

ARKANSAS DEPARTMENT OF EDUCATION
RULES IDENTIFYING AND GOVERNING
THE ARKANSAS FISCAL ASSESSMENT AND ACCOUNTABILITY PROGRAM
August 2003

1.00 AUTHORITY

- 1.01 The Arkansas State Board of Education’s authority for promulgating these rules is pursuant to Ark. Code Ann. § 6-11-105, Ark. Code Ann. § 25-15-201 et seq. and Act 1467 of 2003.
- 1.02 These rules shall be known as the Arkansas Department of Education Rules Governing the Arkansas Fiscal Assessment and Accountability Program.
- 1.03 These rules will replace any former Arkansas Department of Education Rules Identifying and Governing School Districts in Fiscal Distress previously adopted.

2.00 PURPOSE

- 2.01 The purpose of these rules is to establish how the Department and State Board will evaluate, assess, identify, classify and address those school districts in fiscal distress.

3.00 DEFINITIONS – For purposes of these rules, the following terms mean:

- 3.01 “Annexation”– the joining of an affected school district or districts or parts thereof with a receiving district pursuant to § 6-13-1401.
- 3.02 “Consolidation” - the joining of two (2) or more school districts or parts thereof create a new resulting school district pursuant to § 6-13-1401.
- 3.03 “Current Year Expenditures” - the total expenditures accruing to the combined teacher salary, operating, and debt service funds.
- 3.04 “Current Year Revenues” - the total revenues accruing to the combined teacher salary, operating, and debt service funds.
- 3.05 “Day” – a calendar day, regardless of whether it is a day the Department is conducting official governmental business.
- 3.06 “Debt” – a legal liability, encumbrance or contract, to be paid out of future revenues or current reserves of the district.

- 3.07 “Declining Balance” - the current year expenditures exceeding current year revenues for the combined teacher salary, operating, and debt service funds with balances in the combined funds projected to be no greater than zero in no more than three years. The projected balance will be calculated by an analysis of balances for the previous three years.
- 3.08 “Department” - the Arkansas Department of Education.
- 3.09 “The Fiscal Distress Financial Improvement Plan (Plan)” - the written plan submitted by a district classified in fiscal distress and approved by the Department to be implemented by the district addressing each indicator of fiscal distress identified by the Department and the State Board with a specific corrective action plan and timeline.
- 3.10 “Fiscal Distress Status” - to be identified by the Department and classified by the State Board as being in fiscal distress.
- 3.11 “Fiscal Integrity” - to comply with financial management, accounting, auditing, and reporting procedures and facilities management procedures as required by state or federal laws and regulations in a forthright and timely manner.
- 3.12 “Jeopardize” - to expose to loss or injury or peril.
- 3.13 “Material Failure, Violation, Default, or Discrepancies” – an act, omission, event, circumstances or combination thereof that directly jeopardizes the fiscal integrity of a school district. In other words, but for the material failure, violation, default, or discrepancy, the district’s fiscal integrity would not be jeopardized.
- 3.14 “Public School or School District” - a public school or school district created or established pursuant to Title 6 of the Arkansas Code and subject to the Arkansas Comprehensive Testing Assessment and Accountability Program except specifically excluding those schools or educational programs created by or receiving authority to exist pursuant to A.C.A. §6-15-501; A.C.A. §9-28-205 and A.C.A. §12-29-301-310, or other provisions of Arkansas law.
- 3.15 “School Year” - a school year beginning July 1 of one calendar year and ending June 30 of the following calendar year.
- 3.16 “State Board” - the Arkansas State Board of Education.
- 3.17 “Reconstitution” - the reorganization of the administrative unit or the governing school board 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 or both.

4.00 SCHOOL DISTRICT INDICATORS OF FISCAL DISTRESS PURSUANT TO FISCAL ASSESSMENT AND ACCOUNTABILITY PROGRAM

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

4.01.1 A declining balance determined to jeopardize the fiscal integrity of a school district; or

4.01.2 Any act or violation determined to jeopardize the fiscal integrity of a school district, including, but not limited to; or

- a. Material failure to properly maintain school facilities;
- b. Material violation of local, state, or federal fire, health, or safety code provisions or law;
- c. Material violation of local, state, or federal construction code provisions or law;
- d. Material state or federal audit exceptions or violations;
- e. Material failure to provide timely and accurate legally-required financial reports to the Department, the Division of Legislative Audit, the General Assembly, or the Internal Revenue Service;
- f. Insufficient funds to cover payroll, salary, employment benefits, or legal tax obligations;
- g. Material failure to meet legally binding minimum teacher salary schedule obligations;
- h. Material failure to comply with state law governing purchasing or bid requirements;
- i. Material default on any school district debt obligation;
- j. Material discrepancies between budgeted and actual school district expenditures;
- k. Material failure to comply with audit requirements of § 6-20-301; or
- l. Material failure to comply with any provision of the Arkansas Code that specifically places a school district in fiscal distress based on noncompliance;

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.

