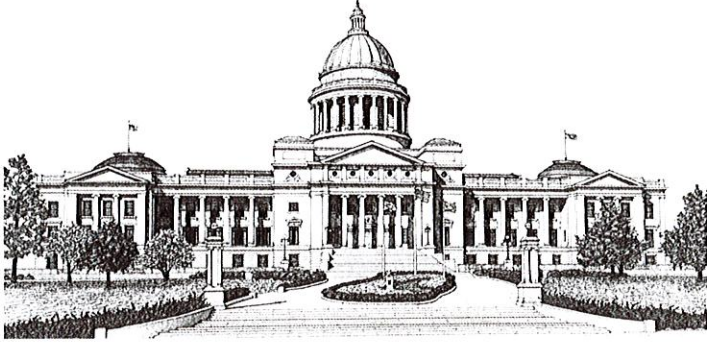


# ARKANSAS REGISTER

## Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

**Mark Martin**

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[www.sos.arkansas.gov](http://www.sos.arkansas.gov)



**For Office**

**Use Only:**

Effective Date \_\_\_\_\_ Code Number \_\_\_\_\_

Name of Agency Arkansas Department of Education Division of Elementary and Secondary Education

Department Learning Services

Contact Courtney Salas-Ford E-mail courtney.salas-ford@arkansas.gov Phone 501-682-4752

Statutory Authority for Promulgating Rules Ark. Code Ann. §§ 6-11-105, 6-15-2901 et seq., and 6-17-410

**Rule Title:** Division of Elementary and Secondary Education Rules Governing Test Security, Testing Violations, and Testing Improprieties

**Intended Effective Date**

(Check One)

Emergency (ACA 25-15-204)

10 Days After Filing (ACA 25-15-204)

Other \_\_\_\_\_  
(Must be more than 10 days after filing date.)

Legal Notice Published .....

Final Date for Public Comment .....

Reviewed by Legislative Council .....

Adopted by State Agency .....

Date

9/20/19

10/19/19

12/20/19

11/14/19

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Courtney Salas-Ford

courtney.salas-ford@arkansas.gov

12/20/19

Contact Person

E-mail Address

Date

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

501-682-4752

courtney.salas-ford@arkansas.gov

Phone Number

E-mail Address

Deputy General Counsel

Title

12/20/19

Date

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** ADE Division of Elementary and Secondary Education  
**DIVISION** Learning Services  
**PERSON COMPLETING THIS STATEMENT** Courtney Salas-Ford  
**TELEPHONE NO.** 501-682-4752 **FAX NO.** 501-682-4249 **EMAIL:** Courtney.salas-ford@arkansas.gov

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

**SHORT TITLE OF THIS RULE** DESE Rules Governing Test Security, Testing Violations, and Alleged Testing Improprieties

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 Does this proposed, amended, or repealed rule have a financial impact?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

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

- (a) How the additional benefits of the more costly rule justify its additional cost;
  
- (b) The reason for adoption of the more costly rule;
  
- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and
  
- (d) Whether the reason is within the scope of the agency’s statutory authority, and if so, please explain.

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

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

**Current Fiscal Year**

**Next Fiscal Year**

General Revenue \_\_\_\_\_

General Revenue \_\_\_\_\_

Federal Funds \_\_\_\_\_

Federal Funds \_\_\_\_\_

Cash Funds \_\_\_\_\_

Cash Funds \_\_\_\_\_

Special Revenue \_\_\_\_\_

Special Revenue \_\_\_\_\_

Other (Identify) \_\_\_\_\_

Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

Total \_\_\_\_\_

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

**Current Fiscal Year**

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
  
Total \_\_\_\_\_

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
  
Total \_\_\_\_\_

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

**Current Fiscal Year**

**Next Fiscal Year**

\$ \_\_\_\_\_

\$ \_\_\_\_\_

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

**Current Fiscal Year**

**Next Fiscal Year**

\$ \_\_\_\_\_

\$ \_\_\_\_\_

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

Yes \_\_\_\_\_ No X

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously

with the financial impact statement and shall include, without limitation, the following:

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

**ARKANSAS DIVISION OF ELEMENTARY AND SECONDARY EDUCATION  
RULES GOVERNING TEST SECURITY, TESTING VIOLATIONS,  
AND TESTING IMPROPRIETIES  
Effective Date January 1, 2020**

**1.00 REGULATORY AUTHORITY**

- 1.01 These rules shall be known as the Arkansas Division of Elementary and Secondary Education (“Division”) Rules Governing Test Security, Testing Violations, and Testing Improproprieties.
- 1.02 These rules are enacted pursuant to the Arkansas State Board of Education’s authority under Ark. Code Ann. §§ 6-11-105, 6-15-2901 et seq., 6-17-410, 25-15-201 et seq., and Act 930 of 2017.

