

ARKANSAS REGISTER

Transmittal Sheet

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



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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency _____

Department _____

Contact _____ E-mail _____ Phone _____

Statutory Authority for Promulgating Rules _____

Rule Title: _____

Intended Effective Date

(Check One)

Date

- | | | |
|--|---------------------------------------|-------|
| <input type="checkbox"/> Emergency (ACA 25-15-204) | Legal Notice Published | _____ |
| <input type="checkbox"/> 10 Days After Filing (ACA 25-15-204) | Final Date for Public Comment | _____ |
| <input type="checkbox"/> Other _____
(Must be more than 10 days after filing date.) | Reviewed by Legislatice Council | _____ |
| | Adopted by State Agency | _____ |

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

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.)

/s/Jennifer Dedman _____
Signature

_____ Phone Number _____ E-mail Address

_____ Title

_____ Date

**DIVISION OF ELEMENTARY AND SECONDARY EDUCATION RULES
GOVERNING THE CREATION OF SCHOOL DISTRICTS BY DETACHMENT
May 2020**

1.00 REGULATORY AUTHORITY

- 1.01 These rules shall be known as the Division of Elementary and Secondary Education Rules Governing the Creation of School Districts by Detachment.
- 1.02 The State Board of Education (State Board) enacted these rules pursuant to its authority as set forth in Ark. Code Ann. § 6-13-1501 et seq. and Act 528 of 2019.

2.00 GENERAL REQUIREMENTS

- 2.01 No school district shall be created with fewer than two thousand five hundred (2,500) students.
- 2.02 A school district created under Ark. Code Ann. §6-13-1501 et seq. and these rules shall have all the rights, privileges, and responsibilities of other public school districts.

Source: Ark. Code Ann. § 6-13-1501

3.00 MINIMUM AREA AND ATTENDANCE REQUIREMENTS

- 3.01 A new school district may not be created in an area with fewer than two thousand five hundred (2,500) students in average daily membership.
- 3.02 An existing school district shall not be reduced by means of detachment to an area with fewer than two thousand five hundred (2,500) students in average daily membership.
- 3.03 A new school district to be created by detachment must only be made up of students from one (1) existing school district.
- 3.04 These rules shall apply only to school districts that:
 - 3.04.1 Had an average daily membership of at least five thousand (5,000) students in the school year immediately preceding the detachment; or
 - 3.04.2 Encompass a total area of four hundred and fifty square miles (450 sq. mi.) or more, now or in the future.

Source: Ark. Code Ann. § 6-13-1502

4.00 INITIATION OF DETACHMENT

Creation of a new school district by detachment shall be initiated by:

- 4.01 Resolution of the board of directors of each school district from which territory is to be detached; or
- 4.02 A petition that is presented to the State Board of Education pursuant to the provisions of Ark. Code Ann. §6-13-1501 et seq. and these rules.

Source: Ark. Code Ann. § 6-13-1503

5.00 PETITION AND ELECTION

- 5.01 Not later than the thirtieth day after the date the State Board receives a petition or resolution for detachment under Ark. Code Ann. §6-13-1501 et seq. and these rules, the State Board shall hold a hearing on the validity of the petition or resolution.
- 5.02 To be valid, a petition or resolution shall:
 - 5.02.1 State the purpose for which the petition or resolution is being submitted;
 - 5.02.2 Contain a plat or map of the proposed new school district;
 - 5.02.3 Contain an independent feasibility study stating:
 - 5.02.3.1 Cost of operation of the new school district and the ability to operate the new school district taking into consideration the tax base, debt service, and division of assets to the new school district;
 - 5.02.3.2 A list of the public school assets to be transferred from the existing school district to the new school district;
 - 5.02.3.3 The size of the new school district; and
 - 5.02.3.4 The effect of detachment on court-ordered desegregation; and
 - 5.02.4 Be signed by at least ten percent (10%) of the number of voters in the area proposed for detachment who voted in the most recent general election.
- 5.03 If the State Board determines that the petition or resolution is valid and the petition or resolution does not conflict with Ark. Code Ann. § 6-13-1504(b)(2) and this section, the State Board may, after complying with Ark. Code Ann. § 6-

13-1504(b)(2), order an election on the proposition of detachment to be held at the next annual school election or general election.

