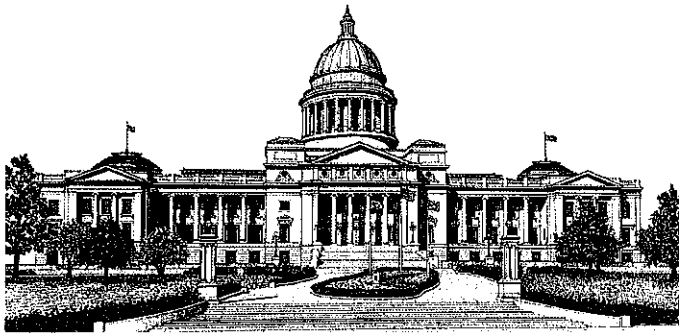


ARKANSAS REGISTER



Proposed Rule Cover Sheet

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Name of Department Arkansas Department of Education

Agency or Division Name Division of Elementary and Secondary Education

Other Subdivision or Department, If Applicable Educator Effectiveness and Licensure

Previous Agency Name, If Applicable _____

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**ARKANSAS DEPARTMENT OF EDUCATION
DIVISION OF ELEMENTARY AND
SECONDARY EDUCATION
RULES GOVERNING BACKGROUND CHECKS
Effective Date: July 3, 2020**

1.0 REGULATORY AUTHORITY AND PURPOSE

- 1.1** These rules shall be known as Arkansas Department of Education Division of Elementary and Secondary Education Rules Governing Background Checks.
- 1.2** The State Board of Education enacts these Rules pursuant to its authority as set forth in Ark. Code Ann. §§ 6-11-105, 6-17-402, 6-17-410, 6-17-411, 6-17-414, 6-17-415, 6-17-421, 25-15-201 et seq., and Acts 536, 1040 of 2019.
- 1.3** It is the purpose of these rules to set forth the requirements for a criminal background check and a Child Maltreatment Central Registry check for:
 - 1.3.1 Each first-time applicant for a license issued by the State Board of Education;
 - 1.3.2 Each applicant for his or her license renewal;
 - 1.3.3 Each applicant for initial employment in a licensed staff position with an educational entity;
 - 1.3.4 Each applicant for initial employment or non-continuous reemployment in a nonlicensed staff position with an educational entity; and
 - 1.3.5 Each preservice teacher.
- 1.4** It is further the purpose of these rules to prescribe the procedure for revoking, suspending, or placing on probation an educational license when an applicant is disqualified for licensure on the basis of a background check under these rules.
- 1.5** It is further the purpose of these rules to clarify that superintendents, ~~and~~ directors of educational entities, and third party vendors shall have the responsibility of reporting licensure violations of teachers, disqualifying offenses of classified employees, and fraudulent acts by Fiscal Officers to the State Board.

- 1.6 It is further the purpose of these rules to provide for the participation in state and federal rap back programs.

2.0 DEFINITIONS

For the purposes of these rules:

- 2.1 **“Affected District”** means a public school district that loses territory or students as a result of annexation, consolidation, or detachment.
- 2.2 **“Applicant”** includes any individual who must apply to the Identification Bureau of the Division of Arkansas State Police for a statewide or nationwide criminal records check or with the Arkansas Child Maltreatment Central Registry check as a condition for a license issued by the State Board of Education under Ark. Code Ann. § 6-17-410 or as a condition for employment by an educational entity under Ark. Code Ann. §§ 6-17-411, 6-17-414, or 6-17-421.
- 2.3 **“Breach of Fiduciary Trust”** means the wrongful misappropriation by a person of any fund or property, which had lawfully been committed to him or her in a fiduciary character.
- 2.4 **“Division”** means the Arkansas Department of Education Division of Elementary and Secondary Education.
- 2.5 **“Educational entity”** means:
- 2.5.1 The Division of Elementary and Secondary Education; or
 - 2.5.2 An entity that is identified by the Division as a local education agency, except that for a public school operated by a school district the school district is the educational entity.
- 2.6 **“Employment”** includes any contract of hire, whether written or oral, whether express or implied, for any type of work on behalf of an educational entity, whether full-time or part-time, and whether permanent or temporary.
- 2.6.1 “Employment” also specifically includes without limitation:
 - 26.1.1 Service as a substitute teacher, whether paid or unpaid; and
 - 26.1.2 Student teacher in a supervised clinical practice, whether paid or unpaid.
 - 2.6.2 “Employment” does not include contractors and workers for hire

from third party vendors under the exclusion in Section 2.201.2 of these rules.

