

ARKANSAS REGISTER

Proposed Rule Cover Sheet



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Name of Department _____

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~~ARKANSAS DEPARTMENT OF EDUCATION~~
ARKANSAS DIVISION OF ELEMENTARY AND SECONDARY EDUCATION
~~RULES IDENTIFYING AND GOVERNING~~
THE ARKANSAS FISCAL ASSESSMENT AND ACCOUNTABILITY PROGRAM
 Effective ~~June 25, 2018~~ 2020

1.00 AUTHORITY

- 1.01 The Arkansas State Board of Education enacted these rules pursuant to Ark. Code Ann. § 6-11-105, Ark. Code Ann. § 6-20-1901 et seq., Ark. Code Ann. § 25-15-201 et seq. and Act ~~600 of 2013~~ 929 of 2019.
- 1.02 These rules shall be known as the Arkansas ~~Department of~~ Division of Elementary and Secondary Education (“Division”) Rules Governing the Arkansas Fiscal Assessment and Accountability Program.

2.00 PURPOSE

- 2.01 The purpose of these rules is to establish how the ~~Department and State Board~~ Division will review the financial management practices of public school districts, including identifying best financial management practices, and evaluate, assess, identify, classify and address school districts in any phase of fiscal distress, including identification of early indicators of fiscal distress and early intervention in public school districts that experience early indicators of fiscal distress, and provide fiscal support to public school districts.

3.00 DEFINITIONS

- 3.01 “Annexation” means the joining of an affected school district or part of an affected school district with a receiving district pursuant to Ark. Code Ann. § 6-13-1401 et seq.
- 3.02 “Capital Outlay Expenditures” means land, land improvements, buildings, infrastructure and equipment having a unit value of \$1,000 or more and a life expectancy of more than one year.
- 3.03 “Consolidation” means the joining of two (2) or more school districts or parts of the districts to create a new single school district pursuant to Ark. Code Ann. § 6-13-1401 et seq.
- 3.04 “Current Year Expenditures” means the total expenditures accruing to the combined teacher salary, operating, and debt service funds, excluding restricted funds.
- 3.05 “Current Year Revenues” means the total revenues accruing to the combined teacher salary, operating, and debt service funds, excluding restricted funds.

- 3.06 “Day” means ~~unless otherwise set forth in these rules,~~ a calendar day, unless otherwise specified in these rules, regardless of whether it is a day the ~~Department~~ Division or a public school district conducts official business.
- 3.07 “Debt” means a legal liability, encumbrance or contract, including employment contracts, to be paid out of future revenues or current reserves of the district.
- 3.08 “Declining Balance” means balance resulting when current year expenditures exceed current year revenues.
- ~~3.09 “Department” the Arkansas Department of Education.~~
- 3.10 ~~“The Fiscal Distress Financial Improvement Plan (Plan)”~~ means the written plan submitted by a district classified in fiscal distress and approved by the ~~Department~~ Division to be implemented by the district addressing each indicator of fiscal distress identified by the ~~Department~~ Division and the State Board with a specific corrective action plan and timeline.
- 3.11 “Fiscal Distress Status” means the status of a public school district ~~determined (identified)~~ identified by the ~~Arkansas Department of Education~~ Division and classified by the State Board as being placed in fiscal distress status pursuant to Ark. Code Ann. § 6-20-1901 et seq. and these rules.
- 3.12 “Fiscal Integrity” means to comply with financial management, accounting, auditing, and reporting procedures and facilities management procedures as required by state and federal laws and regulations in a forthright and timely manner.
- 3.13 “General Business Manager” means a chief financial officer or business manager, however the position is titled, who:
- 3.13.1 Is responsible for the fiscal operations of a public school district;
- 3.13.2 Performs duties under the direction of a superintendent, or equivalent, of a public school district; and
- 3.13.3 Is not the superintendent or equivalent of the public school district.
- ~~3.13~~14 “Jeopardize” means to expose to loss, ~~or~~ injury, or peril.
- ~~3.14~~15 “Material Failure, Violation, Default, or Discrepancies” means an act, omission, event, circumstances, or combination thereof, that directly jeopardizes the fiscal integrity of a school district.

3.1516 “Non-Material Failure, Violation, Default, or Discrepancies” means an act, omission, event, circumstance, or combination thereof, that does not directly jeopardize the fiscal integrity of a school district, but without intervention could place the school district in fiscal distress.

