

ARKANSAS REGISTER

Proposed Rule Cover Sheet



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Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

ARKANSAS DEPARTMENT OF EDUCATION
DIVISION OF ELEMENTARY AND SECONDARY EDUCATION
RULES GOVERNING FEDERAL PROGRAM COMPLAINT RESOLUTION

May 2019 _____

1.00 Regulatory Purpose & Authority.

- 1.01 These Rules shall be known as the Arkansas Department of Education Division of Elementary and Secondary Education Rules Governing Federal Program Complaint Resolution.
- 1.02 The State Board of Education enacts these Rules pursuant to its authority under Arkansas Code Annotated §§ 6-11-105 & 25-15-201 *et seq.*; 20 U.S.C. §§ 1232c, 7844, 7881, & 7883; and 34 C.F.R. Chapter 2, Part 299, Subpart F.
- 1.03 The purpose of these Rules is to provide a procedure for receiving, reviewing, and resolving complaints made by organizations or individuals against the Arkansas State Board of Education (State Board), Arkansas Department of Education (Department) Division of Elementary and Secondary Education (Division), other state agency, or a local educational agency (LEA). These Rules apply only to complaints regarding the administration of the following programs contained within the Elementary and Secondary Education Act (ESEA):
- (1) Part A of Title I (Improving Basic Programs Operated by Local Educational Agencies);
 - (2) Part B of Title I (Even Start Family Literacy Programs State Assessment Grants) (other than the federally administered direct grants for Indian tribes and tribal organizations, children of migratory workers, Statewide family literacy initiatives, and a prison that house women and children);
 - (3) Part C of Title I (Migrant Education of Migratory Children);
 - (4) Part D of Title I (Children and Youth Who Are Neglected, Delinquent, or At Risk of Dropping Out Prevention and Intervention Programs for Children and Youth who are Neglected, Delinquent, or At-Risk);
 - (5) Title II (Eisenhower Professional Development Program) (other than section 2103 and part C of this Title Preparing, Training, and Recruiting High-Quality Teachers, Principals, and Other School Leaders);

(6) Title III (Language Instruction for Limited English Proficient and Immigrant Students English Learners and Immigrant Students);

(7) Subpart 2 of Part A of Title III (State and Local Programs for School Technology Resources Accountability and Administration);

(8) Part A of Title IV (Safe and Drug-Free Schools and Communities) (other than section 4114) (Student Support and Academic Enrichment Grants);

(9) Part B of Title IV (21st Century Community Learning Centers);

(9) ~~(10)~~ Title VI (Innovative Education Program Strategies Indian, Native Hawaiian, and Alaska Native Education);

(10) ~~(11)~~ Part C of Title VII (Emergency Immigrant Education Impact Aid); and

(11) ~~(12)~~ Sections 8015 and 8017 of the Every Student Succeeds Act (Equitable participation of private school students in public school programs) Part F of Title VIII (Participation by Private School Children and Teachers).

1.04 In computing any period of time described in these Rules, the last day of the period so computed shall be included, unless it is a Saturday, Sunday, legal holiday, or other day the Department Division is closed, in which event the period runs until the end of the next day that the Department Division is open. Days shall be counted on the basis of calendar days.

2.00 Complaints Against Local Educational Agencies or State Agencies

2.01 A complaint against an LEA, or against a state agency other than the Arkansas State Board of Education and Department of Education Division of Elementary and Secondary Education, may be made in a statement signed by the complainant. Complaints may be received directly from the complainant, referred from other state or federal agencies, or come on appeal from an LEA. Complaints should be mailed to:

Arkansas Department of Education
Division of Elementary and Secondary Education
Assistant Commissioner for Public School Accountability
Four Capitol Mall, Mailbox 19
Little Rock, AR 72201