- 2.7 “Fiscal Officer”** means any licensed or nonlicensed employee of an educational entity who has any right, duty, or responsibility to access funds of the educational entity in excess of five thousand dollars (\$5,000), specifically including without limitation superintendents, Fiscal Officers and bookkeepers.
- 2.8 “Fraud”** means all acts, omissions and concealments involving a breach of a legal or equitable duty and resulting in damage to another.
- 2.9 “Fraudulent Act”** means an act:
- 2.9.1 Performed willfully and with the specific intent to deceive or cheat for the purpose of either causing some financial loss to another or bringing about some financial gain to the actor; and
 - 2.9.2 In which the actor has pleaded guilty or nolo contendere, or has been found guilty by any court in this state, another state, or by a federal court.
- 2.10 “Initial employment”** means the first time that an applicant has been employed by an educational entity.
- 2.11 “Law enforcement officer”** means a state police officer, a city police officer, a sheriff or a deputy sheriff.
- 2.12 “Letter of provisional eligibility”** means a six-month, non-renewable letter of provisional eligibility for licensure issued by the State Board of Education to an applicant for first-time licensure during the period that a criminal records check and Child Maltreatment Central Registry check are being conducted.
- 2.13 “Non-continuous reemployment”** means employment in an educational entity by an applicant who was previously employed by the same entity but not at any point during the immediately preceding school year.
- 2.14 “Nonlicensed staff position”** means a position with an educational entity, which position does not require the holder of the position to possess an Arkansas teacher’s license.
- 2.14.1 “Nonlicensed staff position” includes a:
 - 2.14.1.1 Parental monitor on a school bus as permitted under A.C.A. § 6-19-127;

- 2.14.12 Staff position for which the nonlicensed staff person is either paid directly by the educational entity or by a third party vendor under contract with the educational entity to staff the position; and
- 2.14.13 Designated employee position with the Division.
- 2.15 **“Preservice teacher”** means an unlicensed person accepted or enrolled in a teacher preparation program approved by the Division.
- 2.16 **“Rap Back program”** means a state or federal program that provides notification to the Division of an arrest subsequent to an initial background check that is conducted pursuant to these rules.
- 2.17 **“Receiving or resulting public school district”** means a public school district that is created or gains territory or students as the result of a consolidation, annexation, or detachment.
- 2.18 **“Revocation”** means the invalidation of any educator’s license. The revocation will remain permanently in the ~~DESE~~ Division file of the educator and in the files retained by the PLSB. An Educator whose licensed ~~has~~ been revoked may refer to the Division of Elementary and Secondary Education Rules Governing Educator Licensure on the reinstatement of a revoked license.
- 2.19 **“State Board”** means the Arkansas State Board of Education.
- 2.20 **“Supervised clinical practice”** means the placement of a preservice teacher by a teacher preparation program approved by the Division at the educational entity for the purpose of the student completing an -internship or a student teaching experience required by the teacher education program.
- 2.21 **“Third party vendor”** (or “outside vendor”) means:
 - 2.21.1 A person or business organization that contracts with an educational entity to provide staffing for:
 - 221.1.1 Nonlicensed positions;
 - 221.1.2 Positions requiring a license issued by the State Board; and
 - 221.1.3 Positions where the requirement for a license is waived by the State Board
 - 2.21.2 “Third party vendor” does not include a contractor or vendor who is temporarily on an educational entity’s property solely for the purpose of routine maintenance or service and who is not filling a

staff position.

Source: Ark. Code Ann. §§ 6-17-410, 6-17-411, 6-17-414, 6-17-417, and 6-17-421.

3.0 LICENSURE, LICENSE RENEWALS, AND LICENSE REVOCATION

3.1 Unless a waiver is granted pursuant to this Section 3.00, the State Board shall not issue a license or license renewal to, and shall revoke, suspend, or place on probation the existing license of any individual who:

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

3.1.2 Has a sealed, an expunged, or a pardoned conviction for any offense in Ark. Code Ann. § 6-17-410(c) that involves the physical or sexual injury, mistreatment, or abuse of another.