5.00 PROCESS AND PROCEDURE FOR CLASSIFICATION OF FISCAL DISTRESS STATUS

- 5.01 A school district identified by the Department as being in fiscal distress shall be classified as a school district in fiscal distress upon final classification by the State Board.
- 5.02 A 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 calendar days of the final classification by the State Board.
 - 5.02.2 The newspaper of general circulation may be either a daily or weekly newspaper.
- 5.03 The provisions of subdivisions 5.01 and 5.02 of this section are effective after the school district's appeal rights have been exhausted.
- 5.04 The decision of the State Board shall be a final order and there is no further right of appeal except the school district may appeal to circuit court in Pulaski County pursuant to the Arkansas Administrative Procedures Act, A.C.A. § 25-15-201, et seq.

6.00 PROCESS AND PROCEDURE FOR NOTIFICATION OF FISCAL DISTRESS STATUS AND APPEAL

- 6.01 The Department shall provide written notice, via certified mail return receipt requested, to the president of the school board and the superintendent of each school district identified as being in fiscal distress.
- 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 Director of the Department, by certified mail return receipt requested, within thirty (30) calendar days of receipt of notice of being identified in fiscal distress status from the Department.
- 6.03 The State Board shall hear the appeal within sixty (60) calendar 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 district should not be classified as in fiscal distress.

6.05 Notwithstanding any appeal rights in this subchapter, no appeal shall stay the Department's authority to take action to protect the fiscal integrity of any school district identified as in fiscal distress.

7.00 SCHOOL DISTRICT'S FISCAL DISTRESS IMPROVEMENT PLAN
PURSUANT TO FISCAL ASSESSMENT AND ACCOUNTABILITY
PROGRAM

7.01 Those school districts classified by the State Board as being in fiscal distress shall file, with the Department within ten (10) calendar days after the final classification, a written fiscal distress financial improvement plan to address any area in which the school district is experiencing fiscal distress as identified by the Department.

7.01.1 The plan shall contain, at a minimum, the following elements:

- a. Identification of each indicator
- b. Specific corrective action steps for each indicator
- c. Timeline for each corrective action step
- d. Additional action steps the district proposes to take
- e. Timeline for each additional action step the district proposed

7.01.2 The Department is authorized to review and amend the plan submitted by the school district.

7.01.3 The Department may edit, amend, update, or replace the plan at any time deemed appropriate.

7.01.4 The districts 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 Director's Office within ten (10) calendar days of receipt of the notice required in 7.01.4. The appeal shall be heard at the next State Board meeting, and the State Board's decision shall be final.

7.02 Each school district shall first seek and obtain approval of its plan from the Department and shall describe how the school district will remedy those areas in which the school district is experiencing fiscal distress and shall establish the time period by which the school district will remedy all criteria which placed the school district in fiscal distress status.

- 7.03 A school district in fiscal distress may only petition the State Board for removal from fiscal distress status after the Department has certified in writing that the school district has corrected all criteria for being classified as in fiscal distress and has complied with all Department recommendations and requirements for removal from fiscal distress.
- 7.04 No school district shall be allowed to remain in fiscal distress status for more than two (2) consecutive school years beginning with the July 1 subsequent to the date the school district was identified as being in fiscal distress status.
- 7.05 Any school district classified as being in fiscal distress status shall be required to receive on-site technical evaluation and assistance from the Department.
- 7.06 The Department shall evaluate and make recommendations to the district superintendent regarding staffing of the district and fiscal practices of the district.
- 7.07 The recommendations of the Department shall be binding on the district, the superintendent, and the school board.
- 7.08 Every six (6) months, the Department shall submit a written evaluation on the status of each school district in fiscal distress to the State Board.
- 8.00 PRIOR APPROVAL OF DEBT
 - 8.01 No school district classified in fiscal distress may incur any debt without the prior written approval of the Department.
- 9.00 DEPARTMENT ASSISTANCE AND INTERVENTION IN FISCAL DISTRESS:
 - 9.01 In addressing school districts in fiscal distress, the Department may take any number of the following actions:
 - 9.01.1 Require the superintendent to relinquish all administrative authority with respect to the school district;
 - 9.01.2 Appoint an individual in place of the superintendent to administratively operate the school district under the supervision and approval of the Director of the Department, and to compensate non-department agents operating the school district from school district funding;

