

**ARKANSAS DEPARTMENT OF EDUCATION EMERGENCY RULES GOVERNING
THE CREATION OF SCHOOL DISTRICTS BY DETACHMENT**
November 13, 2014

1.00 REGULATORY AUTHORITY

- 1.01 These rules shall be known as the Arkansas Department of Education Emergency Rules Governing the Creation of School Districts by Detachment.
- 1.02 The State Board of Education (State Board) enacted these rules pursuant to its authority as set forth in Ark. Code Ann. § 6-13-1501 et seq. and Ark. Code Ann. § 25-15-204.

2.00 GENERAL REQUIREMENTS

- 2.01 No school district shall be created with fewer than four thousand (4,000) students.
- 2.02 A new school district may be created by detaching territory from:
- 2.02.1 An existing school district; or
- 2.02.2 Two (2) or more existing contiguous school districts.
- 2.03 A school district created under Title 6, Chapter 13, Subchapter 15 of the Arkansas Code and these rules shall have all the rights, privileges, and responsibilities of other public school districts.

Source: Ark. Code Ann. § 6-13-1501

3.00 MINIMUM AREA AND ATTENDANCE REQUIREMENTS

- 3.01 A new school district may not be created in an area with fewer than four thousand (4,000) students in average daily membership.
- 3.02 An existing school district shall not be reduced by means of detachment to an area with fewer than four thousand (4,000) students in average daily membership.
- 3.03 A new school district to be created by detachment must only be made up of students from one (1) existing school district.
- 3.04 Title 6, Chapter 13, Subchapter 15 of the Arkansas Code and these rules shall apply only to school districts that:
- 3.04.1 Had an average daily membership of at least fifteen thousand (15,000) students but not more than twenty thousand (20,000) students in the school year immediately preceding the detachment; or

3.04.2 Encompass a total area of seven hundred square miles (700 sq. mi.) or more, now or in the future.

Source: Ark. Code Ann. § 6-13-1502

4.00 INITIATION OF DETACHMENT

Creation of a new school district by detachment shall be initiated by:

4.01 Resolution of the board of directors of each school district from which territory is to be detached; or

4.02 A petition that is presented to the State Board of Education pursuant to the provisions of Title 6, Chapter 13, Subchapter 15 of the Arkansas Code and these rules.

Source: Ark. Code Ann. § 6-13-1503

5.00 PETITION AND ELECTION

5.01 Not later than the thirtieth day after the date the State Board receives a petition or resolution for detachment under Title 6, Chapter 13, Subchapter 15 of the Arkansas Code and these rules, the State Board shall hold a hearing on the validity of the petition or resolution.

5.02 To be valid, a petition or resolution shall:

5.02.1 State the purpose for which the petition or resolution is being submitted;

5.02.2 Contain a plat or map of the proposed new school district;

5.02.3 Contain an independent feasibility study stating:

5.02.3.1 Cost of operation of the new school district and the ability to operate the new school district taking into consideration the tax base, debt service, and division of assets to the new school district;

5.02.3.2 A list of the public school assets to be transferred from the existing school district to the new school district;

5.02.3.3 The size of the new school district; and

5.02.3.4 The effect of detachment on court-ordered desegregation; and

5.02.4 Be signed by at least ten percent (10%) of the number of voters in the area proposed for detachment who voted in the most recent general election.

5.03 If the State Board determines that the petition or resolution is valid and the petition or resolution does not conflict with Ark. Code Ann. § 6-13-1504(b)(2) and Section 5.03 of these rules, the State Board may, after complying with Ark. Code Ann. § 6-13-1504(b)(2) and Section 5.03 of these rules, order an election on the proposition of detachment to be held at the next annual school election or general election.

5.03.1 The State Board shall not order any creation of a new school district by detachment or any other act or combination of any acts that hampers, delays, or in any manner negatively affects desegregation efforts of a school district or districts in this state.

5.03.2 Prior to the entry of any order for election on the question of detachment, the State Board shall seek an advisory opinion from the Attorney General concerning the impact of the proposed detachment and creation of a new school district on the effort of the state to assist the affected school district or districts in the desegregation of the public schools of this state.