~~3.1617 “Public School or School District” a public school or school district created or established pursuant to Title 6 of the Arkansas Code and subject to the Arkansas Educational Support and Accountability Act except specifically excluding those schools or educational programs created by or receiving authority to exist pursuant to Ark. Code Ann. § 6-15-501; Ark. Code Ann. § 9-28-205 and Ark. Code Ann. § 12-29-301 et seq., or other provisions of Arkansas law.~~

“Public school” means:

3.17.1 A school operated by a public school district; or

3.17.2 An open-enrollment public charter school, as defined in Ark. Code Ann. § 6-23-103.

3.17.3 Schools or educational programs created by or receiving authority to exist pursuant to Ark. Code Ann. § 6-15-501, Ark. Code Ann. § 9-28-205, and Ark. Code Ann. § 12-29-301 et seq., are specifically excluded from this definition.

3.18 “Public school district” means:

3.18.1 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:

3.18.1.1 Governed by an elected board of directors; or

3.18.1.2 Under the administrative control of the State Board or the Commissioner of Education in place of an elected board of directors; or

3.18.2 An open-enrollment public charter school, as defined in Ark. Code Ann. § 6-23-103.

3.18.3 Schools or educational programs created by or receiving authority to exist pursuant to Ark. Code Ann. § 6-15-501, Ark. Code Ann. § 9-28-205, and Ark. Code Ann. § 12-29-301 et seq., are specifically excluded from this definition.

3.179 “Reconstitution” means the reorganization of the administrative unit or the governing school board of directors of a school district, including, but not limited to, the replacement or removal of a current superintendent or the removal or replacement of a current school board of directors or both;

3.1820 “Restricted Funds” means funds accruing to the teacher salary, operating and debt service funds that can be used only for specific purposes as stated in law or in accordance with a grant award (such as NSLAESA, ALE, ELL, Professional Development).

3.21 “School district systems” means the operations and procedures that occur within a public school district, including without limitation:

3.21.1 Academics;

3.21.2 Facilities;

3.21.3 Fiscal operations;

3.21.4 Human capital management; and

3.21.5 Student support services

3.1922 “School Year” means a school year beginning July 1 of one calendar year and ending June 30 of the following calendar year.

3.203 “State Board” means the Arkansas State Board of Education.

4.00 INDICATORS OF FISCAL DISTRESS

4.01 A school district meeting any of the following criteria may be identified by the ~~Department~~ Division to be a school district in fiscal distress upon final approval by the State Board:

4.01.1 A declining balance determined to jeopardize the fiscal integrity of a school district. However, capital outlay expenditures for academic facilities from a school district balance shall not be used to put the school district in fiscal distress.

4.01.2 An act or violation determined to jeopardize the fiscal integrity of a school district, including without limitation:

4.01.2.1 Material failure to properly maintain school facilities;

4.01.2.2 Material violation of local, state, or federal fire, health, or safety code provisions or law;

4.01.2.3 Material violation of local, state, or federal construction code provisions or law;

4.01.2.4 Material state or federal audit exceptions or violations;

- 4.01.2.5 Material failure to provide timely and accurate legally required financial reports to the ~~Department~~ Division, the Division of Legislative Audit, the General Assembly, or the Internal Revenue Service;
 - 4.01.2.6 Insufficient funds to cover payroll, salary, employment benefits, or legal tax obligations;
 - 4.01.2.7 Material failure to meet legally binding minimum teacher salary schedule obligations;
 - 4.01.2.8 Material failure to comply with state law governing purchasing or bid requirements;
 - 4.01.2.9 Material default on any school district debt obligation;
 - 4.01.2.10 Material discrepancies between budgeted and actual school district expenditures;
 - 4.01.2.11 Material failure to comply with audit requirements; ~~or~~
 - 4.01.2.12 Material failure to comply with any provision of the Arkansas Code that specifically places a school district in fiscal distress based on noncompliance; ~~or~~
 - 4.01.2.13 Material failure to comply with Ark. Code Ann. § 6-20-1913 or the Division's rules concerning the minimum qualifications for a general business manager; or
 - 4.01.2.14 Material failure to comply with reporting, debt approval, or other requirements placed on a public school district that has been returned to local control under Ark. Code Ann. § 6-20-1912; or
- 4.01.3 Any other fiscal condition of a school district deemed to have a material detrimental negative impact on the continuation of educational services by that school district.