**2.00 PURPOSE**

The purpose of these rules is to:

- 2.01 Define the requirements for maintaining test security and confidentiality on state required assessments;
- 2.02 Identify procedures for reporting testing violations;
- 2.03 Identify a procedure for investigating and addressing complaints regarding alleged testing improprieties; and
- 2.04 Identify categories of violations and actions for individuals, public schools, or public school districts found in violation of the test security requirements included in these Rules and Rules Governing the Arkansas Educational Support and Accountability Act.

**3.00 DEFINITIONS**

- 3.01 “District Test Coordinator” means the same as defined in the Division’s Rules Governing the Arkansas Educational Support and Accountability Act.
- 3.02 “Ethics violation” means 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 for Arkansas Educators;
- 3.03 "Public school" means:
- 3.03.1 A school operated by a public school district; or
- 3.03.2 An open-enrollment public charter school, as defined in Ark. Code Ann. § 6-23-103.

- 3.04 “Public school district” means:
- 3.04.1 A geographic area that qualifies as a taxing unit for purposes of ad valorem property taxes under Ark. Code Ann. § 26-1-101 et seq. and Arkansas Constitution, Article 14, § 3, and is either:
    - 3.04.1.1 Governed by an elected board of directors; or
    - 3.04.1.2 Under the administrative control of the State Board or the Commissioner of Education in place of an elected board of directors; or
  - 3.04.2 An open-enrollment public charter school, as defined in Ark. Code Ann. § 6-23-103.
- 3.05 “Sanction” means a penalty for failing to maintain the security or confidentiality of a state required assessment;
- 3.06 “Testing impropriety” means any departure from either the requirements established by law or rule or from the procedures specified in the applicable test administration materials or Division assessment training, that violates or compromises the security or confidential integrity of an assessment or inappropriately influences student performance or the reporting of student performance, and may include, without limitation, the following acts or omissions:
- 3.06.1 Viewing secure assessment materials;
  - 3.06.2 Duplicating secure assessment materials;
  - 3.06.3 Disclosing the contents of any portion of secure assessment materials;
  - 3.06.4 Aiding or assisting an examinee with a response or answer to any secure assessment item;
  - 3.06.5 Changing or altering any response or answer of an examinee to a secure assessment item;
  - 3.06.6 Failing to return the secured test booklets to the testing company in a timely manner;
  - 3.06.7 Encouraging or assisting an individual to engage in conduct described in Section 3.07 of these rules, the Department’s Rules Governing the Arkansas Educational Support and Accountability Act, or Ark. Code Ann. § 6-15-2907;

- 3.06.8 Failing to report to the appropriate authority that an individual has engaged in conduct set forth in Section 3.07 of these rules, the Department’s Rules Governing the Arkansas Educational Support and Accountability Act, or ~~in~~ Ark. Code Ann. § 6-15-2907; or
- 3.06.9 Having a founded history of repeated unresolved testing violations.
- 3.07 “Testing irregularity” means a departure from the established administration procedures that does not represent a severe breach in test security or confidentiality;
- 3.08 “Test Security Agreement” means the agreement provided to each test administrator or other educator involved in testing that outlines the security requirements for testing and the agreement that these are understood and will be followed by the signatory;
- 3.09 “Testing violation” means any departure from established procedures and administration requirements of the state required assessment as indicated in law, these Rules, test manuals, or Division training, and may include, without limitation, the following acts or omissions:
- 3.09.1 Failing to follow the specified testing procedures or to actively monitor students while testing;
- 3.09.2 Allowing personnel who are not trained in test security to access secure tests, testing materials, or an on-line test delivery system;
- 3.09.3 Failing to administer the assessment on the designated testing dates, unless otherwise approved by the Division;
- 3.09.4 Failing to provide an approved accommodation to a student that may influence the student’s performance or providing accommodations to students for which they do not qualify or are not included in their Individualized Education Program (IEP) or 504 plan; or
- 3.09.5 Failing to follow the specified procedures and required criteria for alternate assessments.

#### **4.00 GENERAL REQUIREMENTS**

- 4.01 A violation of the security or confidential integrity of any test or assessment is prohibited.
- 4.02 Procedures for maintaining the security and confidential integrity of all testing and assessment instruments and procedures shall be specified in the appropriate

test or assessment administration instructions, Division training provided for each assessment, or other policy documents issued by the Division.

