

**ARKANSAS DEPARTMENT OF EDUCATION
RULES IDENTIFYING AND GOVERNING
THE ARKANSAS FISCAL ASSESSMENT AND ACCOUNTABILITY PROGRAM
August 2014**

1.00 AUTHORITY

- 1.01 The Arkansas State Board of Education enacted these rules 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 600 of 2013.
- 1.02 These rules shall be known as the Arkansas Department of Education Rules Governing the Arkansas Fiscal Assessment and Accountability Program.

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 school districts in fiscal distress.

3.00 DEFINITIONS

- 3.01 “Annexation”– the joining of an affected school district or part of an affected school district with a receiving district pursuant to Ark. Code Ann. § 6-13-1401 et seq.
- 3.02 “Capital Outlay Expenditures” – 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” - 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. § 6-13-1401 et seq.
- 3.04 “Current Year Expenditures” - the total expenditures accruing to the combined teacher salary, operating, and debt service funds, excluding restricted funds.
- 3.05 “Current Year Revenues” - the total revenues accruing to the combined teacher salary, operating, and debt service funds, excluding restricted funds.

- 3.06 “Day” – unless otherwise set forth in these rules, a calendar day, regardless of whether it is a day the Department conducts official governmental business.
- 3.07 “Debt” – 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” – balance resulting when current year expenditures exceed current year revenues.
- 3.09 “Department” - the Arkansas Department of Education.
- 3.10 “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.
- 3.11 “Fiscal Distress Status” – the status of a public school district determined (identified) by the Arkansas Department of Education and classified by the State Board as being placed in fiscal distress status pursuant to Ark. Code Ann. § 6-20-1901 et seq. and these rules.
- 3.12 “Fiscal Integrity” - 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.
- 3.13 “Jeopardize” - to expose to loss or injury or peril.
- 3.14 “Material Failure, Violation, Default, or Discrepancies” – 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” – 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 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 Ark. Code Ann. § 6-15-501; Ark. Code Ann. § 9-28-205 and Ark. Code Ann. § 12-29-301 et seq., or other provisions of Arkansas law.

- 3.17 “Reconstitution” – 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;
- 3.18 “Restricted Funds” – 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 NSLA, ALE, ELL, Professional Development).
- 3.19 “School Year” - a school year beginning July 1 of one calendar year and ending June 30 of the following calendar year.
- 3.20 “State Board” - 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 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. 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 Department, the Division of 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;
 - 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
- 4.01.3 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 CLASSIFICATION OF FISCAL DISTRESS STATUS

- 5.01 Those school districts identified by the Department as being in fiscal distress shall be classified as school districts in fiscal distress upon final determination (classification) by the State Board.
- 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.
 - 5.02.2 The newspaper of general circulation may be either a daily or weekly newspaper.
- 5.03 The provisions of subsections 5.01 and 5.02 of these rules are effective after the school district's appeal rights in Ark. Code Ann. § 6-20-1905 and section 6.00 of these rules have been exhausted.

6.00 NOTIFICATION AND APPEAL

- 6.01 The Department 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 Department shall provide the notice on or before March 30 of each year.
- 6.01.2 At any time after March 30, the Department may identify a school district as being in fiscal distress if the Department 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 Department 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 Education, by certified mail return receipt requested, within thirty (30) 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) 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. § 6-20-1901 et seq. and these rules, 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.
- 6.06 The following procedures shall apply to State Board hearings involving school districts that appeal a fiscal distress identification by the Department:
- 6.06.1 All persons wishing to testify before the State Board shall first be placed under oath by the Chairperson of the State Board.
- 6.06.2 The Department shall have up to thirty (30) minutes to present its case to the 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 Chairperson 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 as to why the school district should not be classified as a school district in fiscal distress. The Chairperson of the State Board may allow additional time if necessary.

- 6.06.4 The State Board may pose questions to any party at any time during the hearing.
- 6.06.5 The 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 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 shall issue a written order concerning the matter.
- 6.07 The decision of the 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. § 25-15-201 et seq.