4.02 By November 1 of each year, the Division shall report to the superintendent of a public school district if the Division is aware that the public school district has experienced two (2) or more indicators of fiscal distress, as described in 4.01 of these rules, in one (1) school year that the Division deems to be at a nonmaterial level but that without intervention could place the public school district in fiscal distress.

4.03 By November 1 of each year, the superintendent of a public school district shall report to the Division if the superintendent is aware the public school district has experienced two (2) or more indicators of fiscal distress, as described in 4.01 of these rules, in one (1) school year that the superintendent deems to be at a nonmaterial

level but that without intervention could place the public school district in fiscal distress.

4.04 The Division and the superintendent shall review all data related to the nonmaterial indicators of fiscal distress.

4.04.1 Within thirty (30) days of the Division's determination that the public school district may be experiencing fiscal distress at a nonmaterial level, the Division shall provide a notice to the public school district's superintendent and board of directors that:

4.04.1.1 Describes the nonmaterial indicators of fiscal distress that could jeopardize the fiscal integrity of the public school district if not addressed; and

4.04.1.2 Identifies the support available from the Division to address each nonmaterial indicator of fiscal distress.

4.04.2 The board of directors of the public school district shall place on the agenda for the next regularly scheduled meeting of the board of directors of the public school district a discussion of the notice of nonmaterial indicators of fiscal distress.

4.05 If a public school district is determined to be experiencing fiscal distress at a nonmaterial level, the public school district shall:

4.05.1 Comply with all requirements established by the state board in these rules, including without limitation review of the public school district's budget, reporting, and the hiring and termination of staff, and;

4.05.2 Not incur any debt without the prior written approval of the Division.

4.06 The Division may request that Arkansas Legislative Audit conduct an annual audit of a public school district that is determined to be experiencing fiscal distress at a nonmaterial level under this subsection.

5.00 CLASSIFICATION OF FISCAL DISTRESS STATUS

5.01 Those school districts identified by the ~~Department~~ Division as being in fiscal distress shall be classified as school districts in fiscal distress upon final determination (classification) by the State Board.

5.02 Any school district classified as in fiscal distress shall be required to publish at least one (1) time for two (2) consecutive weeks in a newspaper of general circulation in the school district the school district's classification as a school district in fiscal distress and the reasons why the school district was classified as being in fiscal distress.

- 5.02.1 The district shall publish this announcement within 30 days of the final classification by the State Board.
- 5.02.2 The newspaper of general circulation may be either a daily or weekly newspaper.
- 5.03 The provisions of subsections 5.01 and 5.02 of these rules are effective after the school district's appeal rights in Ark. Code Ann. § 6-20-1905 and section 6.00 of these rules have been exhausted.

6.00 NOTIFICATION AND APPEAL

- 6.01 The ~~Department~~ Division shall provide written notice, via certified mail, return receipt requested, to the president of the school board of directors and the superintendent of each school district identified as being in fiscal distress.
- 6.01.1 The ~~Department~~ Division shall provide the notice on or before ~~March~~ June 30 of each year.
- 6.01.2 At any time after ~~March~~-June 30, the ~~Department~~ Division may identify a school district as being in fiscal distress if the ~~Department~~ Division discovers that a fiscal condition of a school district negatively impacts the continuation of educational services by the school district. If this identification occurs, the ~~Department~~ Division shall immediately provide the same notice described in section 6.01 of these rules.
- 6.02 Any school district identified in fiscal distress status may appeal to the State Board by filing a written appeal with the Office of the Commissioner of Education, by certified mail return receipt requested, within thirty (30) days of receipt of notice of being identified in fiscal distress status from the ~~Department~~ Division.
- 6.03 The State Board shall hear the appeal within sixty (60) days of receipt of the written notice of appeal from the school district.
- 6.04 The written appeal shall state in clear terms the reason why the school should not be classified as in fiscal distress.
- 6.05 Notwithstanding any appeal rights in Ark. Code Ann. § 6-20-1901 et seq. and these rules, no appeal shall stay the ~~Department's~~ Division's authority to take action to protect the fiscal integrity of any school district identified as in fiscal distress.
- 6.06 The following procedures shall apply to State Board hearings involving school districts that appeal a fiscal distress identification by the ~~Department~~ Division:
- 6.06.1 All persons wishing to testify before the State Board shall first be placed under oath by the Chairperson of the State Board.