5.03.3 The order for election on the proposition of detachment shall:

5.03.3.1 Contain a plat or map of the proposed new school district; and

5.03.3.2 Comply with all requirements and procedures set forth in Ark. Code Ann. § 6-14-101 et seq. that do not conflict with the provisions of Title 6, Chapter 13, Subchapter 15 of the Arkansas Code and these rules.

5.04 The State Board shall certify two (2) copies of the detachment order and convey one (1) copy to the county clerk and one (1) copy to the county election commission at least sixty (60) days prior to the date the commission sets for election on the question of detachment.

5.04.1 No later than forty-five (45) days prior to the election, the county clerk of each county affected shall identify all persons who reside within the area proposed to be detached, and the county clerk shall determine the names and addresses of all qualified electors residing within that area. The failure to identify all persons residing within the area proposed to be detached or the failure to determine the names and addresses of all qualified electors residing within that area shall not invalidate or otherwise affect the results of the election.

5.04.1.1 All of the qualified electors residing within the territory to be detached shall be entitled to vote in the election.

5.04.1.2 The petitioners shall give notice of the election by publication of at least one (1) insertion in a newspaper having general circulation in each school district from which territory is being detached.

5.04.2 The county clerk shall prepare a list by precinct of all those qualified electors residing within the area to be detached who are qualified to vote in that precinct and furnish that list to the election officials at the time the ballot boxes and voting machines are delivered.

5.04.2.1 If the county clerk or the county election commission shall fail to perform any duties required, then any interested party may apply for a writ of mandamus to require the performance of the duties.

5.04.2.2 The failure of the county clerk or the county election commission to perform the duties shall not void the detachment election unless a court finds that the failure to perform the duties substantially prejudiced an interested party.

5.05 The ballot shall be printed to permit voting for or against the proposition in a manner similar to the following: "Creation of a new school district by detachment of property and territory that includes the following property and territory from the _____ School District: _____." The ballot description of the property and territory to be detached shall be sufficient to give general notice of the territory affected.

Source: Ark. Code Ann. § 6-13-1504

6.00 CREATION OF A SCHOOL DISTRICT

6.01 If all the requirements of Title 6, Chapter 13, Subchapter 15 and these rules are met and a majority of the votes are cast for the proposition, the State Board shall order the creation of the new school district.

6.02 At the time the order creating the district is made, the State Board shall appoint a board of directors of seven (7) members for the new school district to serve until the next regular election of members, when a board of directors shall be elected in compliance with Arkansas law.

6.02.1 Following the entry of the order creating the new school district and the appointment of a board of directors for the new school district but prior to

the transfer of any assets, territory, property, liabilities, duties, or responsibilities, any new school district created by detachment from an existing school district that is a party to any court-ordered desegregation plan shall petition the court having jurisdiction in the desegregation matter and obtain any and all court orders or other relief necessary to ensure that the detachment will not cause the state or any affected school district to be in violation of any orders of the court or any consent orders or decrees entered into by the parties with regard to the desegregation plan.

- 6.03 Any new school district created under Title 6, Chapter 13, Subchapter 15 of the Arkansas Code and these rules shall take the property of the school district from which the territory was taken, as the State Board shall deem proper, and shall be liable for that part of all indebtedness of the school district from which the territory was taken as shall be assigned to the new school district by the State Board.
- 6.04 The millage rate of the electors (or property) of the detached territory shall remain the same until an election may be held to change the rate of taxation for the detached area.
- 6.05 The State Board shall have the following duties regarding creation of a school district by detachment:
- 6.05.1 To form local school districts, change boundary lines of school districts, create new school districts, and perform all other functions regarding changes in school districts in accordance with the law;
- 6.05.2 To transfer funds and attach territory that is in one (1) school district to other school districts as may seem best for the educational welfare of the children; and
- 6.05.3 To enact rules and regulations regarding the creation of school districts by detachment under Title 6, Chapter 13, Subchapter 15 of the Arkansas Code.
- 6.06 In its order creating the new school district under this section, the State Board may allow a transition period of up to two (2) consecutive years to allow the new school district to become fully operational.

