

**ARKANSAS DEPARTMENT OF EDUCATION
PROPOSED RULES IDENTIFYING AND GOVERNING
THE ARKANSAS FISCAL ASSESSMENT AND ACCOUNTABILITY PROGRAM
August 2009**

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., Ark. Code Ann. § 6-20-1901 et seq., Act 1467 of 2003, Act 741 of 2007, Act 1469, Section 11 of 2009, Act 798 of 2009, and Act 1289 of 2009.
- 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 and Education Service Cooperatives 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 and education service cooperatives 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 "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 thereof to create a new resulting school district pursuant to § 6-13-1401.
- 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" – a calendar day, regardless of whether it is a day the Department is conducting 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 or cooperative.

- 3.08 "Declining Balance" - the current year expenditures exceeding current year revenues.
- 3.09 "Department" - the Arkansas Department of Education.
- 3.10 "Education Service Cooperative" - the intermediate service units in the state's elementary and secondary education system established by the State Board of Education pursuant to A.C.A. § 6-13-1001 et seq.
- 3.11 "The Fiscal Distress Financial Improvement Plan (Plan)" - the written plan submitted by a district or education service cooperative classified in fiscal distress and approved by the Department to be implemented by the district or cooperative addressing each indicator of fiscal distress identified by the Department and the State Board with a specific corrective action plan and timeline.
- 3.12 "Fiscal Distress Status" - to be identified by the Department and classified by the State Board as being in fiscal distress.
- 3.13 "Fiscal Integrity" - to comply completely and accurately 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.
- 3.14 "Jeopardize" -to expose to loss or injury or peril.
- 3.15 "Material Failure, Violation, Default, or Discrepancies" – an act, omission, event, circumstance or combination thereof that directly jeopardizes the fiscal integrity of a school district or education service cooperative. In other words, but for the material failure, violation, default, or discrepancy, the district's or cooperative's fiscal integrity would not be jeopardized.
- 3.16 "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 or education service cooperative, but if not corrected could become material.
- 3.17 "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 et. seq. or other provisions of Arkansas law.
- 3.18 "School Year" - a school year beginning July 1 of one calendar year and ending June 30 of the following calendar year.

- 3.19 "State Board" - the Arkansas State Board of Education.
- 3.20 "Reconstitution" - the reorganization of the administrative unit or board of a school district or education service cooperative; including, but not limited to, the replacement or removal of a current superintendent or director, or the removal or replacement of a board or both.
- 3.21 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).

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

- 4.01 A school district or education service cooperative meeting any of the following criteria may be identified by the Department to be 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 education service cooperative; or
 - 4.01.2 An act or violation determined to jeopardize the fiscal integrity of a school district or education service cooperative, including without limitation:
 - a. Material failure to properly maintain 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 debt obligation;
 - j. Material discrepancies between budgeted and actual expenditures;
 - k. Material failure to comply with audit requirements; or
 - l. Material failure to comply with any provision of the Arkansas Code that specifically places a school district or education service cooperative in fiscal distress based on noncompliance;

4.01.3 Any other fiscal condition of a school district or education service cooperative deemed to have a material detrimental negative impact on the continuation of educational services by that school district or education service cooperative.

4.01.4 In determining a declining balance trend, capital outlay expenditures for academic facilities will be excluded in order to project future fund balances.

5.00 PROCESS AND PROCEDURE FOR CLASSIFICATION OF FISCAL DISTRESS STATUS

5.01 A school district or education service cooperative identified by the Department as being in fiscal distress shall be classified 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 An education service cooperative, within two (2) weeks following the date the education service cooperative receives the final classification by the State Board of fiscal distress shall:

5.03.1 Notify in writing each public school district in its service area that the education service cooperative is classified as being in fiscal distress.

5.03.2 File with the Department a fiscal distress plan.

5.04 The provisions of subdivisions 5.01 through 5.03 of this section are effective after the school district's or education service cooperative's appeal rights have been exhausted.

5.05 The decision of the State Board shall be a final order and there is no further right of appeal except the school district or education service cooperative may appeal to circuit court in Pulaski County pursuant to the Arkansas Administrative Procedure 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 board and the superintendent or director of each school district or education service cooperative identified as being in fiscal distress.

6.01.1 The Department shall provide the notice to school districts 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 6.01.

6.01.3 The Department shall provide the notice to education service cooperatives within ten (10) calendar days of identification.

6.02 Any school district or education service cooperative 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) 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 or education service cooperative.

6.04 The written appeal shall state, in clear terms, the reason why the school district or education service cooperative 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 or education service cooperative identified as in fiscal distress.