- 6.06.2 The ~~Department~~ Division shall have up to thirty (30) minutes to present its case to the State Board as to why the school district identified as a district in fiscal distress should be classified as a school district in fiscal distress. The Chairperson of the State Board may allow additional time if necessary.
- 6.06.3 The appealing school district shall have up to thirty (30) minutes to present its case to the State Board as to why the school district should not be classified as a school district in fiscal distress. The Chairperson of the State Board may allow additional time if necessary.
- 6.06.4 The State Board may pose questions to any party at any time during the hearing.
- 6.06.5 The State Board shall then discuss, deliberate and vote upon the matter of the classification of fiscal distress.
- 6.06.6 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 in a public hearing.
- 6.06.7 The State Board shall issue a written order concerning the matter.
- 6.07 The decision of the State Board shall be a final order, and there is no further right of appeal except that the school district may appeal to Pulaski County Circuit Court pursuant to the Arkansas Administrative Procedure Act, Ark. Code Ann. § 25-15-201 et seq.

7.00 FISCAL DISTRESS IMPROVEMENT PLAN

- 7.01 Those school districts classified by the State Board as being in fiscal distress shall file, with the ~~Department~~ Division within ten (10) days after the final classification, a written fiscal distress financial improvement plan to address any area in which the school district is experiencing fiscal distress as identified by the ~~Department~~ Division.
- 7.01.1 The plan shall contain, at a minimum, the following elements:
- 7.01.1.1 Identification of each indicator of fiscal distress;
 - 7.01.1.2 Specific corrective action steps for each indicator of fiscal distress;
 - 7.01.1.3 A timeline for the completion of each corrective action step;
 - 7.01.1.4 Additional corrective action steps the school district proposes to take; and

- 7.01.1.5 A timeline for each additional corrective action step proposed by the school district.
- 7.01.2 The ~~Department~~ Division is authorized to review and amend the plan submitted by the school district.
- 7.01.3 The ~~Department~~ Division may edit, amend, update, or replace the plan at any time deemed appropriate.
- 7.01.4 The school district shall be given notice of the edited, amended, updated, or replacement plan criteria.
- 7.01.5 The district may appeal any edit, amendment or replacement of a plan by filing its written notice of appeal (which must include an explanation of its concerns) with the Commissioner of Education's Office within ten (10) days of receipt of the notice required in subsection 7.01.4. The appeal shall be heard at the next State Board meeting, and the State Board's decision shall be final.
- 7.02 Each school district shall seek and obtain approval of its plan from the ~~Department~~ Division and shall describe how the school district will remedy those areas in which the school district is experiencing fiscal distress and shall establish the time period by which the school district will remedy all criteria which placed the school district in fiscal distress status.
- 7.03 A school district in fiscal distress may only petition the State Board for removal from fiscal distress status after the ~~Department~~ Division has certified in writing that the school district has corrected all criteria for being classified as in fiscal distress, has not experienced any additional indicators of fiscal distress, and has complied with all ~~Department~~ Division recommendations and requirements for removal from fiscal distress status.
- 7.04 Except as set forth in Ark. Code Ann. § 6-20-1910(e) and Section 10.05 of these Rules, a school district shall not be allowed to remain in fiscal distress status for more than five (5) consecutive school years from the date that the school district was classified as being in fiscal distress status.
- 7.05 Any school district classified as being in fiscal distress status shall be required to receive on-site technical evaluation and assistance from the ~~Department~~ Division.
- 7.06 The ~~Department~~ Division shall evaluate and make written recommendations to the district superintendent regarding staffing and fiscal practices of the school district.
- 7.07 The written recommendations of the ~~Department~~ Division shall be binding on the school district, the superintendent and the school district board of directors.
- 7.08 Every six (6) months, the ~~Department~~ Division shall submit a written evaluation on the status of each school district in fiscal distress to the State Board.

- 7.09 The ~~Department~~ Division may petition the State Board at any time for the consolidation, annexation, or reconstitution of a school district in fiscal distress or take other appropriate action as allowed by Ark. Code Ann. § 6-20-1901 et seq. and these rules in order to secure and protect the best interest of the educational resources of the state or to provide for the best interests of students in the school district. The State Board may approve the petition or take other appropriate action as allowed by Ark. Code Ann. § 6-20-1901 et seq. and these rules.
- 7.10 Except as set forth in Ark. Code Ann. § 6-20-1910(e) and Section 10.05 of these Rules, the State Board shall consolidate, annex, or reconstitute any school district that fails to remove itself from the classification of a school district in fiscal distress within five (5) consecutive school years of classification of fiscal distress status unless the State Board, at its discretion, issues a written finding supported by a majority of the State Board, explaining in detail that the school district could not remove itself from fiscal distress due to impossibility caused by external forces beyond the school district's control.

