ARKANSAS REGISTER

Proposed Rule Cover Sheet

Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov

Name of Department Arkansas Department of Education

Agency or Division Name Division of Elementary and Secondary Education

Other Subdivision or Department, If Applicable

Previous Agency Name, If Applicable

Contact Person Andres Rhodes

Contact E-mail andres.rhodes@ade.arkansas.gov

Contact Phone 501-682-4234

Name of Rule DESE Rules Governing the Arkansas Fiscal Assessment and Accountability Program

Newspaper Name Arkansas Democrat-Gazette

Date of Publishing May 10-12, 2024

Final Date for Public Comment June 10, 2024

Location and Time of Public Meeting ADE Auditorium, Four Capitol Mall, Little Rock AR 72201 on May 31, 2024 at 10:00am

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

Effective October 19, 2020

1.00 AUTHORITY

1.01 The ~~Arkansas~~ State Board of Education enacted ~~these rules~~ this rule 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 929 of 2019.

~~1.02 These rules shall be known as the Arkansas 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~~ this rule is to establish how the Division of Elementary and Secondary Education 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.~~ Arkansas Code § 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.~~ Arkansas Code § 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 a calendar day, unless otherwise specified in ~~these rules~~ this rule, regardless of whether it is a day the Division of Elementary and Secondary Education 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 "Fiscal Distress Financial Improvement Plan (Plan)" means the written plan submitted by a district classified in fiscal distress and approved by the ~~Division~~ division to be implemented by the district addressing each indicator of fiscal distress identified by the ~~Division~~ division and the State Board of Education with a specific corrective action plan and timeline.

3.10 "Fiscal Distress Status" means the status of a public school district identified by the ~~Division~~ division and classified by the ~~State Board~~ state board as being placed in fiscal distress status pursuant to ~~Ark. Code Ann.~~ Arkansas Code § 6-20-1901 et seq. and ~~these rules~~ this rule.

3.11 "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.

3.12 "General Business Manager" means a chief financial officer or business manager, however the position is titled, who:

3.12.1 Is responsible for the fiscal operations of a public school district;

3.12.2 Performs duties under the direction of a superintendent, or equivalent, of a public school district; and

3.12.3 Is not the superintendent or equivalent of the public school district.

3.13 "Jeopardize" means to expose to loss, ~~or~~ injury, or peril.

3.14 "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.

3.15 "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.

3.16 "Public school" means:

3.16.1 A school operated by a public school district; or

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

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

3.17 "Public school district" means:

3.17.1 A geographic area that qualifies as a taxing unit for purposes of ad valorem property taxes under ~~Ark. Code Ann.~~ Arkansas Code § 26-1-101 et seq. and Arkansas Constitution, Article 14, § 3, and is either:

3.17.1.1 Governed by an elected board of directors; or

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

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

3.17.3 Schools or educational programs created by or receiving authority to exist pursuant to ~~Ark. Code Ann.~~ Arkansas Code §§ 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 "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;

3.19 "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 ESA, ALE, ELL, Professional Development).

3.20 "School district systems" means the operations and procedures that occur within a public school district, including without limitation:

3.20.1 Academics;

3.20.2 Facilities;

3.20.3 Fiscal operations;

3.20.4 Human capital management; and

3.20.5 Student support services

3.21 "School Year" means a school year beginning July 1 of one calendar year and ending June 30 of the following calendar year.

~~3.22 "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 Division of Elementary and Secondary Education to be a school district in fiscal distress upon final approval by the State Board of Education:

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 ~~Division~~ division, Arkansas 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;

DRAFT

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.~~ Arkansas Code § 6-20-1913 or the ~~Division's~~ 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.~~ Arkansas Code § 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~~ division shall report to the superintendent of a public school district if the ~~Division~~ 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~~ 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~~ 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~~ 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~~ division's determination that the public school district may be experiencing fiscal distress at a nonmaterial

level, the ~~Division~~ 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~~ 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~~ this rule, 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~~ division.

4.06 The ~~Division~~ 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 ~~sub~~section.

5.00 CLASSIFICATION OF FISCAL DISTRESS STATUS

5.01 Those school districts identified by the Division of Elementary and Secondary Education as being in fiscal distress shall be classified as school districts in fiscal distress upon final determination (classification) by the State Board of Education.

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~~ state board.