3.01.2.1 A sealed, an expunged, or a pardoned conviction shall not disqualify a person if the conviction does not involve the physical or sexual injury, mistreatment, or abuse of another;

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

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

3.1.5 Has had a teaching or similar license revoked in another state for any reason that Arkansas would disqualify the individual for licensure or employment under these rules;

3.1.6 Intentionally compromises the validity or security of any student test or testing program administered by or required by the State Board or the Division;

3.1.7 Has the completed examination test score of any testing program required by the State Board for teacher licensure declared invalid by the testing program company and so reported to the Division by the testing company;

3.1.8 Fails to establish or maintain the necessary requirements and standards set forth in Arkansas law or State Board rules and regulations for teacher licensure;

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

or required by law to the Division, the State Board, or the Arkansas Legislative Audit; or

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

3.2 Before denying an application for licensure or renewal, or taking action against an existing license, the Division shall provide to the Applicant or licensee a written notice of the reason for the action and shall afford the Applicant or licensee the opportunity to request a hearing before the State Board.

3.2.1 Upon receiving the written notice required by this section a person may:

3.2.1.1 Decline to answer the notice, in which case the State Board shall hold a hearing to establish by a preponderance of the evidence that cause for the proposed action exists;

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

3.2.1.3 Admit the allegations of fact and request a hearing before the State Board to request a waiver; or

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

3.2.2 A preservice teacher who receives notice under this section and who desires to request a hearing before applying for licensure shall submit to the Division the following items with the written request for a hearing:

3.2.2.1 Proof of acceptance or enrollment in a teacher preparation program approved by the Division; and

3.2.2.2 A written recommendation from the teacher preparation program.

3.2.3 A written request for hearing by the Applicant, licensee, or board of directors of a school district or open-enrollment public

charter school must be received by the Division's Office of Legal Services no more than thirty (30) calendar days after the receipt of the notice of denial, nonrenewal, or other action by the Applicant or licensee.

3.2.3.1 If the person requesting a hearing fails to appear at the hearing, the hearing shall proceed in the manner described in Section 3.02.1.1 above.

- 3.3** Any hearing shall comply with the procedures set forth in Section 8.00 herein.
- 3.4** Circumstances for which a waiver may be granted after a hearing pursuant to Sections 3.02 or 3.03 shall include without limitation the following:
- 3.4.1 The age at which the crime or incident was committed;
 - 3.4.2 The circumstances surrounding the crime or incident;
 - 3.4.3 The length of time since the crime or incident;
 - 3.4.4 Subsequent work history;
 - 3.4.5 Employment references;
 - 3.4.6 Character references; and
 - 3.4.7 Other evidence demonstrating that the applicant does not pose a threat to the health or safety of school children or school personnel.
- 3.5** After a hearing, the State Board may take one (1) or more of the following actions:
- 3.5.1 Revoke a license permanently or allow an educator the ability to apply for reinstatement pursuant to Act 628 of 2019;
 - 3.5.2 Suspend a license for a terminable period of time or indefinitely;
 - 3.5.3 Place or grant a license on probationary status for a terminable period of time with the license to be revoked or suspended if the probationary period is not successfully completed;
 - 3.5.4 Impose a monetary penalty not to exceed five hundred dollars (\$500.00) for each violation;

- 3.5.5 Require a licensee to complete appropriate professional development programs, education courses, or both;
- 3.5.6 Require a licensee to successfully complete a licensing examination, credentialing examination, or any other examination required by law or rule to obtain a permit, license, endorsement, or
- 3.5.7 Impose conditions or restrictions on the teaching or educational activities of the licensee;
- 3.5.8 Impose any other requirement or penalty as may be appropriate under the circumstances of the case and which would achieve the State Board’s desired disciplinary purposes, but which would not impair the public health or welfare; or
- 3.5.9 Take no action against a license.
- 3.6 If after a hearing the State Board approves a waiver for a licensee, the waiver shall also operate as a waiver under Ark. Code Ann. § 6-17-411 for the licensee to work for an educational entity.
- 3.7 If, after a hearing, the State Board approves a waiver for a preservice teacher:
 - 3.7.1 The individual may obtain a license only upon:
 - 3.7.1.1 Successful completion of the teacher preparation program for which the preservice teacher has provided proof of acceptance or enrollment under Section 3.02.2.1; and
 - 3.7.1.2 Fulfillment of all other requirements for licensure.
 - 3.7.2 A waiver granted under this Section 3.06 shall also operate as a waiver under Ark. Code Ann. § 6-17-414 for the preservice teacher to work for a school district as a student teacher.

Source: Ark. Code Ann. § 6-17-410.