8.00 DEBT ISSUANCE

- 8.01 No school district identified in fiscal distress may incur any debt without the prior written approval of the ~~Department~~ Division.

9.00 ~~DEPARTMENT~~ DIVISION FISCAL DISTRESS ACTIONS

- 9.01 In addressing public school districts in fiscal distress, the Commissioner of Education may:
- 9.01.1 Remove permanently, reassign, or suspend on a temporary basis the superintendent of the school district and:
- 9.01.1.1 Appoint an individual in place of the superintendent to administratively operate the school district under the supervision and approval of the Commissioner; ~~and~~
- 9.01.1.2 Compensate ~~nond~~department ~~nond~~division agents operating the school district from school district funding; and
- 9.01.1.3 Authorize an individual appointed under 9.01.1.1 to remove, replace, reassign, or suspend public school district personnel in accordance with state law;
- 9.01.2 Suspend or remove some or all of the current board of directors and call for the election of a new board of directors for the school district, in which case the school district shall reimburse the county board of election commissioners for election costs as otherwise recognized by law;
- 9.01.3 Suspend on a temporary basis some or all of the powers and duties granted to the current public school district board of directors under Ark. Code Ann.

§ 6-13-620 or any other law but allow the board of directors to continue to operate under the direction and approval of the Commissioner;

9.01.3.1 The State Board shall define the powers and duties of the board of directors while the board of directors is operating under the direction and approval of the Commissioner.

9.01.3.2 The public school district board of directors shall act in an advisory capacity to the Commissioner regarding all powers and duties granted under Ark. Code Ann. § 6-13-620 that are not defined under 9.01.3.1.

9.01.34 Require the school district to operate without a local school board of directors under the supervision of the local superintendent or an individual or panel appointed by the Commissioner of Education;

9.01.45 Waive the application of Arkansas law or the corresponding State Board of Education rules with the exception of:

9.01.45.1 The Teacher Fair Dismissal Act of 1983, Ark. Code Ann. § 6-17-1501 et seq.; ~~and~~

9.01.45.2 The Public School Employee Fair Hearing Act, Ark. Code Ann. § 6-17-1701 et seq;

9.01.5.3 Special education programs as provided in state and federal law;

9.01.5.4 Criminal background checks for employees as provided in state law; and

9.01.5.5 Health and safety codes as established by the state board and local governmental entities;

9.01.56 Petition the State Board of Education for the annexation, consolidation, or reconstitution of the school district;

9.01.67 In the absence of a school district board of directors, assume all authority of the board of directors as designated by the State Board of Education as may be necessary for ~~the day-to-day~~ operation of ~~the~~ all school district systems;

9.01.8 Require reassignment of some or all of the administrative, instructional, or support staff of a public school district;

9.01.9 Require reorganization, closure, or dissolution of one (1) or more of the public schools within the public school district;

9.01.710 Return the administration of the school district to the former board of directors or to a newly elected board of directors if:

- 9.01.710.1 The ~~Department~~ Division certifies in writing to the State Board of Education and to the school district that the school district has corrected all issues that caused the classification of fiscal distress; and
- 9.01.710.2 The State Board of Education determines the school district has corrected all issues that caused the classification of fiscal distress.
- 9.01.710.3 If the Commissioner calls for an election of a new school district board of directors, the school district shall reimburse the county board of election commissioners for election costs as otherwise required by law;
- 9.01.811 Otherwise reconstitute the school district; or
- 9.01.912 Take any other action allowed by law that is deemed necessary to assist a school district in removing the classification of fiscal distress.
- 9.02 The ~~Department~~ Division may impose various reporting requirements on the school district. The ~~Department~~ Division may review any and all school district records and documents.
- 9.03 The ~~Department~~ Division shall monitor the fiscal operations and accounts of the school district.
- 9.04 The ~~Department~~ Division shall require school district staff and employees to obtain fiscal instruction or training in areas of fiscal concern for the school district.