- 9.01.3 Call for the temporary suspension of the local school board;
 - 9.01.4 Require the school district to operate without a local school board under the supervision of the local superintendent or an individual or panel appointed by the Director of the Department;
 - 9.01.5 Place the administration of the school district over to the former board or to a newly elected school board; or
 - 9.01.6 Take any other action allowed by law that is deemed necessary to assist a district in removing criteria of fiscal distress.
- 9.02 The Department may impose various reporting requirements on the school district. The Department may review any and all school district records and documents.
 - 9.03 The Department shall monitor the fiscal operations and accounts of the school district.
 - 9.04 The Department shall require school district board members and employees to obtain fiscal instruction or training in areas of fiscal concern for the school district at the school district's expense.

10.00 STATE BOARD AUTHORITY:

- 10.01 After providing thirty (30) calendar days written notice, via certified mail return receipt requested, to a school district, the Department may petition the State Board or the State Board may on its own motion, at any time, take action for the consolidation, annexation, or reconstitution of a school district in fiscal distress or take other appropriate action as allowed by Act 1467 of 2003 in order to secure and protect the best interest of the educational resources of the state or provide for the best interests of students in the school district. The school district shall have a right of appeal to a public hearing before the State Board as provided herein.
- 10.02 The State Board may approve the petition or take other appropriate action as allowed by this subchapter.
- 10.03 The State Board shall consolidate, annex, or reconstitute any school district that fails to remove itself from the classification of a school district in fiscal distress within two (2) consecutive school years of receipt of notice of identification unless the State Board, at its discretion, issues a written finding supported by a majority of the 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.

10.03.1 The two (2) consecutive school years shall commence the July 1 subsequent to classification by the State Board.

10.04 After a public hearing, the State Board shall consolidate, annex, or reconstitute the school district in fiscal distress to another school district or school districts upon a majority vote of a quorum of the members of the State Board, as permitted or required by this subchapter.

10.05 The State Board has exclusive jurisdiction to determine the boundary lines of the receiving or resulting school district and to allocate assets and liabilities of the district.

10.06 The decision of the State Board shall be final with no further right of appeal, except a school district may appeal to circuit court in Pulaski County pursuant to the Arkansas Administrative Procedures Act, § 25-15-201, et seq.

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH
THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY Education
DIVISION Public School Finance & Administrative Support
DIVISION DIRECTOR Patricia Martin
CONTACT PERSON Patricia Martin
ADDRESS #4 Capitol Mall, Little Rock, AR 72201
PHONE NO. 501-682-5124 FAX NO. 501-682-9035 E-MAIL _____

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire & financial impact statement attached to the front of two (2) copies of your proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Subcommittee on Administrative Rules and Regulations
Arkansas Legislative Council
Bureau of Legislative Research
Room 315, State Capitol
Little Rock, AR 72201

- 1. What is the short title of this rule? ***Rules and Regulations Identifying and Governing the Arkansas Fiscal Assessment and Accountability Program***
- 2. What is the subject of the proposed rule? ***To establish how the Department and the State Board will evaluate, assess, identify, classify and address school districts in fiscal distress.***
- 3. Is this rule required to comply with federal statute or regulations? Yes _____ No **XX** _____
If yes, please provide the federal regulation and/or statute citation.
- 4. Was this rule filed under the emergency provisions of the Administrative Procedures Act?
Yes _____ No **XX** _____
If yes, what is the effective date of the emergency rule?

When does the emergency rule expire?

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes _____ No _____

5. Is this a new rule? Yes _____ No **XX** ____ If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule? Yes **XX** _____ No _____ If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. ***This rule provides for the implementation of certain portions of Act 1467 of 2003. Specifically, it administers the Arkansas Public School District Fiscal Distress Program.***

Is this an amendment to an existing rule? Yes _____ No **XX** ____ If yes, please attach a markup showing the changes in the existing rule and a summary of the substantive changes. **NOTE: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law grants the authority for this proposed rule. If codified, please give Arkansas Code citation. ***A.C.A. §§ 6-11-105, 25-15-201 et seq. & Act 1467 of 2003***

7. What is the purpose of this proposed rule? Why is it necessary? ***To establish how the Department and the State Board will evaluate, assess, identify, classify and address those school districts in fiscal distress.***