4.0 BACKGROUND CHECKS REQUIRED FOR LICENSURE AND SCHOOL EMPLOYMENT

- 4.1 Except as otherwise provided herein, an Applicant may not be issued a first-time license or license renewal, nor may an Applicant be employed by or serve in a supervised clinical practice at an educational entity, without the successful completion of a criminal records check and the

successful completion of a Child Maltreatment Central Registry check as required by these Rules.

- 4.1.1 Before a teacher or administrator may be hired for employment at an Arkansas school, the school hiring officer shall check the Arkansas Educator Licensure System (AELS) to determine whether the State Board has acted upon a violation of Standard 1 involving the sexual abuse of a student by the applicant.

Source: Ark. Code Ann. § 6-17-428(p)

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

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

- 4.2.1.1 The Identification Bureau of the Division of Arkansas State Police for a state and federal criminal records check including the taking of fingerprints; and

- 4.2.1.2 The Division of Human Services for a Child Maltreatment Central Registry check.

- 4.2.2 A background check for a first-time Applicant for a license obtained during the twelve (12) months before the license is issued meets the requirement under 4.02.1 for the first-time Applicant.

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

- 4.2.4 The Commissioner of Elementary and Secondary Education may extend the period of provisional eligibility to the end of the contract year if:

- 4.2.4.1 The Applicant is employed by an educational entity; and

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

- 4.2.5 The letter of provisional eligibility will immediately become invalid upon receipt of information that the Applicant has a true report on the Child Maltreatment Central Registry or information obtained from the criminal records check from the Arkansas State Police or the FBI, or other eligibility information, indicating that the applicant has pled guilty or nolo contendere to, or has been found guilty of, any offense that will or may result in license revocation under Ark. Code Ann. § 6-17-410.
- 4.2.6 The Applicant shall be responsible for the payment of any fees associated with the criminal records check and Child Maltreatment Central Registry check.

4.3 Applicants for a license renewal:

- 4.3.1 Each Applicant for license renewal shall be required to apply to:
 - 4.3.1.1 The Identification Bureau of the Division of Arkansas State Police for a state and federal criminal records check including the taking of fingerprints; and
 - 4.3.1.2 The Division of Human Services for a Child Maltreatment Central Registry check.
- 4.3.2 The Applicant should begin the process of obtaining the criminal records check and Child Maltreatment Central Registry check by July 1 of the year in which the Applicant's license expires.
- 4.3.3 The State Board may issue a six-month, non-renewable letter of provisional eligibility for licensure to a first-time Applicant if the Applicant meets all other qualifications, pending the results of the nationwide criminal records and Child Maltreatment Central Registry checks.
- 4.3.4 The Commissioner of Elementary and Secondary Education may extend the period of provisional eligibility to the end of the contract year if:
 - 4.3.4.1 The Applicant is employed by a public school district or open-enrollment public charter school; and
 - 4.3.4.1 Results of the nationwide criminal records check or Child Maltreatment Central Registry check are delayed.
- 4.3.5 The letter of provisional eligibility will immediately become

invalid upon receipt of information that the Applicant has a true report on the Child Maltreatment Central Registry or information obtained from the criminal records check from the Arkansas State Police or the FBI, or other eligibility information, indicating that the applicant has pled guilty or nolo contendere to, or has been found guilty of, any offense that will or may result in license revocation under Ark. Code Ann. § 6-17-410.

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

4.4 Preservice teachers:

4.4.1 Each Applicant who is a preservice teacher shall apply to:

44.1.1 The Identification Bureau of the Division of Arkansas State Police for a state and federal criminal records check including the taking of fingerprints; and

44.1.2 The Division of Human Services for a Child Maltreatment Central Registry check.

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

4.4.3 These rules do not require an institution of higher education to bar a student from enrollment due to a disqualifying criminal conviction or a true report in the Child Maltreatment Central Registry.

4.4.4 The preservice teacher shall successfully complete the required criminal records check and Child Maltreatment Central Registry check before beginning a supervised clinical practice for a school district or public charter school.

4.5 Applicants for employment in a licensed staff position:

4.5.1 Each Applicant for initial employment or non-continuous reemployment in a licensed staff position for an educational entity shall be required as a condition of employment to apply to:

45.1.1 The Identification Bureau of the Division of Arkansas State Police for a state and federal criminal records

check including the taking of fingerprints; and

4.5.1.2 The Division of Human Services for a Child Maltreatment Central Registry check.

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

4.5.3 An educational entity shall not employ in a licensed staff position any individual who has a true report in the Child Maltreatment Central Registry, unless the State Board granted a waiver by awarding a license or renewal under Section 3.00 herein.