10.00 STATE BOARD ACTIONS

- 10.01 After a public hearing, the State Board of Education shall consolidate, annex, or reconstitute the school district in fiscal distress to another school district or school districts upon a majority vote of a quorum of the members of the State Board as permitted or required by Ark. Code Ann. § 6-20-1901 et seq. and these rules.
- 10.01.1 After providing thirty (30) days written notice, via certified mail, return receipt requested, to the superintendent and the president of the school board of directors, the ~~Department~~ Division may petition the State Board for the consolidation, annexation, or reconstitution of a school district in fiscal distress pursuant to Ark. Code Ann. § 6-20-1908 and subsection 7.09 of these rules.
- 10.01.2 After providing thirty (30) days written notice, via certified mail, return receipt requested, to the superintendent and the president of the school board of directors, the State board, on its own motion, may consolidate, annex, or reconstitute the school district in fiscal distress

as set forth in Ark. Code Ann. 6-20-1910 and subsection 10.01 of these rules.

10.02 The following procedures shall apply to State Board hearings concerning the consolidation, annexation, or reconstitution of a school district in fiscal distress:

10.02.1 All persons wishing to testify before the State Board shall first be placed under oath by the Chairperson of the State Board.

10.02.2 The ~~Department~~ Division shall have up to thirty (30) minutes to present its case to the State Board as to why the school district classified as a district in fiscal distress should be consolidated, annexed or reconstituted. The Chairperson of the State Board may allow additional time if necessary.

10.02.3 School districts and citizens' groups opposing the consolidation, annexation or reconstitution shall have up to a combined thirty (30) minutes to present their cases to the State Board as to why the school district classified as a district in fiscal distress should not be consolidated, annexed or reconstituted. The Chairperson of the State Board may allow additional time if necessary.

10.02.4 The State Board may pose questions to any party at any time during the hearing.

10.02.5 The State Board shall then discuss, deliberate and vote upon the matter of the consolidation, annexation or reconstitution of the school district classified as a district in fiscal distress.

10.02.6 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 in a public hearing.

10.02.7 The State Board shall issue a written order concerning the matter.

10.02.8 If the State Board of Education orders the annexation or consolidation of a school district in fiscal distress, the order shall, as appropriate, dissolve existing school districts and establish receiving or resulting school districts. The order shall also establish the boundary lines of the receiving or resulting school district or school districts. The State Board shall file the order with:

10.02.8.1 The county clerk of each county where a receiving or resulting district is located. The county clerk shall make a permanent record of the order;

- 10.02.8.2 The Secretary of State; and
- 10.02.8.3 The Arkansas Geographic Information Systems Office.
- 10.02.9 It shall be the duty of the ~~Department~~ Division to make changes in the maps of the school districts to properly show the boundary lines of the receiving or resulting districts.
- 10.03 The State Board has exclusive jurisdiction to determine the boundary lines of the receiving or resulting school district and to allocate assets and liabilities of the school district.
- 10.04 The decision of the State Board shall be final with no further right of appeal except that a school district may appeal to Pulaski County Circuit Court pursuant to the Arkansas Administrative Procedure Act, Ark. Code Ann. § 25-15-201 et seq.
- ~~10.05 If the Commissioner of Education assumes authority over a public school district in fiscal distress as set forth in Ark. Code Ann. § 6-20-1909 or Section 9.00 of these Rules, the State Board of Education may pursue the following process for returning a public school district to the local control of its residents:~~
- ~~10.05.1 During the second full school year following the assumption of authority, the State Board shall determine the extent of the school district's progress toward correcting all issues that caused the classification of fiscal distress;~~
- ~~10.05.2 If the State Board determines that sufficient progress has been made by a school district toward correcting all issues that caused the classification of fiscal distress, but the school district has not yet resolved all issues that caused the classification of fiscal distress, the Commissioner, with the approval of the State Board, may appoint a community advisory board of either five (5) or seven (7) members to serve under the supervision and direction of the commissioner.~~
- ~~10.05.2.1 The members of the community advisory board shall be residents of the school district and shall serve on a voluntary basis without compensation.~~
- ~~10.05.2.2 The Department of Education shall cause to be provided to the community advisory board technical assistance and training in, at a minimum, the areas required in Ark. Code Ann. § 6-13-629.~~
- ~~10.05.2.3 The duties of the community advisory board include without limitation:~~
- ~~10.05.2.3.1 Meeting monthly during a regularly scheduled public meeting with the state-~~

appointed administrator regarding the progress of the public school or school district toward correcting all issues that caused the classification of fiscal distress;

~~10.05.2.3.2~~ Seeking community input from the patrons of the school district regarding the progress of the public school or school district toward correcting all issues that caused the classification of fiscal distress;

~~10.05.2.3.3~~ Conducting hearings and making recommendations to the Commissioner regarding personnel and student discipline matters under the appropriate district policies;

~~10.05.2.3.4~~ Working to build community capacity for the continued support of the school district; and

~~10.05.2.3.5~~ Submitting quarterly reports to the Commissioner and the State Board regarding the progress of the public school or school district toward correcting all issues that caused the classification of fiscal distress.