5.03.1 The State Board shall not order any creation of a new school district by detachment under Ark. Code Ann. §6-13-1501 et seq. and these rules, or any other act or combination of any acts that hampers, delays, or in any manner negatively affects desegregation efforts of a school district or school districts in this state.

5.03.2 Prior to the entry of any order for election on the question of detachment, the State Board shall seek an advisory opinion from the Attorney General concerning the impact of the proposed detachment and creation of a new school district on the effort of the state to assist the affected school district or school districts in the desegregation of the public schools of this state.

5.03.3 The order for election on the proposition of detachment shall:

5.03.3.1 Contain a plat or map of the proposed new school district; and

5.03.3.2 Comply with all requirements and procedures set forth in Ark. Code Ann. § 6-14-101 et seq. that do not conflict with the provisions of Ark. Code Ann. §6-13-1501 et seq. and these rules.

5.04 The State Board shall certify two (2) copies of the detachment order and convey one (1) copy to the county clerk and one (1) copy to the county election commission at least sixty (60) days prior to the date the commission sets for election on the question of detachment.

5.04.1 No later than forty-five (45) days prior to the election, the county clerk of each county affected shall identify all persons who reside within the area proposed to be detached, and the county clerk shall determine the names and addresses of all qualified electors residing within that area. The failure to identify all persons residing within the area proposed to be detached or the failure to determine the names and addresses of all qualified electors residing within that area shall not invalidate or otherwise affect the results of the election.

5.04.1.1 All of the qualified electors residing within the territory to be detached shall be entitled to vote in the election.

5.04.1.2 The petitioners shall give notice of the election by publication of at least one (1) insertion in a newspaper having general circulation in each school district from

which territory is being detached.

5.04.2 The county clerk shall prepare a list by precinct of all those qualified electors residing within the area to be detached who are qualified to vote in that precinct and furnish that list to the election officials at the time the ballot boxes and voting machines are delivered.

5.04.2.1 If the county clerk or the county election commission shall fail to perform any duties required, then any interested party may apply for a writ of mandamus to require the performance of the duties.

5.04.2.2 The failure of the county clerk or the county election commission to perform the duties shall not void the detachment election unless a court finds that the failure to perform the duties substantially prejudiced an interested party.

5.05 The ballot shall be printed to permit voting for or against the proposition in a manner similar to the following: "Creation of a new school district by detachment of property and territory that includes the following property and territory from the _____ School District: _____." The ballot description of the property and territory to be detached shall be sufficient to give general notice of the territory affected.

Source: Ark. Code Ann. § 6-13-1504

6.00 CREATION OF A SCHOOL DISTRICT

6.01 If all the requirements of Ark. Code Ann. §6-13-1501 et seq. and these rules are met and a majority of the votes are cast for the proposition, the State Board shall order the creation of the new school district.

6.02 At the time the order creating the school district is made, the State Board shall appoint a board of directors of seven (7) members for the new school district to serve until the next regular election of members, when a board of directors shall be elected in compliance with Arkansas law.

6.02.1 Following the entry of the order creating the new school district, the new school district shall:

6.02.1.1 Be considered a school district under § 6-13-101 et seq. for all constitutional and statutory purposes, except as limited under this section;

