

A.C.A. § 6-17-428

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Title 6 Education
Subtitle 2. Elementary And Secondary Education Generally
Chapter 17 Personnel
Subchapter 4 -- Licensure Generally

A.C.A. § 6-17-428 (2016)

6-17-428. Ethical violations.

(a) As used in this section:

(1) "Code of ethics" means the code of ethics for educators established by the Professional Licensure Standards Board under § 6-17-422;

(2) "Educator" means:

(A) A person holding a valid Arkansas standard teaching license, ancillary license, provisional license, technical permit, or administrator's license issued by the State Board of Education; or

(B) A preservice teacher;

(3) (A) "Ethical violation" means an act or omission on the part of an educator when the educator knew or reasonably should have known that the act or omission was in violation of the code of ethics.

(B) "Ethical violation" does not include:

(i) A reasonable mistake made in good faith;

(ii) An act or omission undertaken in accordance with the reasonable instructions of a supervisor; or

(iii) An act or omission under circumstances in which the educator had a reasonable belief that failure to follow the instructions of a supervisor would result in an adverse job action against the educator;

(4) "Ethics complaint" means a document that:

(A) States facts constituting an alleged ethical violation of the code of ethics; and

(B) Is signed under penalty of perjury by the person filing the ethics complaint; and

(5) "Preservice teacher" means an unlicensed person who is enrolled as a student in an educator preparation program.

(b) (1) The Professional Licensure Standards Board shall:

(A) Establish procedures for:

- (i)** Receiving and investigating an ethics complaint;
- (ii)** Enforcing the code of ethics; and
- (iii)** Granting and conducting hearings under this section;

(B) Make recommendations for enforcement of the code of ethics; and

(C) Establish an ethics subcommittee of the Professional Licensure Standards Board with equal representation of public school teachers and administrators as well as one (1) member from any other category of representation on the Professional Licensure Standards Board.

(2) All rules, procedures, hearings, and appeals relating to the code of ethics complaints under this section shall be promulgated and implemented under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(c) (1) The ethics subcommittee of the Professional Licensure Standards Board shall:

(A) (i) Receive and investigate ethics complaints.

(ii) The ethics subcommittee shall not accept a facsimile or electronic signature on a complaint form but shall require that a complaint form bear the original signature of the complainant;

(B) Enforce the code of ethics by:

(i) Making a recommendation to the State Board of Education for:

(a) A written warning, a written reprimand, or the written placement of conditions or restrictions on the activities of the educator; or

(b) The revocation, suspension, probation, nonrenewal, or denial of a license issued by the State Board of Education; or

(ii) Issuing a private letter of caution; and

(C) Dismiss an ethics complaint if it finds there is no ethics violation.

(2) For a preservice teacher assigned to a public school as a student intern in a supervised field experience or supervised clinical experience, a sanction adopted by the State Board of Education may be imposed on a license when it is issued to a preservice teacher.

(3) The ethics subcommittee may appoint or contract for one (1) or more persons to conduct evidentiary hearings.

(4) The State Board of Education may make an informal disposition of the ethical violation by stipulation, settlement, consent order, or default.

(d) An ethics complaint may be filed with the Professional Licensure Standards Board by any person through:

(1) The Department of Education;

(2) A public school district; or

(3) A public school superintendent.

(e) (1) The ethics subcommittee shall investigate an ethics complaint that it determines is credible.

(2) Following an interview conducted as part of an investigation of an ethics complaint, the investigator shall place in the investigation file a written report of the interview.

(f) (1) Within ten (10) business days of authorizing an ethics complaint investigation, the ethics subcommittee shall provide to the educator under investigation:

(A) Written notice of the investigation and the nature of the alleged ethical violation; and

(B) A copy of:

(i) The documents and evidence provided by the complainant concerning the facts alleged in the ethics complaint;

(ii) Provisions of this section or other state statutory law applicable to an ethical violation under this section; and

(iii) The applicable rules in effect at the time the ethics complaint is filed.

(2) Upon the completion of the investigation and before an initial consideration of the investigation, the ethics subcommittee shall provide to the educator:

(A) A copy of the documents and evidence concerning the investigation of the ethics complaint; and

(B) Written notice that the ethics subcommittee will consider taking an action against the educator.

(g) (1) Within thirty (30) calendar days after an educator receives the notice, documentation, and evidence from the ethics subcommittee under subsection (f) of this section, the educator may respond to the ethics complaint in writing.

(2) The ethics subcommittee may permit additional time for a response.