~~10.05.2.4~~ The members of the community advisory board shall serve at the pleasure of the Commissioner until:

~~10.05.2.5~~ The school district is returned to local control and a permanent board of directors is elected and qualified; or

~~10.05.2.6~~ The State Board annexes, consolidates, or reconstitutes the school district under Ark. Code Ann. § 6-20-1910 or under another provision of law;

~~10.05.2.5~~ By April 1 of each year following the appointment of a community advisory board under Ark. Code Ann. § 6-20-1910(d)(2) and Section 10.05 of these Rules, the State Board shall determine the extent of the school district's progress toward correcting all issues that caused the classification of fiscal distress and shall:

- ~~10.05.2.6 — Allow the community advisory board to remain in place for one (1) additional year;~~
- ~~10.05.2.7 — Return the school district to local control by calling for the election of a newly elected board of directors if the Department of Education certifies in writing to the State Board and to the school district that the school district has corrected all criteria for being placed into fiscal distress; and the State Board determines the school district has corrected all criteria for being placed into fiscal distress; or~~
- ~~10.05.2.8 — Annex, consolidate, or reconstitute the school district pursuant to Title 6 of the Arkansas Code.~~
- ~~10.05.2.6 — If the State Board or Commissioner calls for an election of a new school district board of directors, the school district shall reimburse the county board of election commissioners for election costs as otherwise required by law;~~
- ~~10.05.2.7 — If the State Board calls for an election of a new school district board of directors pursuant to Ark. Code Ann. § 6-20-1910 (d)(3)(A)(ii) or these Rules, the Commissioner, with the approval of the State Board, may appoint an interim board of directors to govern the school district until a permanent school district board of directors is elected and qualified.~~
- ~~10.05.2.7.1 — The interim board of directors shall consist of either five (5) or seven (7) members.~~
- ~~10.05.2.7.2 — The members of the interim board of directors shall be residents of the school district and otherwise eligible to serve as school district board members under applicable law.~~
- ~~10.05.2.7.3 — The members of the interim board of directors shall serve on a voluntary basis without compensation.~~

- 10.05.3 If, by the end of the fifth school year following the school district's classification of fiscal distress status, the school district in fiscal distress has not corrected all issues that caused the classification of fiscal distress, the State Board, after a public hearing, shall consolidate, annex, or reconstitute the school district under Ark. Code Ann. § 6-20-1910 and these Rules.
- 10.05.3.1 The State Board may grant additional time for a public school or school district to remove itself from fiscal distress by issuing a written finding supported by a majority of the State Board explaining in detail that the public school or school district could not remove itself from fiscal distress during the relevant time period due to impossibility caused by external forces beyond the control of the public school or school district.
- 10.05.4 Nothing in Ark. Code Ann. § 6-20-1910 or these Rules shall be construed to prevent the ~~Department of Education~~ Division or the State Board from taking any of the actions listed in Ark. Code Ann. § 6-20-1909 or Ark. Code Ann. § 6-20-1910 at any time to address a school district in fiscal distress.

11.00 FISCAL SUPPORT AND MONITORING

11.01 When a public school district is returned to local control or removed from fiscal distress status, the Division:

11.01.1 Shall monitor the fiscal operations and accounts of the public school district for a period of three (3) years;

11.01.2 Shall provide support to the public school district regarding maintaining fiscal integrity and best financial management practices; and

11.01.3 May impose various reporting requirements on the public school district.

11.02 A public school district that is returned to local control shall:

11.02.1 Comply with all monitoring and reporting requirements established by the Division and the State Board, including without limitation review of the public school district's budget and approval for staffing;

11.02.2 Not incur any debt without prior written approval of the department; and

11.02.3 Use Arkansas Legislative Audit to conduct an annual audit.

12.00 GENERAL BUSINESS MANAGER QUALIFICATIONS

12.01 A general business manager for a public school district or education service cooperative shall either meet the qualifications of a Certified Arkansas School Business Official (CASBO) based on the requirements established by the Arkansas Association of School Business Officials (AASBO), or be enrolled in the CASBO required courses of study.