- 6.02.1.2 Be considered a body corporate and may sue and be sued in the name of the new school district; and
 - 6.02.1.3 After the appointment of a board of directors for the new school district but before the transfer of any assets, territory, property, liabilities, duties, or responsibilities, a new school district created by detachment from an existing school district that is a party to any court-ordered desegregation plan shall petition the court having jurisdiction in the desegregation matter and obtain any and all court orders or other relief necessary to ensure that the detachment will not cause the state or any affected school district to be in violation of any orders of the court or any consent orders or decrees entered into by the parties with regard to the desegregation plan.
- 6.02.2 Following the entry of the order creating the new school district, the new school district may:
- 6.02.2.1 Exercise the power of eminent domain; and
 - 6.02.2.2 Borrow money and issue bonds for allowable purposes under Ark. Code Ann. § 6-20-1201 et seq.
- 6.03 A new school district created under Ark. Code Ann. §6-13-1501 et seq. and these rules shall be allocated the assets of the school district from which the territory was taken, as the State Board shall deem proper or as agreed by the original school district and the new school district with the approval of the State Board.
- 6.03.1 The transfer or conveyance of the title of the assets from the original school district to the new school district shall be documented through deeds, assignments, or bills of sale as necessary to produce evidence of the transfer of ownership and the resulting rights and liabilities.
 - 6.03.2 The new school district may be allocated transferred assets in exchange for payment or may assume liability for that part of the indebtedness of the original school district allocable to the territory within the new school district as agreed by the original school district and the new school district with the approval of the State Board or as determined, assigned, or allocated to the new school district by the State Board.
 - 6.03.3 In determining the value of the transferred assets or the amount of the indebtedness for which the new school district will become responsible, the new school district and the original school district shall either:

- 6.03.3.1 Agree upon an amount with the approval of the State Board; or
- 6.03.3.2 Allow the State Board to determine the amount if the new school district and the original school district fail to agree.
- 6.03.4 The allocation or assignment of indebtedness shall be structured in such a manner that does not cause the original school district to default under the documents authorizing the indebtedness, and shall not violate any tax covenants contained in the documents authorizing the indebtedness by the original school districts.
- 6.03.5 In determining foregoing allocations, all reasonable and fair methods of allocations shall be considered, including without limitation:
 - 6.03.5.1 A third-party appraisal of the real property to be transferred to the new school district;
 - 6.03.5.2 A ratio generated by comparing the number of students currently residing in the boundaries of the new school district to the total number of students in the original school district;
 - 6.03.5.3 A ratio generated by comparing the assessed value of property within the boundaries of the new school district to the assessed value of property within the original school district;
 - 6.03.5.4 A ratio generated by comparing the amount of the outstanding debt of the original school district that was incurred to finance property located within the boundaries of the new school district to the total outstanding debt of the original school district; and
 - 6.03.5.5 Other reasonable and fair methods of allocation.
- 6.04 The ad valorem tax rate of the new school district shall remain the same as that of the original school district until an election is held in the new school district and a rate of tax is approved and shall be allocated in the same proportion between maintenance and operation and debt service as allocated by the original school district.
- 6.05 The new school district may use and pledge debt service millage to pay all or part of any indebtedness assigned or allocated to the new school district for payment of any other lawful indebtedness of the new school district, for maintenance and

operation of the new school district, or for any other lawful purpose, until a different rate is approved by the qualified electors of the new school district.

- 6.06 In order to satisfy the payment obligations of a new school district with respect to the allocation of assets, or if the new school district assumes or becomes responsible for any indebtedness of the original school district, one (1) or more of the following methods may be used by the new school district to meet the new school district's obligations:
- 6.06.1 Borrow funds from the original school district as mutually agreed by both school districts;
 - 6.06.2 Enter into lease purchase agreements, revolving loans under Ark. Code Ann. §6-20-801 et seq., term loans, post-dated warrants, or installment contracts pursuant to Ark. Code Ann. § 6-20-402;
 - 6.06.3 Borrow funds from a private, governmental, or commercial lender;
 - 6.06.4 Issue bonds; or
 - 6.06.5 Use any other lawful method.
- 6.07 The State Board shall have the following rights and duties regarding creation of a school district by detachment:
- 6.07.1 To form local school districts, change boundary lines of school districts, create new school districts, and perform all other functions regarding changes in school districts in accordance with the law; and
 - 6.07.2 To transfer funds and attach territory that is in one (1) school district to other school districts as may seem best for the educational welfare of the children, including the loaning of funds to the new school district under terms and conditions acceptable to the State Board.
- 6.08 In its order creating the new school district, the State Board may allow a transition period of up to two (2) consecutive years to allow the new school district to become fully operational.
- 6.09 The new school district shall publish a projected budget of expenditures for the first anticipated operational school year at least sixty (60) days before the next annual school election for which notice can be lawfully given.
- 6.10 At the school election or any subsequent school election, a new school district may present to the qualified electors of the new school district a proposed ad valorem tax for the maintenance and operation of schools and the retirement of indebtedness.

