

DEPARTMENT OF EDUCATION

SUBJECT: Issuance of Subpoenas by the Arkansas State Board of Education

DESCRIPTION: Ark. Code Ann. § 6-17-425 grants the Arkansas State Board of Education the authority to issue subpoenas. The proposed rules set forth a procedure for issuance of those subpoenas. With the exception of Sections 2.01 and 2.02, 2.05, and 2.08, the rules mirror the statutory language of Ark. Code Ann. § 6-17-425.

Section 2.01: Clarifies that the State Board of Education on its own motion and through its chairperson or the Commissioner of Education, may issue subpoenas.

Section 2.02: Clarifies that the State Board of Education may issue a subpoena at the request of a party to a proceeding. Under this situation, however, it is the responsibility of the person requesting the subpoena to properly serve the subpoena.

Section 2.05: Reiterates that it is the responsibility of the person requesting the subpoena to serve the subpoena in accordance with Arkansas law.

Section 2.08: States that a challenge to a subpoena must first be made to the state board. If the State Board of Education denies a challenge to the subpoena, the challenging party may then challenge the subpoena in circuit court.

PUBLIC COMMENT: The public hearing was held on October 25, 2011. The public comment period ended on November 17, 2011.

An attorney with the Bureau asked whether adding the condition that a challenge to a subpoena be first filed with the Board of Education rather than in Circuit Court is authorized by statute. The Department responded that is not an uncommon procedure for the issuance of subpoenas. It allows for the board itself to resolve this issue before someone has to go all the way to circuit court, pay a filing fee, wait for a court date, etc. It doesn't remove the ability of someone to go to court, but it does allow them an interim (free) review prior to having to go through that trouble. In other words, if the State Board decides there should be no need for the subpoena in the first place, the subpoenaed party has saved themselves the time, trouble and expense of going to court over it. I hope this helps.

The proposed effective date is tentatively set for January 2011.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Arkansas Code Annotated § 6-17-425(a)(2) gives the Department the authority to issue subpoenas stating "the State Board of Education shall by rule provide for the issuance of a subpoena upon the request of a party to a proceeding pending before... the State Board of Education."

MNH 12-21-11

RECEIVED

ARKANSAS DEPARTMENT OF EDUCATION
RULES GOVERNING THE ISSUANCE OF SUBPOENAS BY THE
ARKANSAS STATE BOARD OF EDUCATION

DEC 12 2011

BUREAU OF
LEGISLATIVE RESEARCH

1.00 REGULATORY AUTHORITY

1.01 These rules shall be known as the Arkansas Department of Education Rules Governing the Issuance of Subpoenas by the Arkansas State Board of Education.

1.02 The State Board of Education enacted these rules pursuant to its authority as set forth in Ark. Code Ann. §§ 6-11-105, 6-17-425 and 25-15-201 et seq.

2.00 GENERAL REQUIREMENTS

2.01 The State Board of Education, through its Chairperson or the Commissioner of Education, may issue subpoenas and bring before the State Board of Education as a witness any person in this state.

2.02 At the request of a party to a proceeding before the State Board of Education, the Chairperson of the State Board of Education or Commissioner of Education may issue a subpoena and bring before the State Board of Education as a witness any person in this state. However, it shall be the duty of the party requesting the subpoena to properly serve the subpoena.

2.03 The subpoena shall:

2.03.1 Be in the name of the State Board of Education;

2.03.2 State the name of the proceeding; and

2.03.3 Command each person to whom it is directed to give testimony at the time and place specified in the subpoena in one (1) of the following ways:

2.03.3.1 In person;

2.03.3.2 Before a certified court reporter under oath at the place of the witness's residence or employment;

- 2.03.3.3 By videotaped deposition at the place of the witness's residence or employment;
- 2.03.3.4 By live video communications from the witness's residence, place of employment or nearby facility capable of providing video transmission to the proceeding for which the witness has been subpoenaed.
- 2.03.3.5 The manner of providing testimony under the subpoena shall be conducted by video conference testimony unless another manner is agreed upon by the State Board of Education and the person who is the subject of the subpoena.
- 2.04 The subpoena may require the witness to bring with him or her any book, writing or other thing under his or her control that he or she is bound by law to produce in evidence.
- 2.05 Service of the subpoena shall be the responsibility of the party requesting the subpoena and shall be in the manner as provided by law or rule for the service of subpoenas in civil cases.
- 2.06 A witness who has been served by subpoena and who appears in person to testify at the trial or case pending before the State Board of Education shall be reimbursed by the party requesting the subpoena for travel and attendance as provided by law.
- 2.07 If a witness is served with a subpoena pursuant to these rules and Ark. Code Ann. § 6-17-425 and fails to appear or to provide testimony in obedience to the subpoena, the State Board of Education may apply to the circuit court of the county in which the State Board of Education is holding the proceeding for an order causing the arrest of the witness and directing that the witness be brought before the court. The court shall have the power to punish the disobedient witness for contempt as provided by the Arkansas Rules of Civil Procedure.
- 2.08 A witness who has been served with a subpoena under these rules and Ark. Code Ann. § 6-17-425 may challenge the validity of the subpoena. Any motion to quash or limit the subpoena shall first be filed with the State Board of Education through the Office of the Commissioner of Education and must include the legal grounds relied upon by the witness challenging the validity of the subpoena.