- 4.03 The superintendent or equivalent in each public school district is responsible for the proper implementation of these Rules, Section 5.00 of the Division Rules Governing the Arkansas Educational Support and Accountability Act concerning the Statewide Student Assessment System, and the assessment requirements set forth in the Arkansas Educational Support and Accountability Act, Ark. Code Ann. § 6-15-2901 et seq.

## **5.00 REPORTING OF TESTING IMPROPRIETIES**

- 5.01 Public school district-level personnel with knowledge of a testing impropriety, irregularity, violation, or breach of security, must notify the Division as soon as practicable.
- 5.02 Public school personnel with knowledge of an alleged testing impropriety, irregularity, violation, or breach of security, must contact the school administration, the district test coordinator, or the superintendent, to report the alleged act. Personnel may also contact the Division Office of Student Assessment if the alleged act concerns ~~any of the above-named~~ district-level personnel.
- 5.03 The district test coordinator or other administrator with knowledge of the alleged testing impropriety, irregularity, violation, or breach of security:
- 5.03.1 Must document the incident;
- 5.03.2 May gather evidence or statements from those involved;
- 5.03.3 Must contact the Division Office of Student Assessment via telephone to report the incident or to attempt to immediately correct a ~~alleged~~ testing impropriety, irregularity, violation, or breach of security, in a manner that would safeguard the validity and security of the ongoing test; and
- 5.03.4 May be required to file a written, signed report with the ~~department~~ Division.
- 5.04 Any public school personnel or individual with knowledge of an alleged testing impropriety, irregularity, violation, or breach of security, may file a report with the Office of Student Assessment.
- 5.05 Public school district personnel may complete the District/School Testing Violation Report form ~~that can be found on the ADE~~ available on the Division's website.
- 5.06 Any other organization or individual may complete the Individual Testing Violation Report form ~~found on the ADE~~ available on the Division's website.



- 5.07 All violation reports should be filed immediately, but no later than fourteen (14) days after the reporting party became aware of the alleged testing impropriety, irregularity, violation, or breach of security.
- 5.08 Violation reports must be submitted in writing to the Office of Student Assessment to the attention of the Assessment Director.
- 5.09 Written violation reports, if not ~~completing~~ submitted using the ~~ADE~~ Division's Testing Violation Report form, must include:
- 5.09.1 A statement that conduct violating the security or confidential integrity of a test or assessment has occurred;
- 5.09.2 Specific facts upon which the statement is based, including without limitation:
- 5.09.2.1 When the alleged violation occurred;
- 5.09.2.2 Where the alleged violation occurred;
- 5.09.2.3 How the alleged violation occurred, including specific statements of fact describing the acts or omissions alleged to constitute a violation;
- 5.09.2.4 Names of individuals who allegedly committed the violation, if known;
- 5.09.2.5 Names of individuals who possess information concerning the alleged violation; and
- 5.09.2.6 The signature of the individual filing the complaint. The Office of Student Assessment shall not process anonymous reports.
- 5.10 While testing is ongoing, nothing in these rules prohibits public school district personnel from contacting the Office of Student Assessment via telephone in an effort to immediately correct a testing impropriety, irregularity, violation, or breach of security, in a manner that would safeguard the validity and security of the ongoing test. The Office of Student Assessment is authorized to assist public school districts in this manner.

## **6.00 PROCESSING A REPORT OF TESTING VIOLATIONS OR TESTING IMPROPRIETIES**

- 6.01 The Office of Student Assessment of the Division shall receive and review reports of alleged testing violations or testing improprieties filed pursuant to these rules.

- 6.02 The Director of the Office of Student Assessment, or his or her designee, shall conduct an initial review of each report.
- 6.02.1 The Director may, as part of the initial review, request additional information or documentation from the district superintendent or district test coordinator, and determine what actions have been taken by the district with respect to the alleged testing violations or testing improprieties.
- 6.02.2 After the Director's initial review, he or she will appoint a committee of Division staff to conduct a review of all reports of alleged testing violations or testing improprieties and any additional documentation submitted. The committee will categorize each reported alleged testing violation and testing impropriety into one of the following stages:
- 6.02.2.1 Stage 1: Testing violations and testing improprieties that do not breach the security or confidentiality of the assessment or influence the validity of student performance on the assessment. These testing violations are typically procedural in nature and are able to be corrected at the time of testing with no likelihood that the incident would reoccur during the remaining test administration window.
- 6.02.2.2 Stage 2: Testing violations and testing improprieties that depart from the administration requirements of the assessment, may impact the security of the assessment, the confidentiality of student data, or the reports of student performance, but are not found to be egregious or intentional. These testing violations are generally the result of unintentional human error, inattention during test preparation or administration, insufficient test monitoring, lack of training, and include other violations that may not impact the security of the assessment or adversely affect the performance of students. These violations are able to be corrected at the local level.
- 6.02.2.3 Stage 3: Testing violations and testing improprieties that result from failure to follow the required procedures for testing, failure to follow the requirements of the Security Agreement, or other actions that may violate the security of the assessment or inappropriately influence student performance or the reporting of student performance or a pattern of stage 1 or 2 testing violations within a public school or across schools in a district.