(h) (1) Upon receipt of the results of the investigation and any written response from the educator who is the subject of the ethics complaint, the ethics subcommittee shall issue an initial decision and provide notice of the initial decision to the educator.

(2) Within thirty (30) days of receiving notice of the initial decision, if the educator disagrees with the initial decision, the educator may request an evidentiary hearing in the manner specified in the rules of the Professional Licensure Standards Board.

(i) (1) Upon receipt of a request for a hearing, the ethics subcommittee shall grant and conduct a hearing in accordance with its rules.

(2) The educator and the Professional Licensure Standards Board may be represented by representatives of their choosing.

(j) Within ten (10) business days of the ethics subcommittee's taking action following a hearing, the ethics subcommittee shall provide to the educator under investigation a written notice of the action.

(k) The ethics subcommittee shall complete its investigation of an ethics complaint and take action:

(1) Within one hundred fifty (150) days of authorizing the investigation of the ethics complaint; or

(2) If a hearing is conducted, within one hundred eighty (180) days of authorizing the investigation of the ethics complaint.

(l) The time limitations imposed under this section may be waived when reasonable under certain circumstances, including without limitation inclement weather, state or national emergencies, or other unforeseeable events by the:

(1) Educator if the time limitation is imposed upon the ethics subcommittee; or

(2) Ethics subcommittee if the time limitation is imposed upon the educator.

(m) Except as provided in subsection (o) of this section, all records and all hearings, meetings, and deliberations of the Professional Licensure Standards Board and the ethics subcommittee relating to an ethics complaint are confidential and exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq.

(n) All records pertaining to an ethics complaint shall be open for inspection and copying by the educator against whom the ethics complaint is lodged, unless otherwise prohibited by state or federal law.

(o) (1) A hearing under this section before the State Board of Education on a recommendation of the ethics subcommittee for enforcement of the code of ethics is a public hearing.

(2) All records upon which the State Board of Education relies at a hearing under this subsection to make its decision are subject to public disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(p) (1) As used in this subsection:

(A) "Acted upon" means that the State Board of Education has taken an action to address an ethics complaint by revoking, suspending, or imposing another sanction upon an educator's license;

(B) "School hiring officer" means the person designated by a school who is responsible for hiring or making final recommendations for the hiring of an educator who holds an Arkansas teaching or administrator's license;

(C) "Sexual abuse" has the same meaning as given to the term in § 12-18-103(20)(D) as it applies to a caretaker but shall include a victim who is eighteen (18) years of age or older and is still a student; and

(D) "Student" means a person who is enrolled in a public or private school in any level from prekindergarten through grade twelve (preK-12).

(2) The code of ethics shall include without limitation the following provisions:

(A) A standard that an educator maintains a professional relationship with each student, both in and outside the classroom;

(B) An educator in a supervisory role in an Arkansas school shall file an ethics complaint if he or she observes or has reasonable cause to suspect that an educator has violated the standard in subdivision (p)(2)(A) of this section involving the sexual abuse of a student; and

(C) The failure to submit an ethics complaint under subdivision (p)(2)(B) of this section is a violation of the code of ethics.

(3) (A) (i) By March 1, 2014, the department shall establish and maintain a website providing a school hiring officer with the ability to determine if the State Board of Education has acted upon an ethics complaint concerning a violation of the standard in subdivision (p)(2)(A) of this section involving the sexual abuse of a student by an applicant for employment who holds an Arkansas teaching or administrator's license.

(ii) The website shall identify the action taken on the ethics complaint.

(B) Beginning March 1, 2014, before an educator who holds an Arkansas teaching license or administrator's license may be hired for employment at an Arkansas school, the school hiring officer shall check the website maintained by the department under subdivision (p)(3)(A) of this section to determine whether the State Board of Education has acted upon a violation of the standard in subdivision (p)(2)(A) of this section involving the sexual abuse of a student by the applicant.

(q) Subject to the disclosure limitations of subsections (m) and (o) of this section, the department may include on the department's public website for licensure the following information on each violation of the code of ethics by an educator upon whom the State Board of Education has suspended, revoked, denied, or not renewed a license based on the recommendations of the ethics subcommittee:

(1) The code of ethics standard that was violated;

(2) The sanction approved by the State Board of Education; and

(3) A copy of the final order of the State Board of Education.

HISTORY: Acts 2011, No. 1045, § 2; 2013, No. 454, § 4; 2013, No. 1323, § 1; 2015, No. 1090, §§ 10-14.