Should the State Board of Education deny the relief requested, a witness who has been served with the subpoena may challenge the validity of the subpoena in the circuit court of the county in which the witness resides or is employed.

ISSUED BY THE ARKANSAS STATE BOARD OF EDUCATION
Little Rock, Pulaski County, Arkansas

SUBPOENA IN AN ADMINISTRATIVE PROCEEDING
Issued Pursuant to the Authority of Ark. Code Ann. § 6-17-425

RE: In the matter of: _____

TO: _____

- YOU ARE COMMANDED to appear before the State Board of Education at the place, date, and time specified below to testify in the above case.

Place of Testimony:	Room:
	Date and Time:

- YOU ARE COMMANDED to appear at the place, date, and time specified below to testify in the taking of a deposition in the above case.

Place of Deposition:	Date and Time:
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- YOU ARE COMMANDED, at the time of the hearing or deposition described above, to produce and permit inspection and copying of the following documents or objects (list documents or objects).

- YOU ARE COMMANDED, no more than _____ business days after receiving this subpoena, to produce and permit inspection and copying of the following documents or objects (list documents or objects).

Any organization not a party to this matter that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Arkansas Rules of Civil Procedure 30(b)(6).

Issuing Officer Signature and Title (Indicate Party) Date

Issuing Officer's Name, Address, and Phone Number

PROOF OF SERVICE

SERVED Date: Place:

Served On: (Print Name) Manner of Service:

Served By: (Print Name) Title:

DECLARATION OF SERVER

I declare, under penalty of perjury under the laws of the State of Arkansas that the foregoing information contained in the Proof of Service is true and correct:

Executed on: _____
Date Signature of Server

Address of Server

NOTICE TO PERSONS SUBJECT TO SUBPOENAS

Regardless of his or her county of residence, a witness subpoenaed for examination at a hearing must be properly served with the subpoena at least two days prior to the hearing, or within a shorter time if a court so orders. The subpoena must be accompanied by a witness fee calculated at the rate of \$30.00 per day for attendance and \$0.25 per mile for travel from the witness' residence to the place of the hearing. Rule 45(d), Ark. R. Civ. P.

A witness subpoenaed in connection with a deposition must be properly served with a subpoena at least five business days prior to a deposition, or within a shorter time if a court so orders. The witness is required to attend a deposition at any place within 100 miles of where he or she resides, is employed, or transacts business in person, or at such other convenient place set by court order. The subpoena must be accompanied by a witness fee calculated at the rate of \$30.00 per day for attendance and \$0.25 per mile for travel from the witness' residence to the place of the deposition. Rule 45(e), Ark. R. Civ. P.

A subpoena may command the person to whom it is directed to produce for inspection any books, papers, documents, or tangible things designated in the subpoena. The person subpoenaed may ask a court to quash or modify the subpoena if it is unreasonable or oppressive or to require that the person on whose behalf the subpoena is issued pay the reasonable cost of such production. Rule 45(b), Ark. R. Civ. P. The person subpoenaed may also object in writing to inspection or copying of any or all of the designated materials or seek a protective order from the court. If a written objection is made within ten days of service of the subpoena or on or before the time specified for compliance if such time is less than ten days, the party causing the subpoena to be issued is not entitled to inspect the materials unless the court so orders. Rule 45(e), Ark. R. Civ. P.

When a witness fails to attend in obedience to a subpoena or intentionally evades the service of a subpoena by concealment or otherwise, the court may issue a warrant for arresting and bringing the witness before the court to give testimony and answer for contempt. Rule 45(g), Ark. R. Civ. P. For further information pertaining to the nature of this subpoena and your rights pertaining to this subpoena, please consult Ark. Code Ann. § 6-17-425.