5.02.2 The newspaper of general circulation may be either a daily or weekly newspaper.

5.03 The provisions of ~~sub~~sections 5.01 and 5.02 ~~of these rules~~ are effective after the school district's appeal rights in ~~Ark. Code Ann.~~ Arkansas Code § 6-20-1905 and section 6.00 ~~of these rules~~ have been exhausted.

6.00 NOTIFICATION AND APPEAL

6.01 The Division of Elementary and Secondary Education 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 ~~Division~~ division shall provide the notice on or before June 30 of each year.

6.01.2 At any time after June 30, the ~~Division~~ division may identify a school district as being in fiscal distress if the ~~Division~~ 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 ~~Division~~ 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 the ~~Division~~ division, by certified mail return receipt requested, within thirty (30) days of receipt of notice of being identified in fiscal distress status from the ~~Division~~ division.

6.03 The State Board of Education 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.~~ Arkansas Code § 6-20-1901 et seq. and ~~these rules~~ this rule, no appeal shall stay the ~~Division'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~~ state board hearings involving school districts that appeal a fiscal distress identification by the ~~Division~~ division:

6.06.1 All persons wishing to testify before the ~~State Board~~ state board shall first be placed under oath by the Chair~~person~~ of the State Board.

6.06.2 The ~~Division~~ division shall have up to thirty (30) minutes to present its case to the ~~State Board~~ 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 Chair~~person 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~~ state board as to why the school district should not be classified as a school district in fiscal distress. The Chair~~person of the State Board~~ may allow additional time if necessary.

6.06.4 The ~~State Board~~ state board may pose questions to any party at any time during the hearing.

6.06.5 The ~~State Board~~ 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~~ 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~~ state board shall issue a written order concerning the matter.

6.07 The decision of the ~~State Board~~ 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.~~ Arkansas Code § 25-15-201 et seq.

7.00 FISCAL DISTRESS IMPROVEMENT PLAN

7.01 Those school districts classified by the State Board of Education as being in fiscal distress shall file, with the Division of Elementary and Secondary Education 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 ~~Division~~ 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.

DRAFT

7.01.2 The ~~Division~~ division is authorized to review and amend the plan submitted by the school district.

7.01.3 The ~~Division~~ 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 ~~the Division~~ Elementary and Secondary Education within ten (10) days of receipt of the notice required in ~~sub~~section 7.01.4. The appeal shall be heard at the next ~~State Board~~ state board meeting, and the ~~State Board's~~ state board's decision shall be final.

7.02 Each school district shall seek and obtain approval of its plan from the ~~Division~~ 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~~ state board for removal from fiscal distress status after the ~~Division~~ 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 ~~Division~~ division recommendations and requirements for removal from fiscal distress status.

7.04 Except as set forth in ~~Ark. Code Ann.~~ Arkansas Code § 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 ~~Division~~ division.

7.06 The ~~Division~~ 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 ~~Division~~ division shall be binding on the school district, the superintendent and the school district board of directors.

7.08 Every six (6) months, the ~~Division~~ division shall submit a written evaluation on the status of each school district in fiscal distress to the ~~State Board~~ state board.

7.09 The ~~Division~~ division may petition the ~~State Board~~ 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.~~ Arkansas Code § 6-20-1901 et seq. and ~~these rules~~ this rule 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~~ state board may approve the petition or take other appropriate action as allowed by ~~Ark. Code Ann.~~ Arkansas Code § 6-20-1901 et seq. and ~~these rules~~ this rule.

7.10 Except as set forth in ~~Ark. Code Ann.~~ Arkansas Code § 6-20-1910(e) and Section 10.05 ~~of these Rules~~, the ~~State Board~~ 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~~ state board, at its discretion, issues a written finding supported by a majority of the ~~State Board~~ 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 ~~Division~~ division.

9.00 DIVISION FISCAL DISTRESS ACTIONS

9.01 In addressing public school districts in fiscal distress, the Commissioner of ~~the Division~~ Elementary and Secondary 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 nondivision 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.~~

Arkansas Code § 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 of Education 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.~~ Arkansas Code § 6-13-620 that are not defined under 9.01.3.1.