Source: Ark. Code Ann. § 6-13-1505

7.00 TRANSITION PERIOD

- 7.01 If the new school district created by detachment was formed from an existing school district that is a party to any court-ordered desegregation plan, the State Board shall, prior to the transfer of any assets, territory, property, liabilities,

duties, or responsibilities, to the new school district, allow for a time period sufficient to permit the parties to petition the court having jurisdiction in the desegregation matter to obtain any and all court orders or other relief necessary to ensure that the detachment will not cause the state or any affected school district to be in violation of any orders of the court or any consent orders or decrees entered into by the parties with regard to the desegregation plan.

- 7.02 If the State Board allows for a transition period as set forth in Ark. Code Ann. § 6-13-1505 and Section 6.06 of these rules, the State Board may allow a reasonable time period, not to exceed 120 days from the date the State Board issues the order creating the new school district, to allow the existing school district and the new school district created by detachment to develop and present to the State Board a written agreement concerning the following matters, without limitation:
- 7.02.1 A plan for the selection and employment of a superintendent or administrator for the new school district created by detachment;
- 7.02.2 A plan for the zoning and election of school board members in accordance with Arkansas and federal law;
- 7.02.3 A determination of the millage necessary to operate the new school district created by detachment;
- 7.02.4 A plan that specifically addresses the distribution of real and personal property, assets, liabilities (including debt), duties and responsibilities for the existing school district and the new school district created by detachment; and
- 7.02.5 A plan that specifically addresses the procedure by which the new school district will employ licensed and nonlicensed staff.
- 7.03 If the State Board allows for a transition period as set forth in Ark. Code Ann. § 6-13-1505 and Section 6.06 of these rules, and if the new school district created by detachment was formed from an existing school district that is a party to any court-ordered desegregation plan, the State Board may allow a reasonable time period, not to exceed 120 days from the date the presiding court issues all court orders or other relief necessary as set forth in Section 7.01 of these rules, to allow the existing school district and the new school district created by detachment to develop and present to the State Board a written agreement concerning matters set forth in Section 7.02 of these rules.
- 7.04 In the event that the existing school district and the new school district created by detachment are unable to agree upon any issue regarding the formation of a written agreement concerning detachment or upon the implementation of the final

determination of the State Board concerning detachment, the school districts shall:

7.04.1 Jointly petition the Commissioner of Education or his or her designee to resolve the matter subject to final determination by the State Board as set forth in Section 7.05 of these rules;

7.04.2 Jointly select a mediator to mediate the matter subject to final determination by the State Board as set forth in Section 7.05 of these rules;
or

7.04.3 Jointly petition the State Board to resolve the matter in accordance with Section 7.05 of these rules.

7.04.4 In the absence of an agreement regarding any of the options listed in Sections 7.04.1 through 7.04.3 of these rules, the matter will proceed directly to the State Board for resolution in accordance with Section 7.05 of these rules.

7.05 The State Board shall make the final determination concerning the distribution of real and personal property, assets, liabilities (including debt), duties and responsibilities for the existing school district and the new school district created by detachment.

8.00 EMERGENCY CLAUSE

WHEREAS, Ark. Code Ann. § 6-13-1505 requires the State Board of Education to enact rules and regulations regarding the creation of school districts by detachment; and

WHEREAS, on September 16, 2014, an election on the question of detachment was held pursuant to Ark. Code Ann. § 6-13-1501 et seq. wherein the majority of the votes were cast in favor of detachment; and

WHEREAS, the State Board of Education must have rules in place to facilitate the detachment as is best for the educational welfare of the children involved;

THEREFORE, the State Board of Education hereby determines pursuant to Ark. Code Ann. § 25-15-2014 that imminent peril to the welfare of Arkansas public school districts, public schools, and public school students will result without the immediate promulgation of these rules.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Education
DIVISION Legal Services
PERSON COMPLETING THIS STATEMENT Jeremy Lasiter
TELEPHONE NO. 501-682-4227 **FAX NO.** 501-682-4249 **EMAIL:** jeremy.lasiter@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Rules Governing the Creation of School Districts by Detachment

- 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?

<u>Current Fiscal Year</u>	<u>Next Fiscal Year</u>
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, 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

\$ 0

Next Fiscal Year

\$ 0

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

\$ 0

Next Fiscal Year

\$ 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.