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

4.5.5 An educational entity may offer provisional employment to an affected Applicant pending notification from the Division that the:

4.5.5.1 Applicant is eligible for employment based on the background checks; or

4.5.5.2 State Board has waived the disqualifying offense or placement on the Child Maltreatment Central Registry.

4.5.6 The Applicant shall be responsible for the payment of any fees associated with the criminal records check and Child Maltreatment Central Registry check, unless the board of directors of the employing educational entity chooses to pay the fees.

4.6 Applicants for employment in a nonlicensed staff position:

4.6.1 Each Applicant for initial employment or non-continuous

reemployment in a nonlicensed staff position for an educational entity, shall be required as a condition of employment to apply to:

- 4.6.1.1 The Identification Bureau of the Division of Arkansas State Police for a state and federal criminal records check including the taking of fingerprints; and
- 4.6.1.2 The Division of Human Services for a Child Maltreatment Central Registry check.
- 4.6.2 The board of directors of a receiving or resulting public school district in a consolidation, annexation, or detachment may waive the requirements of this Section 4.06 for personnel who were employed by an affected district immediately prior to the annexation, consolidation, or detachment and who had a complete criminal records check conducted as a condition of the person's most recent employment with the affected district as required under this section.
- 4.6.3 An educational entity shall not employ in a nonlicensed staff position any individual who has a true report in the Child Maltreatment Central Registry or who has pled guilty or nolo contendere to, or has been found guilty of, any offense identified in Ark. Code Ann. § 6-17-414(b).
- 4.6.4 An educational entity may offer provisional employment to an affected Applicant pending receipt of the results of the nationwide criminal records or Child Maltreatment Central Registry checks.
- 4.6.5 The Applicant shall be responsible for the payment of any fees associated with the criminal records check and Child Maltreatment Central Registry check, unless the board of directors of the employing educational entity chooses to pay the fees.
- 4.6.6 Notwithstanding the provisions of Section 4.05.5, an educational entity may at its discretion pay the full cost of the criminal records checks and Child Maltreatment Central Registry checks. A school district shall require a criminal records check and Child Maltreatment Central Registry check at least one (1) time every five (5) years.
- 4.6.6.1 School districts should review all classified employees

records to see when their last background check was completed.

4.6.7 If an applicant for employment has been determined ineligible for employment because the applicant has a true report in the Child Maltreatment Central Registry, or has pled guilty or nolo contendere to, or has been found guilty of, any offense identified in Ark. Code Ann. § 6-17-414(b), the board of directors of the educational entity shall provide a written notice to the applicant and shall afford the applicant the opportunity to request a waiver.

4.6.7.1 The waiver shall be requested, pursuant to school district policy, no more than thirty (30) days after receipt of the notice of the denial of employment.

4.6.7.2 The waiver may be requested by:

4.6.7.2.1 The hiring official;

4.6.7.2.2 The affected applicant; or

4.6.7.2.3 The person subject to dismissal.

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

4.6.7.3.1 The age at which the incident was committed;

4.6.7.3.2 The circumstances surrounding the incident;

4.6.7.3.3 The length of time since the incident;

4.6.7.3.4 Subsequent work history;

4.6.7.3.5 Employment references;

4.6.7.3.6 Character references; and

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

4.6.7.4 The board of directors of the educational entity may grant the waiver by adopting a written resolution

identifying the applicant by name and listing the specific facts and circumstances for which the waiver is being granted.

4.6.7.4.1 A waiver request may be discussed and acted upon by the board of directors only in an open public meeting and not in an executive session.

4.6.7.4.2 After adopting the resolution, the board of directors shall immediately provide a copy of the resolution and waiver request to the Division.

4.7 If an Applicant is employed by a third party vendor under contract with the educational entity, the educational entity may– but is not required to – afford the Applicant the opportunity to request a waiver from the school district board of directors.

Source: Ark. Code Ann. §§ 6-17-410, 6-17-411, and 6-17-414.

5.0 BACKGROUND CHECK PROCEDURES

5.1 The criminal records check and Child Maltreatment Central Registry check required by these Rules shall be initiated by the submission to the Division of a form developed by the Division containing a release - of information and notice of the purpose for fingerprinting signed by the Applicant.

5.1.1 For the purposes of these Rules, a criminal records check shall consist of a statewide criminal records check to be conducted by the Division of Arkansas State Police and a nationwide criminal records check to be conducted by the Federal Bureau of Investigation.