9.01.4 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 the Division~~;

9.01.5 Waive the application of Arkansas law or the corresponding ~~State Board of Education~~ state board rules with the exception of:

~~9.01.5.1 The Teacher Fair Dismissal Act of 1983, Ark. Code Ann. § 6-17-1501 et seq.;~~

~~9.01.5.2 The Public School Employee Fair Hearing Act, Ark. Code Ann. § 6-17-1701 et seq;~~

~~9.01.5.3~~ 9.01.5.1 Special education programs as provided in state and federal law;

~~9.01.5.4~~ 9.01.5.2 Criminal background checks for employees as provided in state law; and

~~9.01.5.5~~9.01.5.3 Health and safety codes as established by the state board and local governmental entities;

9.01.6 Petition the ~~State Board of Education~~ state board for the annexation, consolidation, or reconstitution of the school district;

9.01.7 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~~ state board as may be necessary for operation of 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;

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

9.01.10.1 The Division of Elementary and Secondary Education certifies in writing to the ~~State Board of Education~~ state board and to the school district that the school district has corrected all issues that caused the classification of fiscal distress and the public school district has not experienced any additional indicators of fiscal distress; and

9.01.10.2 The ~~State Board of Education~~ state board determines the school district has corrected all issues that caused the classification of fiscal distress.

9.01.10.3 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;

9.01.11 Otherwise reconstitute the school district; or

9.01.12 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 ~~Division~~ division may impose various reporting requirements on the school district. The ~~Division~~ division may review any and all school district records and documents.

9.03 The ~~Division~~ division shall monitor the fiscal operations and accounts of the school district.

9.04 The ~~Division~~ 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~~ state board as permitted or required by ~~Ark. Code Ann.~~ Arkansas Code § 6-20-1901 et seq. and ~~these rules~~ this rule.

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 Division of Elementary and Secondary Education may petition the ~~State Board~~ state board for the consolidation, annexation, or reconstitution of a school district in fiscal distress pursuant to ~~Ark. Code Ann.~~ Arkansas Code § 6-20-1908 and ~~sub~~section 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~~ state board, on its own motion, may consolidate, annex, or reconstitute the school district in fiscal distress as set forth in ~~Ark. Code Ann.~~ Arkansas Code § 6-20-1910 and ~~sub~~section 10.01 ~~of these rules~~.

10.02 The following procedures shall apply to ~~State Board~~ 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~~ state board shall first be placed under oath by the Chair~~person~~ of the State Board.

10.02.2 The ~~Division~~ 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 Chair~~person 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~~ state board as to why the school district classified as a district in fiscal distress should not be consolidated, annexed or reconstituted. The Chair~~person of the State Board~~ may allow additional time if necessary.

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

10.02.5 The ~~State Board~~ 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~~ 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~~ state board shall issue a written order concerning the matter.

10.02.8 If the ~~State Board of Education~~ state board 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~~ 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 Arkansas Geographic Information Systems Office 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~~ 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~~ 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.~~ Arkansas Code § 25-15-201 et seq.

10.05 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~~ state board, after a public hearing, shall consolidate, annex, or reconstitute the school district under ~~Ark. Code Ann.~~ Arkansas Code § 6-20-1910 and ~~these rules~~ this rule.

10.05.1 The ~~State Board~~ 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~~ 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.

10.05.2 Nothing in ~~Ark. Code Ann.~~ Arkansas Code § 6-20-1910 or ~~these rules~~ this rule shall be construed to prevent the ~~Division~~ division or the ~~State Board~~ state board from taking any of the actions listed in ~~Ark. Code Ann.~~ Arkansas Code § 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 of Elementary and Secondary Education:

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

DRAFT

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~~ division and the ~~State Board~~ 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 ~~Division~~ division; 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 (10) required courses and five (5) 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 (5) CASBO courses per year and must complete the ten (10) required and five elective CASBO courses within three (3) 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~~ 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 (2) upper-level CASBO courses per year after the date of certification.

12.04.1 The two (2) 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 the general business manager for a school district or education service cooperative fails to obtain certification within the designated time or who fails to renew his or her certification, the school district or education service cooperative must appoint another person to the position who meets the general business manager qualifications 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).

DRAFT

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT Department of Education
BOARD/COMMISSION State Board of Education
BOARD/COMMISSION DIRECTOR
CONTACT PERSON Andres Rhodes
ADDRESS Four Capitol Mall, Little Rock, AR 72201
PHONE NO. (501) 682-4234 **EMAIL** andres.rhodes@ade.arkansas.gov
NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING
Andres Rhodes; Stephen Reynolds
PRESENTER EMAIL(S) andres.rhodes@ade.arkansas.gov; stephen.reynolds@ade.