2.02 A complaint must include:

- 2.02.1 A statement that the LEA or state agency has violated a requirement of an applicable federal statute or regulation;
 - 2.02.2 The facts on which the statement is based and the specific requirement allegedly violated; and
 - 2.02.3 All relevant documentary or other evidence supporting the allegation.
- 2.03 If the complainant has not previously submitted the complaint to the LEA or state agency, the complaint will be referred by the Department Division to the LEA or state agency for processing through that agency's complaint resolution procedures.
- 2.03.1 The Department Division may waive this requirement if it is determined that:
 - 2.03.1.1 Delay in resolving the complaint may result in serious and immediate harm to the complainant;
 - 2.03.1.2 The allegations and supporting information, together with readily available cross-check data in the files of the Department Division, provide sufficient evidence to show probable success of the complaint on its own merits; or
 - 2.03.1.3 There is evidence that the LEA or state agency is aware of the alleged violation and has failed to act to resolve it.
 - 2.03.2 When a complaint is referred to an LEA or state agency for resolution under this subsection, a transmittal letter shall direct the resolution of the complaint under the adopted procedures of the LEA or state agency within a time period not to exceed thirty (30) days, unless a longer period is specified by the Department Division due to exceptional circumstances. The transmittal shall also provide information on the rights of the complainant to appeal the final written report of the agency to the Department Division. A copy of the transmittal letter shall be sent to the complainant.
 - 2.03.3 Every LEA is required to disseminate, free of charge, adequate information about its complaint procedures to

parents of students, and appropriate private school officials or representatives.

- 2.04 The Department Division shall conduct any investigative efforts it deems necessary to effectively address the complaint. Such efforts may include the appointment of an investigative team to conduct an on-site visit, review records, or conduct interviews. The Department Division may conduct informal fact-finding hearings or mediations to clarify the issues.
- 2.05 Within forty (40) days of the Department's Division's receipt of a complaint, the Department Division shall issue to the complainant and to the LEA or state agency a preliminary report stating:
- 2.05.1 A summary of the substance of the allegations in the complaint and the name of the individual, group or agency making the complaint;
- 2.05.2 A summary of the Department's Division's investigative activities, if any;
- 2.05.3 A summary of the findings concerning each alleged violation or implied violation; and
- 2.05.4 A statement of the corrective actions, if any, needed to resolve the findings, including a recommendation for an independent audit if deemed appropriate.
- 2.06 The complainant and the LEA or state agency may submit written responses or additional evidence within thirty (30) days of the date of the preliminary report. Failure to timely respond to the preliminary report shall be considered as acceptance of every part of the report.
- 2.07 Within ten (10) days of the end of the response period set forth in section 2.06 above, the Department Division shall issue to the complainant and to the LEA or state agency a final report. The final report may affirm and adopt the findings of the preliminary report, or it may make substitute findings.
- 2.08 The Department Division may in exceptional circumstances grant extensions of any time limit in this section on its own initiative or on the request of a party.
- 2.09 The complainant may request the Secretary of the U. S. Department of Education to review the Department's Division's final report, at the Secretary's discretion. A request for review must be filed with the Secretary, with a copy to the Arkansas Department of Education Division of Elementary and Secondary Education, within thirty (30) days of the date of

the Department's Division's final report. On request, the Department Division will promptly provide the complainant with a copy of the preliminary report and final report, and all pertinent exhibits thereto.

- 2.10 Nothing in this section shall prohibit informal disposition of a complaint by stipulation, mediation, settlement, consent order, or default.

3.00 Complaints Against the Arkansas State Board of Education or Arkansas Department of Education Division of Elementary and Secondary Education

- 3.01 Complaints against the Arkansas State Board of Education and/or Arkansas Department of Education Division of Elementary and Secondary Education may be made in a statement signed by the complainant. Complaints must be filed within thirty (30) days of the action or inaction complained of. Complaints should be mailed to:

Arkansas Department of Education
 Division of Elementary and Secondary Education
 Assistant Commissioner for Public School Accountability
 Four Capitol Mall, Mailbox 19
 Little Rock, AR 72201

- 3.02 A complaint must include:

3.02.1 A statement that the State Board and/or Department Division has violated a requirement of an applicable federal statute or regulation;

3.02.2 The facts on which the statement is based and the specific requirement allegedly violated; and

3.02.3 All relevant documentary or other evidence supporting the allegation.

- 3.03 Within ten (10) days of receipt of a complaint meeting the requirements of this section, the Commissioner of Education shall appoint an investigating officer to adjudicate the complaint. The investigating officer shall promptly issue a briefing schedule setting time limits for the submission of briefs, affidavits, declarations, exhibits, or other documents by the parties. Upon the request of any party, the investigating officer shall set a hearing date within sixty (60) days of the request.

- 3.04 The investigating officer shall conduct him- or herself in an impartial manner and shall have power to maintain order to rule upon all questions arising during the course of the complaint resolution process; to hold

conferences for the settlement, clarification, or simplification of issues; and to regulate and guide the course of the complaint resolution process.