5.1.2 Criminal records checks shall conform to the applicable federal or state standards and shall include the taking of fingerprints. The Identification Bureau of the Division of Arkansas State Police and the FBI may maintain these fingerprints in the automated fingerprint identification system.

5.1.3 An educational entity that is initiating a criminal records check shall:

5.1.3.1 Subscribe to the Arkansas State Police online background check system and

- 5.1.3.2 Simultaneously initiate both the state and federal criminal records check on that system.
- 5.1.4 An individual who initiates the criminal records check shall use the online system approved by the Division and identified on the Division's website.
- 5.1.5 Every Applicant shall complete the consent forms prescribed by the Division.
- 5.1.6 Each applicant shall provide fingerprints by:
 - 5.1.6.1 An electronic fingerprinting method approved by the Arkansas State Police;
 - ~~5.1.6.2 Completing the State Police fingerprint card in the presence of a law enforcement officer, and shall have the law enforcement officer sign the fingerprint card and give his/her jurisdiction, the date, and his/her badge number, or~~
 - ~~5.1.6.3 By any other method approved by the Division.~~
- 5.1.7 If a legible set of fingerprints, as determined by the Identification Bureau of the Division of Arkansas State Police, cannot be obtained after a minimum of two (2) attempts, the Division shall determine eligibility for licensure or employment based upon a name check by the Identification Bureau of the Division of Arkansas State Police and the Federal Bureau of Investigation.
- 5.1.8 To be valid for consideration, a criminal records check or Child Maltreatment Central Registry check must have been completed no earlier than twelve (12) months prior to the application for licensure, renewal, or employment.
- 5.1.9 A criminal records check shall be conducted only under the specific Arkansas law governing the request.
 - 5.1.9.1 Every employer or prospective employer of an Applicant shall ensure that the Applicant is correctly informed of the proper reason for the criminal records checks by providing to the Applicant instructions developed by the Division.
 - 5.1.9.2 An Applicant who submits the criminal records check based on an incorrect reason shall be required to

resubmit the background check, at his or her own expense, under the correct reason.

5.2 Any information received by the Division from the Division of Arkansas State Police, the Division of Human Services, or the Federal Bureau of Investigation pursuant to these Rules shall not be available for examination except by the affected applicant or his or her duly authorized representative, and no record, file, or document shall be removed from the custody of the Division of Education.

5.2.1 Any information made available to the affected applicant for licensure or the person whose license is subject to revocation shall be information pertaining to that applicant only.

5.2.2 Rights of privilege and confidentiality established under this section shall not extend to any document created for purposes other than this background check.

5.2.3 Within thirty (30) days of receiving the criminal records background check from the Identification Bureau of the Arkansas State Police and the Division of Human Services, the Division of Elementary and Secondary Education shall inform the board of directors of an educational entity ~~by mail only~~ whether the affected applicant is eligible for employment. The Division will only send written notice when an employee is not eligible for employment. Districts can check the employability status of any employee online at the Arkansas Educator Licensure System website. ~~found at~~
<http://adeaels.arkansas.gov/AelsWeb/Search.aspx>

5.3 New or existing employees of an educational entity who have a contract with or work for more than one (1) school district in one (1) school year shall be required to have only one (1) criminal records check and one (1) Child Maltreatment Central Registry check to satisfy the requirements of all employing school districts for that year.

5.4 Participation in state and federal rap back programs:

The following shall apply when the Division receives approval from the Arkansas State Police, the Federal Bureau of Investigation or Arkansas Crime Information Center, as applicable, for the Division to participate in state and federal rap back programs.

5.4.1 The Division may subscribe to the state rap back program an Applicant who has consented to participation in the state rap

back program.

5.4.2 Upon the submission of a legible set of fingerprints, the Division may subscribe to the national rap back program an Applicant who has consented to participation in the national rap back program.

5.4.2.1 For the duration of the subscription, the Applicant is not required to provide fingerprints, but will submit and pay for the criminal records check and the Child Maltreatment Central Registry check.

5.4.3 An Applicant may withdraw his or her consent to participation in the state or federal rap back program, and will thereafter be removed from participation in the rap back program. Once the Applicant is no longer subscribed in the rap back program, he or she shall provide fingerprints as required under these rules.

Source: Ark. Code Ann. §§ 6-17-410, 6-17-411, 6-17-414, and 6-17-417.

