ARKANSAS REGISTER

Proposed Rule Cover Sheet

Secretary of State
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Name of Department 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

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Contact Phone 501-682-4234

Name of Rule DESE Rules and Regulations Governing Duty to Report Student Criminal Acts

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 1:30 pm

ARKANSAS DEPARTMENT OF EDUCATION
RULES AND REGULATIONS GOVERNING
DUTY TO REPORT STUDENT CRIMINAL ACTS
Revised August 9,1999

1.0 Regulatory Authority

1.1 These regulations shall be known as Arkansas Department of Education regulations governing the duty of school principals or other persons in charge of a public school to report criminal acts.

1.2 The State Board of Education enacted these regulations pursuant to its authority under Ark. Code Ann. 6-17-113 (Supp. 1997), as amended by Act 1520 of 1999.

2.00 Purpose of Regulations

The purpose of these regulations is to provide guidelines under which schools will report all threats of violence or acts of violence on school property.

3.0 Definitions

For the purposes of these rules and regulations:

3.1 "Act of violence" means any violation of Arkansas law where a person purposely or knowingly causes, or threatens to cause death or serious physical injury to another person.

3.2 "Purposely" means a person acts purposely with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result.

3.3 "Knowingly" means a person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

3.4 "Serious Physical Injury" means a physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ.

3.5 "Reasonably believes" or "reasonable belief" means the belief that an ordinary, prudent man would form under the circumstances in question and one not recklessly or negligently formed. A reasonable belief is not based solely on speculation, conjecture or rumor.

3.6 "Recklessly" means a person acts recklessly with respect to attendant circumstances or a result of his conduct when he consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of a nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would

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observe in the actor's situation.

3.7 "Negligently" means a person acts negligently with respect to attendant circumstances or a result of his conduct when he should be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

3.8 'Deadly weapon' means a firearm or anything manifestly designed, made or adapted for the purpose of inflicting death or serious physical injury, or adapted for the purpose of inflicting death or serious physical injury; or

3.8.1 Anything that in the manner of its use or intended use is capable of causing death or serious physical injury; and

3.8.2 'Firearm' means any device designed, made, or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use, including such a device that is not loaded or lacks a clip or other component to render it immediately operable, and components that can readily be assembled into such a device.

3.9 "Threat" means a reasonable person would believe the actor could and would carry out the threatened behavior and a reasonable person would be placed in fear of his life or safety.

3.10 "Law enforcement officer" means any public servant vested by law with a duty to maintain public order or to make arrests for offenses. See Ark. Code Ann. 5-1-102(12) (Repl. 1997).

4.0 School Reporting Responsibility

4.1 The principal or designee who has personal knowledge or who has received information leading to a reasonable belief that any person has committed or threatened to commit an act of violence or any crime involving a deadly weapon on school property or while under school supervision/authority shall immediately report the incident to the superintendent or designee.

4.2 The principal or designee who has personal knowledge or who has received information leading to a reasonable belief that any person has committed or has threatened to commit an act of violence or any crime involving a deadly weapon shall report the incident to the superintendent or designee and the appropriate local law enforcement agency.

4.3 Behavior is considered to be a threat if a reasonable person would believe the actor could and would carry out the threatened behavior and if a reasonable person would be placed in fear of his life or safety.

4.4 The phrase "any crime involving a deadly weapon" requires the commission of a crime using a deadly weapon as previously defined. With the exception of firearms or items which are in and of themselves illegal, mere possession, without more, is not sufficient to trigger reporting requirements.

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4.5 The superintendent, or his designee, shall notify the local school board of any report made to law enforcement under this section.

5.0 Guidelines for School Reporting

5.1 If a principal or designee has reason to believe that an incident has occurred that satisfies the provisions of these rules and regulations, the incident or threat must be reported to the superintendent and the appropriate local law enforcement agency.

5.2 The report shall be by telephone or in person immediately after the incident or threat and shall be followed by a written report within three (3) business days.

5.3 The principal shall notify any school employee or other person who initially reported the incident that a report has been made to the appropriate law enforcement agency.