- 6.02.2.4 Stage 4: Testing violations and testing improprieties that violate the security of the assessment or influence student performance or the validity of the reports, show intentional or egregious disregard for the established test administration procedures, 3 or more years of stage 3 violations without correction(s), and action(s) associated with testing that are a direct violation of the Educator Code of Ethics.
- 6.03 Reported alleged testing violations and testing improprieties shall be recommended for disposition as follows:
- 6.03.1 Stage 1: These reports are informally and administratively processed by the Division's Office of Student Assessment and no further action will be required.
- 6.03.2 Stage 2: The superintendent will receive a letter from the Division's Office of Student Assessment requiring the district to develop and implement procedures to ensure the violation does not reoccur. The superintendent may be required to complete an affidavit to ensure the local plan will be developed and implemented the next school year. Additional sanctions may be imposed.
- 6.03.3 Stage 3: The superintendent will receive a letter from the Division's Office of Student Assessment requiring the district to develop a plan that includes procedures and training to ensure that violations do not occur in the future. The plan must be developed and sent to the Office of Student Assessment for approval within 45 days of the receipt of the letter. The approved plan must be implemented and evidence of its implementation provided to the Division. Additional sanctions, including without limitation, a letter of reprimand to be placed in an individual's employee record, may be imposed.
- 6.03.4 Stage 4: These reports shall be referred by the Director of the Office of Student Assessment or his or her designee to the appropriate authorized entity for processing under the procedures of that entity:
- Professional Licensure Standards Board
  - Charter Authorizing Panel
  - State Board of Education
  - Division of Public School Accountability
- 6.04 Within twenty (20) days of receiving the recommended disposition of the Office of Student Assessment, the superintendent of the public school district, or accused licensee, shall notify, in writing, the Office of Student Assessment whether the

public school district, or accused licensee, agrees with the recommended disposition or wishes to appeal the recommended disposition to the State Board of Education.

- 6.04.1 Failure of a public school district or accused licensee to respond to the Office of Student Assessment's recommended disposition within twenty (20) days shall constitute a waiver of the right to appeal such recommended disposition.
- 6.04.2 Requests for appeal of the recommended disposition to the State Board of Education shall include a brief statement of the reasons why the recommended disposition should not be adopted.
- 6.04.3 If a public school district or accused licensee does not appeal the recommended disposition of the Office of Student Assessment, or does not file such an appeal within twenty (20) days, the recommendation of the Office of Student Assessment shall become final.
- 6.04.4 If a public school district, open-enrollment public charter school, or accused licensee appeals the recommended disposition of the Office of Student Assessment, the State Board of Education shall hear the appeal within sixty (60) days of receipt of the notice of appeal. Through mutual agreement, the public school district, open-enrollment public charter school, or accused licensee, and the Office of Student Assessment may extend the date of the hearing for an additional thirty (30) days.
- 6.04.5 Upon written request by an accused licensee, the public school district or open-enrollment public charter school may respond to all inquiries and allegations on behalf of the accused licensee and may represent the accused licensee at all hearings before the State Board of Education.

## **7.00 STATE BOARD HEARING PROCEDURES**

- 7.01 The following procedures shall apply to State Board of Education hearings of an appeal:
  - 7.01.1 Documentation for consideration by the State Board during the appeal hearing shall be submitted to the Division no later than fifteen (15) days prior to the date of the hearing.
  - 7.01.2 Each party will be given twenty (20) minutes to present their cases, beginning with the representative of the Division. The Chairperson of the State Board of Education may, only for good

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

- 7.01.3 All persons wishing to testify before the State Board shall first be placed under oath by the Chairperson of the State Board.
- 7.01.4 The State Board shall then discuss, deliberate, and vote upon the matter of the classification.
- 7.01.5 The State Board of Education may:
  - 7.01.5.1 Adopt the recommended disposition of the Office of Student Assessment;
  - 7.01.5.2 Modify the recommended disposition of the Office of Student Assessment; or
  - 7.01.5.3 Grant the appeal of the public school district or accused licensee.
- 7.01.6 If it deems necessary, the State Board may take the matter under advisement and announce its decision at a later date, provided that all discussions, deliberations, and votes upon the matter take place at a public hearing.
- 7.01.7 The State Board shall issue a written order concerning the matter.