6.0 REPORTING REQUIREMENTS FOR SUPERINTENDENTS, DIRECTORS OF EDUCATIONAL ENTITIES, AND THIRD PARTY VENDORS

6.1 The superintendent or director of an educational entity, or a third party vendor, shall report in writing ~~by certified mail~~ to the Division's Office of Legal Services the name of any employee of the educational entity or employee of a third party vendor whose employment is covered by these rules, whether currently employed or previously employed at any time during the two (2) preceding school years, who:

6.1.1 Has pled guilty or nolo contendere, or has been found guilty, of any offense listed in Ark. Code Ann. §§ 6-17-410(c) or 6-17-414(b);

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

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

6.1.4 Has intentionally compromised the validity or security of any student test or testing program administered or required by the Division;

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

- 6.1.6 Has a true report in the Child Maltreatment Central Registry.
- 6.2 The superintendent or director of an educational entity, or a third party vendor, shall report in writing ~~by certified mail~~ to the Division's Office of Legal Services the name of any Fiscal Officer of the educational entity, whether currently employed or previously employed at any time during the two (2) preceding school years, who has pled guilty or nolo contendere to, or has been found guilty of, a fraudulent act.
- 6.3 Third party vendor reporting under this section is intended only for classified employee positions.
- 6.4 Failure of a superintendent or director of an educational entity to report a violation in writing ~~by certified mail~~ within five (5) business days of knowledge as listed in Section 6.01 may result in sanctions imposed by the State Board, including but not limited to loss of accreditation.

Source: Ark. Code Ann. §§ 6-17-410 and 6-17-414.

7.0 FISCAL OFFICERS

- 7.1 In addition to the requirements of Section 4.00, an educational entity shall not employ as a Fiscal Officer any individual who has pled guilty or nolo contendere to, or has been found guilty of, a fraudulent act.
- 7.2 A currently-employed Fiscal Officer of an educational entity who has pled guilty or nolo contendere to, or has been found guilty of, a fraudulent act shall be dismissed from employment with the educational entity.
- 7.2.1 Within five (5) business days of knowledge of the plea or conviction, the educational entity shall serve written notice of termination on the Fiscal Officer in person or by certified mail. The notice shall advise the Fiscal Officer of his or her right to a hearing before the State Board.
- 7.2.2 The Fiscal Officer may, within thirty (30) calendar days of service of the written notice of termination, request a hearing before the State Board by sending a written request ~~via certified mail~~ to the Division's Office of Legal Services.
- 7.2.3 If the Fiscal Officer does not timely request a hearing before the State Board, termination shall become effective thirty (30) calendar days after the date of service of the written notice of termination.

- 7.2.4 Termination of employment pursuant to this subsection shall not be subject to the requirements of the Teacher Fair Dismissal Act, Ark. Code Ann. § 6-17-1501 et seq. or the Public School Employee Fair Hearing Act, Ark. Code Ann. § 6-17-1701 et seq.
- 7.3** Circumstances for which a waiver may be granted shall include without limitation the following:
- 7.3.1 The age of the Fiscal Officer at the time the criminal act occurred;
- 7.3.2 The length of time since the conviction;
- 7.3.3 Whether the Fiscal Officer has pled guilty or nolo contendere to, or has been found guilty of, any other criminal violations since the original conviction;
- 7.3.4 Whether the original conviction was expunged or pardoned; and
- 7.3.5 Any other relevant facts.
- 7.4** The hearing shall follow the procedures set forth in Section 8.00 of these Rules.
- 7.5** After making its decision, the State Board shall reduce its decision to writing and shall ~~mail~~ forward copies of the decision to the Fiscal Officer or Applicant and the superintendent or director of the educational entity that issued the notice of termination.

Source: Ark. Code Ann. § 6-17-421.

8.0 STATE BOARD HEARING PROCEDURES

- 8.1** Each party shall exchange exhibits and witness lists not less than ten (10) calendar days before the scheduled hearing date, unless both parties agree to a shorter period of time.
- 8.2** Requests for subpoenas must be received in the Division's Office of Legal Counsel not less than ten (10) calendar days before the hearing date.
- 8.3** Each party will have the opportunity to present an opening statement of no longer than five (5) minutes, beginning with the representative of the Division. The Chairperson of the State Board may, only for good cause shown and upon the request of either party, allow either party additional time to present their opening statements.