7.00 FISCAL DISTRESS IMPROVEMENT PLAN

- 7.01 Those school districts classified by the State Board as being in fiscal distress shall file, with the Department 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 Department.
 - 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.
 - 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 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 Education's Office within ten (10) days of receipt of the notice required in subsection 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 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 Except as set forth in Ark. Code Ann. § 6-20-1910(d) 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 Department.
- 7.06 The Department 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 Department shall be binding on the school district, the superintendent and the school district board of directors.
- 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.
- 7.09 The Department may petition the 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. § 6-20-1901 et seq. and these rules 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 may approve the petition or take other appropriate action as allowed by Ark. Code Ann. § 6-20-1901 et seq. and these rules.

- 7.10 Except as set forth in Ark. Code Ann. § 6-20-1910(d) and Section 10.05 of these Rules, 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 five (5) consecutive school years of classification of fiscal distress status unless the State Board, at its discretion, issues a written finding supported by a majority of the 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 Department.

9.00 DEPARTMENT FISCAL DISTRESS ACTIONS

- 9.01 In addressing school districts in fiscal distress, the Commissioner of 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 nondepartment agents operating the school district from school district funding;
 - 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;
 - 9.01.4~~3~~ 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 Education;
 - 9.01.4 Waive the application of Arkansas law or the corresponding State Board of Education rules with the exception of:
 - 9.01.4.1 The Teacher Fair Dismissal Act of 1983, Ark. Code Ann. § 6-17-1501 et seq.; and
 - 9.01.4.2 The Public School Employee Fair Hearing Act, Ark. Code Ann. § 6-17-1701 et seq;

- 9.01.5 Petition the State Board of Education for the annexation, consolidation, or reconstitution of the school district;
- 9.01.6 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 as may be necessary for the day-to-day operation of the school district;
- 9.01.7 Return the administration of the school district to the former board of directors or to a newly elected board of directors if:
 - 9.01.7.1 The Department certifies in writing to the State Board of Education and to the school district that the school district has corrected all issues that caused the classification of fiscal distress; and
 - 9.01.7.2 The State Board of Education determines the school district has corrected all issues that caused the classification of fiscal distress.
 - 9.01.7.3 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;
- 9.01.8 Otherwise reconstitute the school district; or
- 9.01.9 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 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 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 as permitted or required by Ark. Code Ann. § 6-20-1901 et seq. and these rules.
 - 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 Department may petition the

State Board for the consolidation, annexation, or reconstitution of a school district in fiscal distress pursuant to Ark. Code Ann. § 6-20-1908 and subsection 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, on its own motion, may consolidate, annex, or reconstitute the school district in fiscal distress as set forth in Ark. Code Ann. § 6-20-1910 and subsection 10.01 of these rules.
- 10.02 The following procedures shall apply to 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 shall first be placed under oath by the Chairperson of the State Board.
- 10.02.2 The Department 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 Chairperson 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 as to why the school district classified as a district in fiscal distress should not be consolidated, annexed or reconstituted. The Chairperson of the State Board may allow additional time if necessary.
- 10.02.4 The State Board may pose questions to any party at any time during the hearing.
- 10.02.5 The 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 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 shall issue a written order concerning the matter.
- 10.02.8 If the State Board of Education 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 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 Office.

10.02.9 It shall be the duty of the Department 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 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 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. § 25-15-201 et seq.

10.05 If the Commissioner of Education assumes authority over a public school district in fiscal distress as set forth in Ark. Code Ann. § 6-20-1910(a) or Section 9.00 of these Rules, the State Board of Education may pursue the following process for returning a public school district to the local control of its residents.

10.05.1 During the second school year following a school district's classification as being in fiscal distress status, the State Board shall determine the extent of the school district's progress toward correcting all issues that caused the classification of fiscal distress;

10.05.2 If the State Board determines that sufficient progress has been made by a school district toward correcting all issues that caused the classification of fiscal distress, but the school district has not yet resolved all issues that caused the classification of fiscal distress, the Commissioner, with the approval of the State Board, may appoint a community advisory board of either five (5) or seven (7) members to serve under the supervision and direction of the commissioner.