- 3.05 The investigating officer shall conduct the complaint resolution process in such a manner as to preserve privileges and protect privacy rights, consistent with the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; the Arkansas Freedom of Information Act, Ark. Code Ann. § 25-19-101 *et seq.*; and any other relevant federal or state law or regulation.
- 3.06 All testimony, whether written or oral, shall be given under oath. Any hearing shall be stenographically recorded at the Department's Division's expense by a certified court reporter who shall administer oaths to every witness. Every party shall have the right to appear in person or by counsel.
- 3.07 Travel and other expenses incurred by the investigating officer shall be reimbursed from appropriate federal program funds at the rate allowed for employees of the State of Arkansas. At the option of the Department Division, a pre-negotiated *per diem* may be paid in lieu of expenses to persons who are not employed by the State of Arkansas.
- 3.08 Within sixty (60) days of the receipt of the complaint, or of the date of the hearing, whichever is later, the investigating officer shall issue a written decision which shall include findings of fact and conclusions of law separately stated addressing every issue raised in the complaint. Copies of the decision shall be served on the complainant and the Department Division either personally or by mail.
- 3.09 The investigating officer may in exceptional circumstances grant extensions of any time limit in this section on his or her own initiative or on the request of a party.
- 3.10 The complainant may request the Secretary of the U. S. Department of Education to review the investigating officer's decision, at the Secretary's discretion. A request for review must be filed with the Secretary, with a copy to the Arkansas Department of Education Division of Elementary and Secondary Education, within thirty (30) days of the complainant's receipt of the investigating officer's decision. On request, the Department Division will promptly provide the complainant with a copy of the hearing transcript and all exhibits introduced into evidence at the hearing.
- 3.11 Nothing in this section shall prohibit informal disposition of a complaint by stipulation, mediation, settlement, consent order, or default.

4.00 Complaint Process for Participation of Private School Children

- 4.01 A private school official may file a complaint with the Department Division asserting that the local educational agency did not engage in consultation that was meaningful and timely, did not give due consideration to the views of the private school official, or did not make a decision that treats the private school or its students equitably as required by law.
- 4.02 A complaint under this section must be in writing and signed by the complainant, with a copy sent simultaneously to the local educational agency. Complaints must be filed within thirty (30) days of the action or inaction complained of. Complaints should be mailed to:

Arkansas Department of Education
Division of Elementary and Secondary Education
Assistant Commissioner for Public School Accountability
Four Capitol Mall, Mailbox 19
Little Rock, AR 72201

- 4.03 A complaint must include:
- 4.03.1 A statement that the State Board and/or Department Division has violated a requirement of an applicable federal statute or regulation;
- 4.03.2 The facts on which the statement is based and the specific requirement allegedly violated; and
- 4.03.3 All relevant documentary or other evidence supporting the allegation.
- 4.04 Upon receipt of a complaint meeting the requirements of this section, the Department Division shall appoint an investigating officer. The investigating officer shall request from the local educational agency appropriate documentation.
- 4.05 The Department Division shall issue a written resolution within 45 days.
- 4.06 The complainant may request the Secretary of the U. S. Department of Education to review the Department's Division's decision, at the Secretary's discretion. A request for review must be filed with the Secretary, with a copy to the Arkansas Department of Education Division of Elementary and Secondary Education, within thirty (30) days of the complainant's receipt of the Department's Division's decision or if the Department Division has failed to resolve the complaint within 45 days. On request, the Department Division will promptly provide the complainant with a copy of all documentation forming the basis for the Department's Division decision.
- 4.07 The timelines contained in this section shall be subject to an additional three (3) days to account for mail processing.

QUESTIONNAIRE
FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY _____
DIVISION _____
DIVISION DIRECTOR _____
CONTACT PERSON _____
ADDRESS _____
PHONE NO. _____ FAX NO. _____ E-MAIL _____
NAME OF PRESENTER AT COMMITTEE MEETING _____
PRESENTER E-MAIL _____

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Rule" below.
- E. Submit two (2) copies of the Questionnaire and Financial Impact Statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica C. Sutton
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

- 1. What is the short title of this rule?

- 2. What is the subject of the proposed rule?

- 3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
If yes, please provide the federal rule, regulation, and/or statute citation.

- 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?
Yes No
If yes, what is the effective date of the emergency rule? _____

When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes No

5. Is this a new rule? Yes No If yes, please provide a brief summary explaining the rule.

Does this repeal an existing rule? Yes No If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes No If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled “mark-up.”

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation.

7. What is the purpose of this proposed rule? Why is it necessary?

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

9. Will a public hearing be held on this proposed rule? Yes No If yes, please complete the following:

Date: _____

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. _____

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e). _____

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

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.