7.00 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. Education service cooperatives shall file such plan within two (2) weeks following final classification.

- 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 or education service cooperative proposes to take
 - e. Timeline for each additional action step the district or education service cooperative proposed
- 7.01.2 The Department is authorized to review and amend the plan submitted by the school district or education service cooperative.
- 7.01.3 The Department may edit, amend, update, or replace the plan at any time deemed appropriate.
- 7.01.4 The district or education service cooperative shall be given notice of the edited, amended, updated, or replacement plan criteria.
- 7.01.5 The district or education service cooperative 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) 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 or education service cooperative shall first seek and obtain approval of its plan from the Department and shall describe how the school district or education service cooperative will remedy those areas in which the school district or education service cooperative is experiencing fiscal distress and shall establish the time period by which the school district or education service cooperative will remedy all criteria which placed the school district or education service cooperative in fiscal distress status.
- 7.03 A school district or education service cooperative 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 or education service cooperative 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 or education service cooperative 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 or education service cooperative was identified as being in fiscal distress status.
- 7.05 Any school district or education service cooperative 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 superintendent or director regarding staffing and fiscal practices of the district or education service cooperative.
- 7.07 The recommendations of the Department shall be binding on the district, education service cooperative, the superintendent or director, and the board of the district or cooperative.
- 7.08 Every six (6) months, the Department shall submit a written evaluation on the status of each school district and education service cooperative in fiscal distress to the State Board.

8.00 PRIOR APPROVAL OF DEBT

- 8.01 No school district or education service cooperative 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 and education service cooperatives in fiscal distress, the Department may take any number of the following actions:
 - 9.01.1 Require the superintendent or director to relinquish all administrative authority with respect to the school district or education service cooperative;
 - 9.01.2 Appoint an individual in place of the superintendent or director to administratively operate the school district or education service cooperative under the supervision and approval of the Commissioner of Education, and to compensate non-department agents operating the school district or education service cooperative from school district or education service cooperative 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 Commissioner of Education;

- 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 or cooperative in removing criteria of fiscal distress.
- 9.02 The Department may impose various reporting requirements on the school district or education service cooperative. The Department may review any and all school district or education service cooperative records and documents.
- 9.03 The Department shall monitor the fiscal operations and accounts of the school district or education service cooperative.
- 9.04 The Department shall require school district board members and employees of school districts and education service cooperatives to obtain fiscal instruction or training in areas of fiscal concern for the school district or education service cooperative at the school district's or education service cooperative's expense.

10.00 STATE BOARD AUTHORITY REGARDING SCHOOL DISTRICTS

- 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 interests 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 law.
- 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 Procedure Act, § 25-15-201, et seq.

11.00 STATE BOARD AUTHORITY REGARDING EDUCATION SERVICE COOPERATIVES

- 11.01 After providing thirty (30) calendar days written notice, via certified mail, return receipt requested, to an education service cooperative, the Department may petition the State Board to classify an education service cooperative being in fiscal distress, or the State Board may on its own motion, at any time, classify an education service cooperative as being in fiscal distress. The State Board may take other action as allowed by Act 1289 of 2009 in order to secure and protect the best interests of the educational resources of the State or provide for the best interests of school districts served by the education service cooperative. The education service cooperative shall have a right of appeal to a public hearing before the State Board as provided herein.
 - 11.01.1 The education service cooperative may lodge an appeal by filing a written appeal with the Commissioner of Education by certified mail, return receipt requested, within thirty (30) days of the education service cooperative receiving notice of the identification of fiscal distress.
 - 11.01.2 The written appeal shall state in clear terms the reason why the education service cooperative should not be classified as being in fiscal distress.
 - 11.01.3 The State Board shall hear the appeal within sixty (60) days of receipt of the written notice of appeal.
 - 11.01.4 The decision of the State Board on the appeal is a final order.
 - 11.01.5 There is no further right of appeal except to Pulaski County Circuit Court pursuant to the Arkansas Administrative Procedure Act, A.C.A. § 25-15-201 et seq.
- 11.02 The State Board may approve the petition or take other appropriate action as allowed by law
- 11.03 Every six (6) months during which the education service cooperative is classified as being in fiscal distress, the Department shall submit to the State Board a written evaluation on the fiscal status of the education service cooperative.

12.00 EARLY INDICATORS OF FISCAL DISTRESS – SCHOOL DISTRICTS

- 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.
 - 12.03.1.2 Identifies the support available from the Department to address each nonmaterial indicator of fiscal distress.
 - 12.03.1.3 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.