- 8.4** Each party will be provided fifteen (15) minutes to present their cases, beginning with the representative of the Division. The Chairperson of the State Board may, only for good cause shown and upon the request of either party, allow either party additional time to present their cases.
- 8.5** Every witness giving oral testimony must be sworn under oath by the Chair of the State Board and shall be subject to direct examination, cross examination, and questioning by the State Board.
- 8.6** For the purposes of the record, documents offered during the hearing by the Division shall be clearly marked “DESE” and numbered in sequential, numeric order (for example: DESE-1).
- 8.7** For the purposes of the record, documents offered during the hearing by the appealing public school district, open-enrollment public charter school, Applicant, or licensee shall be clearly marked “Educator” and numbered in sequential, numeric order (for example: Educator-1).
- 8.8** The Division of Education shall have the burden of proving, by a preponderance of the evidence, that cause for the proposed licensure action exists, and that the recommended disposition from the Division be adopted.
- 8.9** While the scope of each party’s presentation ultimately lies within the State Board Chairperson’s discretion, case presentation should be arranged in such a way as to avoid redundant testimony.
- 8.10** After both parties have presented their cases, the State Board may allow each party to present limited rebuttal testimony.
- 8.11** Each party will be given five (5) minutes to present a closing argument, ending with the Division.
- 8.12** After making its decision, the State Board shall reduce its decision to writing and shall ~~mail-forward~~ copies of the decision to each party, each party’s attorney, and the superintendent or director of any interested public school district or open- enrollment public charter school.
- 8.13** The State Board’s written decision shall constitute the final agency action for purposes of judicial review pursuant to the Arkansas Administrative Procedure Act, Ark. Code Ann. § 25-15-201 et seq.

QUESTIONNAIRE
FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Arkansas Department of Education Division of Elementary and Secondary Education
DIVISION Division of Educator Effectiveness and Licensure
DIVISION DIRECTOR Karli Saracini
CONTACT PERSON Amy Douglas
ADDRESS 4 Capitol Mall
PHONE NO. 501-682-0166 **FAX NO.** _____ **E-MAIL** amy.douglas@ade.arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Amy Douglas
PRESENTER E-MAIL amy.douglas@ade.arkansas.gov

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.”

To update the process for accepting and receiving fingerprints for background checks.

See attached mark-ups.

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

630 of 2021

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

With the newest legislation, fingerprint cards must electronically submitted. Out of state through reciprocity are not required to be electronic.

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).

<http://dese.ade.arkansas.gov/divisions/legal/rules/pending>

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

Date: December 7, 2021

Time: 1:30 pm

Place: ADE Auditorium, Four Capitol Mall, Little Rock, AR 72201

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

December 17, 2021

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

January 1, 2022

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. Please see attached.

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

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.

Unknown

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Education Division of Elementary and Secondary Education
DIVISION Division of Educator Effectiveness and Licensure
PERSON COMPLETING THIS STATEMENT Amy Douglas
TELEPHONE NO. 501-682-0166 **FAX NO.** _____ **EMAIL:** amy.douglas@ade.arkansas.gov

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 Background Checks

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 _____ \$ 0.00

Total _____ \$ 0.00

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 _____ \$ 0.00

Total _____ \$ 0.00

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.

September 1, 2021

PURPOSE

The Arkansas Department of Education Division of Elementary and Secondary Education is seeking Governor Hutchinson's review of proposed amendments to the Rules Governing Background Checks.

BACKGROUND

Pursuant to Ark. Code Ann §§ 6-17-410, 6-17-414, and 12-12-1005, background checks are required for certified and classified employees working in a public school system. The Rules Governing Background Checks provide guidance to employees on when and how a background check is required and what avenues are available if there is a disqualifying offense. Act 630 of 2021 made changes to how fingerprints may be received by the Division.

KEY POINTS

- Updated the rules to meet the requirement of new legislation that all fingerprints must be electronically submitted
- Updated language to reflect how certain notices will be sent and received by the Division

DISCUSSION

Prior to 2021 legislative session, fingerprints were submitted through the Arkansas State Police and sometimes with physical fingerprint cards. Now, due to new legislation, all fingerprints must be electronically submitted with only out of state applicants being allowed to submit physical fingerprint cards. The Division has been utilizing digital fingerprint submissions for some time. The new law aligns the Division's best practices with current legislation.

RECOMMENDATION

We recommend the proposed amendments to the Rules Governing Background Checks be approved as proposed by the Arkansas Department of Education Division of Elementary and Secondary Education State Board of Education.