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

****

1. What is the official title of this rule?
DESE Rules Governing the Arkansas Fiscal Assessment and Accountability Program

2. What is the subject of the proposed rule? Fiscal accountability

3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☑

If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☐

4. Is this rule being filed for permanent promulgation? Yes ☑ No ☐

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☑

If yes, what was the effective date of the emergency rule? _____

On what date does the emergency rule expire?_____

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes ☐ No ☑

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes ☑ No ☐

If yes, please provide the state statute and/or rule citation.

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes ☐ No ☑

If yes, please list the rules being repealed.
If no, please explain.

The Department is unable to identify two rules that can be repealed.

8. Is this a new rule? Yes ☐ No ☑

Does this repeal an existing rule? Yes ☐ No ☑
If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes ☑ No ☐
If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

Arkansas Code 6-11-105

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes ☑ No ☐

If yes, please provide the year of the act(s) and act number(s).

Act 237 of 2023

11. What is the reason for this proposed rule? Why is it necessary?

Act 237 of 2023 repealed the Teacher Fair Dismissal Act and the Public School Employee Fair Hearing Act. This amendment removes references to those acts.

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

https://dese.ade.arkansas.gov/Offices/legal/rules/pending

13. Will a public hearing be held on this proposed rule? Yes ☑ No ☐

If yes, please complete the following:

Date: 05/31/2024

Time: 10:00 am

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

Please be sure to advise Bureau Staff if this information changes for any reason.

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. 06/10/2024

15. What is the proposed effective date for this rule? August 1, 2024

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

19. Is the rule expected to be controversial? Yes ☐ No ☑

If yes, please explain.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT Department of Education
BOARD/COMMISSION State Board of Education
PERSON COMPLETING THIS STATEMENT Stephen Reynolds
TELEPHONE NO. (501) 682-4899 **EMAIL** stephen.reynolds@ade.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE DESE Rules Governing the Arkansas Fiscal Assessment and Accountability Program

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 no, please explain:

   (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 reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

   (d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

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

General Revenue_____
Federal Funds_____
Cash Funds_____
Special Revenue_____
Other (Identify)_____

Total $ 0.00

Next Fiscal Year

General Revenue_____
Federal Funds_____
Cash Funds_____
Special Revenue_____
Other (Identify)_____

Total $ 0.00

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

Current Fiscal Year

General Revenue_____
Federal Funds_____
Cash Funds_____
Special Revenue_____
Other (Identify)_____

Total $ 0.00

Next Fiscal Year

General Revenue_____
Federal Funds_____
Cash Funds_____
Special Revenue_____
Other (Identify)_____

Total $ 0.00

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

Current Fiscal Year
$ 0.00

Next Fiscal Year
$ 0.00

6. What is the total estimated cost by fiscal year to a state, county, or 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
$ 0.00

Next Fiscal Year
$ 0.00

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.

Jacob Oliva
Secretary

Stacy Smith
Deputy
Commissioner

State Board of Education

Dr. Sarah Moore
Stuttgart
Chair

Kathy Rollins
Springdale
Vice-Chair

Adrienne Woods
Rogers

Randy Henderson
Blytheville

Lisa Hunter
White Hall

Jeff Wood
Little Rock

Ken Bragg
Sheridan

Leigh Keener
Little Rock

February 2, 2024

Proposed Rule Repeal – Rules Governing the Arkansas Fiscal Assessment and Accountability Program

PURPOSE

The Division of Elementary and Secondary Education is seeking the Governor's review of proposed rule amendment regarding the Arkansas Fiscal Assessment and Accountability Program.

BACKGROUND

Pursuant to Arkansas Code § 6-20-1901 et seq , the Division is charged with promulgating rules regarding the Arkansas Fiscal Assessment and Accountability Program. The purpose of this rule is to provide guidelines and procedures by which public school districts and open-enrollment public charter schools can be provided support or be classified as in fiscal distress.

KEY POINTS

- Removes references to repealed law.
- Makes minor technical corrections in advance of the Code of Arkansas Rules.

DISCUSSION

Act 237 of 2023 repealed the Teacher Fair Dismissal Act and the Public School Employee Fair Hearing Act. This amendment removes references to those acts.

RECOMMENDATION

The Division of Elementary and Secondary Education recommends Governor's Office approval of this rule amendment.