12.01.1 The CASBO courses of study include ten required courses and five electives.

12.01.2 Information pertaining to CASBO courses is posted on the Arkansas Association of Education Administrators (AAEA) web site under the Constituent Association AASBO.

12.01.3 Membership in AAEA, AASBO or any other organization is not required in order to obtain General Business Manager Certification from the Division.

12.02 If not already certified through AASBO, the general business manager must complete at least five CASBO courses per year and must complete the ten required and five elective CASBO courses within three years.

12.02.1 The three-year timeframe for completing the 15 CASBO courses begins on July 1 preceding the Cycle 1 report that first names the individual as General Business Manager.

12.03 After having obtained certification through AASBO or having completed the CASBO courses, the general business manager will receive a certificate issued and dated by the Division with the designation of "Certified General Business Manager."

12.04 A Certified General Business Manager must renew his or her certificate by completing at least two upper-level CASBO courses per year after the date of certification.

12.04.1 The two upper-level CASBO courses must be completed during the fiscal year beginning July 1 following the date of certification and each year thereafter.

12.05 Any individual named as general business manager who fails to complete certification within the designated time or who fails to renew his or her certification will not be able to perform the functions of that role until certification requirements are met.

- 12.06 If a school district or education service cooperative has a general business manager who fails to obtain certification within the designated time or who fails to renew his or her certification, it must appoint another person to the position and that newly appointed person must meet the qualifications as listed above.
- 12.07 A general business manager who was hired before July 31, 2007, is exempt from these requirements as long as they remain with the same school district.
- 12.08 School districts and education service cooperatives shall report the name and qualification status of its general business manager in the Cycle 1 report submitted each year through the Arkansas Public School Computer Network (APSCN).

~~12.00 EARLY INDICATORS OF FISCAL DISTRESS~~

- ~~12.01 By August 31 of each year, the Department shall report to the superintendent of a school district if the Department is aware that the district has experienced two (2) or more indicators of fiscal distress in one (1) school year that the Department deems to be at a nonmaterial level, but that without intervention could place the district in fiscal distress.~~
- ~~12.02 By August 31 of each year, the superintendent of a school district shall report to the Department if the superintendent is aware the school district has experienced two (2) or more indicators of fiscal distress in one (1) school year that the superintendent deems to be at a nonmaterial level, but that without intervention could place the district in fiscal distress.~~
- ~~12.03 The Department and the superintendent shall review all data related to the nonmaterial indicators of fiscal distress.~~
- ~~12.03.1 Within thirty (30) days of the Department's determination that the school district may be experiencing fiscal distress at a nonmaterial level, the Department shall provide a notice to the school district's superintendent and board of directors that:~~
- ~~12.03.1.1 Describes the nonmaterial indicators of fiscal distress that could jeopardize the fiscal integrity of the school district if not addressed; and~~
- ~~12.03.1.2 Identifies the support available from the Department to address each nonmaterial indicator of fiscal distress.~~
- ~~12.03.2 The board of directors shall place on the agenda for the next regularly scheduled meeting of the board of directors a discussion of the notice of nonmaterial indicators of fiscal distress.~~

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.

SUMMARY OF RULES:
ARKANSAS DIVISION OF ELEMENTARY AND SECONDARY EDUCATION RULES GOVERNING
THE ARKANSAS FISCAL ASSESSMENT AND ACCOUNTABILITY PROGRAM

The proposed amendments to these rules:

- Incorporate necessary changes from Act 929 of 2019.
- Add early indicators of fiscal distress (4.01.2.13 and 4.01.2.14).
- Clarify the process for notifying and identifying districts who experience early indicators of fiscal distress.
- Align the authority of the State Board regarding districts in fiscal distress with the Arkansas Educational Support and Accountability Act.
- Add provisions concerning the State Board's authority over districts that are returned to local control or removed from fiscal distress status, including monitoring for up to three (3) years.
- Incorporate provisions of the ADE Rules Governing Minimum Qualifications for General Business Managers to avoid having a separate rule.
- Replace Arkansas Department of Education with the Division of Elementary and Secondary Education.