Source: Ark. Code Ann. § 6-13-1505

7.00 TRANSITION PERIOD

- 7.01 If the new school district created by detachment was formed from an existing school district that is a party to any court-ordered desegregation plan, the State Board shall, prior to the transfer of any assets, territory, property, liabilities, duties, or responsibilities to the new school district, allow for a time period sufficient to permit the parties to petition the court having jurisdiction in the desegregation matter to obtain any and all court orders or other relief necessary to ensure that the detachment will not cause the state or any affected school district to be in violation of any orders of the court or any consent orders or decrees entered into by the parties with regard to the desegregation plan.
- 7.02 If the State Board allows for a transition period as set forth in Ark. Code Ann. § 6-13-1505 and Section 6.08 of these rules, the State Board may allow a reasonable time period, not to exceed 120 days from the date the State Board issues the order creating the new school district, to allow the existing school district and the new school district created by detachment to develop and present to the State Board a written agreement concerning the following matters, without limitation:
- 7.02.1 A plan for the selection and employment of a superintendent or administrator for the new school district created by detachment;
 - 7.02.2 A plan for the zoning and election of school board members in accordance with Arkansas and federal law;
 - 7.02.3 A determination of the millage necessary to operate the new school district created by detachment;
 - 7.02.4 A plan that specifically addresses the distribution of real and personal property, assets, liabilities (including debt), duties and responsibilities for the existing school district and the new school district created by detachment; and
 - 7.02.5 A plan that specifically addresses the procedure by which the new school district will employ licensed and nonlicensed staff.
- 7.03 If the State Board allows for a transition period as set forth in Ark. Code Ann. § 6-13-1505 and Section 6.08 of these rules, and if the new school district created by detachment was formed from an existing school district that is a party to any court-ordered desegregation plan, the State Board may allow a reasonable time period, not to exceed 120 days from the date the presiding court issues all court orders or other relief necessary as set forth in Section 7.01 of these rules, to allow

the existing school district and the new school district created by detachment to develop and present to the State Board a written agreement concerning matters set forth in Section 7.02 of these rules.

- 7.04 In the event that the existing school district and the new school district created by detachment are unable to agree upon any issue regarding the formation of a written agreement concerning detachment or upon the implementation of the final determination of the State Board concerning detachment, the school districts shall:
- 7.04.1 Jointly petition the Commissioner of Education or his or her designee to resolve the matter subject to final determination by the State Board as set forth in Section 7.05 of these rules;
 - 7.04.2 Jointly select a mediator to mediate the matter subject to final determination by the State Board as set forth in Section 7.05 of these rules; or
 - 7.04.3 Jointly petition the State Board to resolve the matter in accordance with Section 7.05 of these rules.
 - 7.04.4 In the absence of an agreement regarding any of the options listed in Sections 7.04.1 through 7.04.3 of these rules, the matter will proceed directly to the State Board for resolution in accordance with Section 7.05 of these rules.
- 7.05 The State Board shall make the final determination concerning the distribution of real and personal property, assets, liabilities (including debt), duties and responsibilities for the existing school district and the new school district created by detachment.

8.00 FIRST YEAR OF DISBURSEMENT OF STATE FUNDING TO THE NEW SCHOOL DISTRICT CREATED BY DETACHMENT

Unless otherwise specified by law, rule, court order, or agreement between the parties approved by the State Board, the provisions in Section 8.00 of these rules apply only to the first year of disbursement of funding for the new school district created by detachment and the remaining original school district.