Notice of Rulemaking

Pursuant to Arkansas Code Annotated § 25-15-201 et seq., notice is hereby given that the Division of Elementary and Secondary Education is considering new administrative rules. Public comment hearings will be held on the DESE Rule Governing Public School Policies Relating to Overnight Trips and Use of Public School Lavatories on May 22, 2024 at 1:30 p.m. Public comment hearings will be held for the following rules on May 31, 2024 at 10:00am: the DESE Rule Governing Professional Development; the DESE Rule Governing Arkansas Governor's School; the DESE Rule Governing Background Checks; the ADE, Office of Early Childhood Rules Governing Better Beginnings, Arkansas's Tiered Quality Rating and Improvement System; the DESE Rule Governing the Code of Ethics for Arkansas Educators; the DESE Rule Governing Dyslexia Screenings and Interventions; the DESE Rule Governing Educator Licensure; the DESE Rule Governing Emergency Response Equipment and Training in Arkansas Public Schools; the DESE Rule Governing Fiscal Assessment and Accountability Program; the DESE Rule Governing the Maternity Leave Cost Sharing Program; the DESE Rule Governing the Requirements and Procedures for Obtaining an Arkansas Birth through Prekindergarten Teaching Credential; and the DESE Rule Governing Water Safety Information Provided by Public Schools. Public comment hearings will be held for the repeal of the following rules on May 31, 2024 at 1:30pm: the DESE Rule Governing the Educator Compensation Reform Program; the DESE Rule Governing Eligibility of Participating School Districts in the Traveling Teacher Program; the DESE Rule Governing Incentives for Teacher Recruitment and Retention in High-Priority Districts; the DESE Rule Governing Reimbursement by School Districts for Election Expenses; the DESE Rule Governing School Board Zones and Rezoning; the DESE Rule Governing School District Duty to Report Student Criminal Acts; the DESE Rule Governing the Succeed Scholarship Program; and DCTE Rule Governing Methods of Administration of Career and Technical Education Programs. All hearings will be held at the Arkansas Department of Education, Arch Ford Building, Four Capitol Mall, Little Rock, AR, 72201. The public comment period for these rules ends on June 10, 2024. Written comments regarding these proposed rules may be mailed to ADE Legal Services, Four Capitol Mall, Room 302A, Little Rock, AR, 72201. Comments also may be emailed to ADE.RulesComments@ade.arkansas.gov. A copy of the proposed rules can be found on the Division of Elementary and Secondary Education's

website at: https://dese.ade.arkansas.gov/Offices/legal/rules/pending. Copies also may be obtained by contacting ADE's Office of Legal Services at the above address or via phone at (501) 683-1390.

Re: Notice of Rulemaking

Legal Ads <legalads@arkansasonline.com>
Wed 5/8/2024 11:42 AM

To:Daniel Shults (ADE) <Daniel.Shults@ade.arkansas.gov>
Cc:LaBria Brown (ADE) <LaBria.Brown@ade.arkansas.gov>;Legal <legal@ade.arkansas.gov>

Caution: This is an external email and may contain a suspicious subject or content. Please take care when clicking links or opening attachments. When in doubt, contact ADE IT Services.

Notice will run Fri 5/10, Sat 5/11, and Sun 5/12.

Sunday will be invoiced separate from Fri/Sat.

Thank you.

Gregg Sterne, Legal Advertising
Arkansas Democrat-Gazette
legalads@arkansasonline.com

From: "Daniel Shults (ADE)" <Daniel.Shults@ade.arkansas.gov>
To: "LaBria Brown, ADE" <LaBria.Brown@ade.arkansas.gov>, "Legal Ads" <legalads@arkansasonline.com>
Cc: "Legal" <legal@ade.arkansas.gov>
Sent: Wednesday, May 8, 2024 11:27:16 AM
Subject: RE: Notice of Rulemaking

ARKANSAS DEPARTMENT OF EDUCATION

Daniel Shults
Deputy Legal Counsel
Arkansas Department of Education
4 Capitol Mall, Suite 302
Little Rock, Arkansas 72201
Office: (501) 682-4202
Cell: (501) 647-5939
Email: daniel.shults@ade.arkansas.gov

From: LaBria Brown (ADE) <LaBria.Brown@ade.arkansas.gov>
Sent: Wednesday, May 8, 2024 9:57 AM
To: Legal Ads <legalads@arkansasonline.com>
Cc: Legal <legal@ade.arkansas.gov>; Daniel Shults (ADE) <Daniel.Shults@ade.arkansas.gov>
Subject: Notice of Rulemaking

Good morning,

Please find the attached Notice of Rulemaking for several Division of Elementary and Secondary Education administrative rules and confirm receipt. Please run for three consecutive days, from Friday, May 10, 2024, through Sunday, May 12, 2024. Please let me know if you have any questions.