5.4 Because a purposeful or knowing mental state is required of the person committing an act of violence, various factors should be considered. These should include but not be limited to:

5.4.1 The age of the person.

5.4.2 Developmental level of the person.

5.4.3 Past disciplinary problems, if any.

5.5 Possible defenses to criminal acts, such as self-defense or justification, may be considered when determining whether or not an offense must be reported.

5.6 In cases involving several persons, where appropriate and possible, assessing differing degrees of involvement is permissible with only the primary participants being reported.

5.7 Upon receipt of the report from the prosecuting attorney, the principal shall notify any school employee or any other person who initially reported the incident that a report has been received from the prosecuting attorney.

6.0 Law Enforcement Responsibility

6.1 Upon receipt, the law enforcement officer shall immediately report the incident to the office of the prosecuting attorney and shall immediately initiate an investigation into the incident.

6.1.1 The investigation shall be conducted with all reasonable haste and, upon completion, shall be referred to the prosecuting attorney.

6.1.2 The prosecuting attorney shall implement the appropriate course of

6.1.2.1 The report shall state whether the investigation into the

6.1.2.2 Whether any charges have been filed, in either circuit or

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6.1.2.3 The disposition of the case

7.0 Failure to Report

The statute carries a Class C misdemeanor penalty for any person who purposefully fails to report, as required by the statute.

7.1 Purposely failing to report a violent act requires proof that:

7.1.1 The person had personal knowledge that an act of violence or any crime involving a deadly weapon has been committed or threatened.

7.1.2 That a reasonable person would have reported the act or threat, and

7.1.3 That the person who failed to report had a conscious object to disregard his obligation to report.

7.2 The maximum penalty for a Class C misdemeanor is thirty (30) days in jail and/or a fine of $100.

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QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT Arkansas Department of Education
BOARD/COMMISSION State Board of Education
BOARD/COMMISSION DIRECTOR
CONTACT PERSON Andres Rhodes
ADDRESS 4 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.arkansas.gov

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.

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1. What is the official title of this rule?
DESE Rule Governing Duty to Report Student Criminal Acts

2. What is the subject of the proposed rule? School safety

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.

This rule is being 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).

Ark. Code Ann. 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).

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

This rule is being repealed. The relevant portions of this rule were added to the DESE Rule Governing School Safety which was effective January 14, 2024. This rule is no longer necessary.

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: May 31, 2024

Time: 1:30 p.m.

Place: ADE Auditorium, 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. June 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 Arkansas 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 Rule Governing Duty to Report Student Criminal Acts

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	**Next Fiscal Year**
General Revenue_____	General Revenue_____
Federal Funds_____	Federal Funds_____
Cash Funds_____	Cash Funds_____
Special Revenue_____	Special Revenue_____
Other (Identify)_____	Other (Identify)_____
Total$0_____	Total$0_____

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

Current Fiscal Year	**Next Fiscal Year**
General Revenue_____	General Revenue_____
Federal Funds_____	Federal Funds_____
Cash Funds_____	Cash Funds_____
Special Revenue_____	Special Revenue_____
Other (Identify)_____	Other (Identify)_____
Total$0_____	Total$0_____

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	**Next Fiscal Year**
$0_____	$0_____

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	**Next Fiscal Year**
$0_____	$0_____

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

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February 2, 2024

Proposed Rule Repeal – Rule Governing Duty to Report Incidents or Threats of Violence

PURPOSE

The Division of Elementary and Secondary Education is seeking the Governor's review of proposed rule repeal regarding the Duty to Report Student Criminal Acts.

BACKGROUND

Pursuant to Act 1520 of 1999, the Division is charged with promulgating rules regarding the Duty to Report Student Criminal Acts, which is codified at Ark. Code Ann. § 6-17-113. The purpose of this rule is to provide guidelines under which schools will report all threats of violence or acts of violence on school property.

KEY POINTS

- Establishes guidelines for schools to report incidents or threats of violence.

DISCUSSION

This rule is being repealed. The relevant portions of this rule were added to the DESE Rule Governing School Safety which was effective January 14, 2014. This rule is no longer necessary.

RECOMMENDATION

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

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.