- 10.05.2.1 The members of the community advisory board shall be residents of the school district and shall serve on a voluntary basis without compensation.
- 10.05.2.2 The Department of Education shall cause to be provided to the community advisory board technical assistance and training in, at a minimum, the areas required in Ark. Code Ann. § 6-13-629.
- 10.05.2.3 The duties of the community advisory board include without limitation:
- 10.05.2.3.1 Meeting monthly during a regularly scheduled public meeting with the state-appointed administrator regarding the progress of the public school or school district toward correcting all issues that caused the classification of fiscal distress;
 - 10.05.2.3.2 Seeking community input from the patrons of the school district regarding the progress of the public school or school district toward correcting all issues that caused the classification of fiscal distress;
 - 10.05.2.3.3 Conducting hearings and making recommendations to the Commissioner regarding personnel and student discipline matters under the appropriate district policies;
 - 10.05.2.3.4 Working to build community capacity for the continued support of the school district; and
 - 10.05.2.3.5 Submitting quarterly reports to the Commissioner and the State Board regarding the progress of the public school or school district toward correcting all issues that caused the classification of fiscal distress.

- 10.05.2.4 The members of the community advisory board shall serve at the pleasure of the Commissioner until:
- 10.05.2.5 The school district is returned to local control and a permanent board of directors is elected and qualified; or
- 10.05.2.6 The State Board annexes, consolidates, or reconstitutes the school district under Ark. Code Ann. § 6-20-1910 or under another provision of law;
- 10.05.2.5 By April 1 of each year following the appointment of a community advisory board under Ark. Code Ann. § 6-20-1910(d)(2) and Section 10.05 of these Rules, the State Board shall determine the extent of the school district's progress toward correcting all issues that caused the classification of fiscal distress and shall:
- 10.05.2.6 Allow the community advisory board to remain in place for one (1) additional year;
- 10.05.2.7 Return the school district to local control by calling for the election of a newly elected board of directors if the Department of Education certifies in writing to the State Board and to the school district that the school district has corrected all criteria for being placed into fiscal distress; and the State Board determines the school district has corrected all criteria for being placed into fiscal distress; or
- 10.05.2.8 Annex, consolidate, or reconstitute the school district pursuant to Title 6 of the Arkansas Code.
- 10.05.2.6 If the State Board or 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;

10.05.2.7 If the State Board calls for an election of a new school district board of directors pursuant to Ark. Code Ann. § 6-20-1910 (d)(3)(A)(ii) or these Rules, the Commissioner, with the approval of the State Board, may appoint an interim board of directors to govern the school district until a permanent school district board of directors is elected and qualified.

10.05.2.7.1 The interim board of directors shall consist of either five (5) or seven (7) members.

10.05.2.7.2 The members of the interim board of directors shall be residents of the school district and otherwise eligible to serve as school district board members under applicable law.

10.05.2.7.3 The members of the interim board of directors shall serve on a voluntary basis without compensation.

10.05.3 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, after a public hearing, shall consolidate, annex, or reconstitute the school district under Ark. Code Ann. § 6-20-1910 and these Rules.

10.05.3.1 The 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 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.

- 10.05.4 Nothing in Ark. Code Ann. § 6-20-1910 or these Rules shall be construed to prevent the Department of Education or the State Board from taking any of the actions listed in Ark. Code Ann. § 6-20-1909 or Ark. Code Ann. § 6-20-1910 at any time to address a school district in fiscal distress.

12.00 EARLY INDICATORS OF FISCAL DISTRESS

- 12.01 By August 31 of each year, the Department shall report to the superintendent of a school district if the Department is aware that the district has experienced two (2) or more indicators of fiscal distress in one (1) school year that the Department deems to be at a nonmaterial level, but that without intervention could place the district in fiscal distress.
- 12.02 By August 31 of each year, the superintendent of a school district shall report to the Department if the superintendent is aware the school district has experienced two (2) or more indicators of fiscal distress in one (1) school year that the superintendent deems to be at a nonmaterial level, but that without intervention could place the district in fiscal distress.
- 12.03 The Department and the superintendent shall review all data related to the nonmaterial indicators of fiscal distress.
- 12.03.1 Within thirty (30) days of the Department's determination that the school district may be experiencing fiscal distress at a nonmaterial level, the Department shall provide a notice to the school district's superintendent and board of directors that:
- 12.03.1.1 Describes the nonmaterial indicators of fiscal distress that could jeopardize the fiscal integrity of the school district if not addressed; and
- 12.03.1.2 Identifies the support available from the Department to address each nonmaterial indicator of fiscal distress.
- 12.03.2 The board of directors shall place on the agenda for the next regularly scheduled meeting of the board of directors a discussion of the notice of nonmaterial indicators of fiscal distress.