The provisions in this Section may be modified, in whole or in part, by a court order or an agreement between the parties approved by the State Board. Absent such an agreement, the following funding methodology shall be used:

- 8.01 To establish the prior-year three-quarter average daily membership for the new school district created by detachment:

- 8.01.1 Allocate the total prior-year three-quarter average daily membership of the original school district to the new school district created by detachment and the remaining original school district by calculating an enrollment ratio for each school district using current-year October 1 enrollment divided by the total current-year October 1 enrollment of the two school districts.
- 8.01.2 To allow for allocation and disbursement of funds pending receipt of October 1 current-year enrollment data, current-year July 1 enrollment shall be used to calculate an estimated enrollment ratio for each school district.
- 8.02 To the extent necessary for other purposes, a history of prior-year average daily membership shall be established for the new school district created by detachment, for the remaining original school district, and for the original school district using the current-year enrollment ratio.
- 8.03 The educational excellence trust fund obligation will be calculated for the new school district created by detachment and the remaining original school district, using prior-year three-quarter average daily membership from fiscal years 1991-1992 through the most recent school year for the original school district multiplied by each school district's enrollment ratio.
- 8.04 To establish the prior-year October 1 Enhanced Student Achievement Funding student counts and percentage for the new school district created by detachment and the remaining original school district:
 - 8.04.1 Allocate the total prior-year October 1 Enhanced Student Achievement Funding free and reduced lunch student counts for the original school district to the new school district created by detachment and the remaining original school district by calculating an enrollment ratio for each school district using current-year October 1 enrollment divided by the total current-year October 1 enrollment of the two school districts.
 - 8.04.2 Both the new school district and the original school district will be excluded from the transitional Enhanced Student Achievement Funding and will instead use the rate outlined in Ark. Code Ann. § 6-23-2305(b)(4)(A).
 - 8.04.3 The new school district created by detachment and the remaining original school district will be eligible for Enhanced Student Achievement Funding after sufficient history exists to complete the calculations. Eligibility for national school lunch state categorical

growth funding requires a three consecutive year enrollment growth trend of 1% or more.

- 8.04.4 Any withholding of Enhanced Student Achievement Funding results from analysis of expenditures and revenue from a fiscal year. The new school district created by detachment will be subject to analysis once the applicable expenditures and revenue are available for analysis.
- 8.05 To allow for allocation and disbursement of funds pending receipt of October 1 current-year enrollment data, current-year July 1 enrollment may be used to calculate an estimated enrollment ratio for each school district.
- 8.06 The original school district will receive the amount of alternative learning environment (ALE) funding for which it qualifies based on eligible ALE students' full-time equivalents (FTE) in the previous school year as defined in rules. To be eligible for ALE funding, the new school district created by detachment shall have established an eligible ALE approved by as being in compliance with Ark. Code Ann. § 6-48-101 et seq. and the Rules Governing the Distribution of Student Special Needs Funding and the Determination of Allowable Expenditures of Those Funds. The ALE funding, disbursed in the following year, shall be the amount authorized by law multiplied by the new school district's eligible ALE students' FTE in the previous school year as defined in rules.
- 8.07 For a new school district created by detachment and the remaining original school district, declining enrollment and student growth funding will be calculated excluding any increase or decrease resulting from the detachment.
- 8.07.1 Declining enrollment funding equals the difference between the average of the two immediately preceding years' average daily memberships and the average daily membership for the previous school year multiplied by the amount of foundation funding set forth in Ark. Code Ann. § 6-20-2305(a). In the first and second years of disbursement of state funding to the new school district created by detachment, declining enrollment funding will be calculated based on the average daily membership of the original school district. The declining enrollment funding amount for one or both years may be prorated between the new school district and the remaining original school district using the current-year enrollment ratios for each school district (calculated in the first year state funding is disbursed to the new school district created by detachment).
- 8.07.2 In the first year of disbursement of state funding to the new school district, student growth funding will be calculated using the prior-year average daily membership of the original school district compared to the combined current-year average daily membership for each quarter for the new school district created by detachment and the remaining original school district.

The student growth funding amount will be prorated between the new school district created by detachment and the remaining original school district using the current-year enrollment ratios for each school district.

- 8.08 Any adjustments for bonded debt assistance will be handled on a case-by-case basis.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT _____
DIVISION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ FAX NO. _____ EMAIL: _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

SHORT TITLE OF THIS RULE

1. Does this proposed, amended, or repealed rule have a financial impact? Yes No

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes No

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

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

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

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

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

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

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

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

Current Fiscal Year

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
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) _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

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

\$ _____

\$ _____

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

\$ _____

\$ _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?
Yes No

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

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