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

Date: ***July 10, 2003***
Time: ***10:00 am - 12:00 pm***
Place: ***ADE Auditorium, #4 Capitol Mall, Little Rock, AR 72201; Ft. Smith Public Schools Service Center, 3205 Jenny Lind, Ft Smith, AR 72902.***

Date: ***July 11, 2003***
Time: ***10:00 am - 12:00 pm***
Place: ***Southeast AR Coop, 1022 Scogin Drive, Monticello, AR 71655; Northeast AR Coop, 211 West Hickory, Walnut Ridge, AR 72476; and Southwest AR Coop, 500 South Spruce, Hope, AR 71801.***

June 26, 2003, 10:00 am to 12:00 pm, ADE Auditorium, meeting via video-conference to 23 sites across the state.

9. When does the public comment period expire for permanent promulgation? (Must provide a date.) ***July 21, 2003***

10. What is the proposed effective date of this proposed rule? (Must provide a date.)
September 2003

11. Do you expect this rule to be controversial? Yes _____ No **XX** _____
If yes, please explain.

12. Please give the names of persons, groups, or organizations that you expect to comment on these rules. Please provide their position (for or against) if known.

School district personnel, education groups, some local patrons

Summary of Changes Resulting from Public Comment Arkansas Fiscal Assessment & Accountability Program

These rules establish how the Department and State Board will evaluate, assess, identify, classify, and address school districts in fiscal distress.

The following is a comparison of the old and new fiscal distress rules and regulations:

- The new rule repeals the old rule that governed both fiscal and academic distress.
- The new rule implements Act 1467 of 2003.
- The old rule contained three phases of fiscal distress, and therefore, encouraged a long time on fiscal distress.
- Act 1467 does not include any phases.
- Act 1467 mandates a two-year maximum on fiscal distress.
- After two years, either the district is removed from distress or the State Board is directed to take action. These actions are ~~are~~ could be replacement of the superintendent or the school board, consolidation, annexation, or reconstitution.
- A district placed on fiscal distress is now required to place an advertisement in a local newspaper announcing the district has been placed in fiscal distress and the reasons for this action.
- The reasons for a district to be placed in fiscal distress has been expanded to include 12 new indicators, including: facilities maintenance, health and safety code violations, construction code violations, insufficient funds to cover operating expenses, and material audit exceptions.

The Department is authorized to approve the district's fiscal distress plan. Under the current rule, the Department cannot do this until Phase II.

FINANCIAL IMPACT STATEMENT

DEPARTMENT Education
DIVISION Public School Finance & Administrative Support
PERSON COMPLETING THIS STATEMENT Scott Smith/Patricia Martin
TELEPHONE NO. 501-682-4227 FAX NO. 501-682-4249 EMAIL dssmith@arkedu.k12.ar.us

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE ***Rules and Regulations Identifying and Governing the Arkansas Fiscal Assessment and Accountability Program***

1. Does this proposed, amended, or repealed rule or regulation have a financial impact? Yes _____ No **XX** _____
2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.
3. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation. Please indicate if the cost provided is the cost of the program.

Current Fiscal Year

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total **0** _____

Total **0** _____

4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation? Identify the party subject to the proposed regulation and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

5. What is the total estimated cost by fiscal year to the agency to implement this regulation?

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

DEPARTMENT OF EDUCATION
FISCAL IMPACT STATEMENT OF PROPOSED REGULATION
(In compliance with Acts 884 and 1253 of 1995)

Regulation Title: ***Rules and Regulations Identifying and Governing the Arkansas Fiscal Assessment and Accountability Program***

Summary Description of Regulatory Proposal: ***To establish how the Department and the State Board will evaluate, assess, identify, classify and address those school districts in fiscal distress.***

Cite Statutory Authority for this Regulatory Proposal: ***A.C.A. §§ 6-11-105, 25-15-201 et seq. & Act 1467 of 2003***

- I. Fiscal Impact on the Department: (include whether impacts are non-recurring or recurring)
 - A. Resources Required - Personnel, equipment, office space.
 - B. Time Required for Implementation.
 - C. Procedural Changes.
 - D. Other.

- II. Fiscal Impact on Local School District or Others? (Include whether impacts are non-recurring or recurring)
 - A. Resources Required - Personnel, equipment, office space.
 - B. Time Required for Implementation.
 - C. Procedural Changes.
 - D. Other.

- III. Additional Comments.

Prepared by: (Name) ***Scott Smith***
 (Title) ***Attorney***
 (Date) ***June 11, 2003***