

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

**PARENT PLAINTIFF LAKESHA  
DOE and her minor child  
DENNIS DOE; et al.**

**PLAINTIFFS**

**v.**

**CASE NO. 4:15-CV-0623 DPM**

**ARKANSAS DEPARTMENT OF  
EDUCATION; et al.**

**DEFENDANTS**

**BRIEF IN SUPPORT OF STATE DEFENDANTS' MOTION TO DISMISS**

A school or district is classified as academically distressed when more than half of its students achieve below proficient on math and literacy skills tests for the most recent three year period.<sup>1</sup> Arkansas law permits the State Board of Education (“State Board”) to take a number of different actions against academically distressed schools or school districts. Ark. Code Ann. § 6-15-430. If the Arkansas Department of Education (“ADE”) classifies a public school as academically distressed, the State Board’s options include requiring the school district to operate without a board of directors under the supervision of the superintendent, or under the supervision of an individual or panel appointed by the Commissioner of Education. Ark. Code Ann. § 6-1-430(a)(3),(b)(9).

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<sup>1</sup> Arkansas Department of Education Rules Governing the Arkansas Comprehensive Testing, Assessment and Accountability Program (ACTAAP) and the Academic Distress Program (the “ACTAAP and Academic Distress Rules”) 3.02.1.1.

During calendar year 2014 the ADE classified several schools in the Little Rock School District (“LRSD”) as academically distressed. At the end of 2014, fully a fourth of the state’s 22 academically distressed schools were in the LRSD. On January 28, 2015, after a series of meetings and notices, the State Board voted to assume the authority of the LRSD board, as permitted by Arkansas law. Amended Complaint at ¶¶181, 198, 203, 207, 209, 223.

The Plaintiffs are individuals who have been identified as LRSD students and their parents and two former members of the LRSD board. Current State Board members Toyce Newton, Jay Barth, Joe Black, Susan Chambers, Charisse Dean, Mireya Reith, Vicki Saviers, R. Brett Williamson and Diane Zook are named in their official capacities. The ADE is also named as a defendant. Arkansas Commissioner of Education Johnny Key (“Key”) is named in his official capacity based on an allegation that he is “in effect” the LRSD board. Key, the named members of the State Board and the ADE will be collectively referred to as the “State Defendants.” LRSD Superintendent Baker Kurrus is sued in his official capacity.

The Plaintiffs assert two sets of unrelated claims. Section I of the Amended Complaint, titled “Claims on Behalf of the Student Plaintiffs and Their Parents,” contends that the LRSD does not provide equal opportunities, resources and facilities to schools in which the students are predominantly black. These allegations do not factually or legally implicate any entity other than the LRSD. Accordingly, the State Defendants’ motion to dismiss does not directly address the

claims asserted in Section I of the Amended Complaint. The State understands that these claims are directed at - and will be defended by – the LRSD, through Baker Kurrus acting in his official capacity as superintendent. Section II of the Amended Complaint challenges the so-called takeover of the LRSD, and Section III contends that the State Defendants conspired to deny the constitutional rights of the Plaintiffs.

The Amended Complaint attempts to assert Equal Protection claims against the State Defendants by cobbling together a series of race neutral circumstances and conclusory statements. Although dressed in the trappings of an equal protection claim the Plaintiffs, at bottom, challenge the State Board’s authority under Arkansas law. The facts alleged as to the State Defendants do not state claims cognizable in this Court.

## I. STANDARD OF REVIEW

To avoid dismissal a complaint must allege facts sufficient to state a claim as a matter of law. *Young v. City of St. Charles*, 244 F.3d 623, 627 (8<sup>th</sup> Cir. 2001). Factual allegations are to be accepted as true, but conclusions couched as factual allegations cannot be relied upon as a substitute for facts. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The facts alleged must “state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 568 (2007). A claim has facial plausibility when the complaint pleads “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct

alleged.” *Iqbal*, 556 U.S. at 678. It is not enough to plead facts that are “merely consistent with a defendant’s liability.” *Id.*

## II. THE AMENDED COMPLAINT DOES NOT STATE FACTS SUFFICIENT TO SUPPORT A CLAIM OVER WHICH THIS COURT HAS JURISDICTION

The remedy requested in the Amended Complaint makes clear that the Plaintiffs’ claim against the State Defendants is simply another attempt to challenge the State Board’s power to assume authority over the LRSD.<sup>2</sup> In their request for relief the Plaintiffs ask this Court to “void the takeover of the LRSD ... on the ground that the Arkansas Department of Education and the State Board of Education were without authority under their own rules ....” Amended Complaint at page 72, subparagraph (b). See also, Amended Complaint at ¶ 223 (“[t]he State Board had no lawful authority to consider the takeover of the LRSD and ouster of the LRSD school board on January 28, 2015”).

Given the true nature of the challenge, it is unsurprising that the Amended Complaint does not state “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. Few, if any, of the facts alleged in the Amended Complaint have

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<sup>2</sup> Plaintiff Ross, and other individuals, filed suit in state court seeking to reverse the State Board’s action. That suit was dismissed on appeal for failure to state facts that would permit an exception to the State’s immunity from suit. *Key v. Curry*, 2015 Ark. 392, 473 S.W.3d 1 (2015).

any logical or factual relationship to the discriminatory intent or purpose that the Plaintiffs must establish to prove an equal protection claim.

A. PLAINTIFFS JOY SPRINGER AND JIM ROSS DO NOT HAVE STANDING TO CHALLENGE THE ACTION OF THE STATE BOARD.

Plaintiffs Joy Springer (“Springer”) and Jim Ross (“Ross”) were among the LRSD board members displaced when the State Board assumed the authority of the LRSD board. To maintain their claims, Springer and Ross must first demonstrate that they have standing. This requires a showing that they hold a legally protected interest. *Sierra Club v. Robertson*, 28 F.3d 753, 758 (8<sup>th</sup> Cir. 1994). In an attempt to create standing to challenge the State Board’s assumption of authority, Springer and Ross contend that they held property and liberty interests in their positions on the LRSD board. Amended Complaint at ¶ 196.

The U.S. Supreme Court has made it clear that “an unlawful denial by state action of a right to state political office is not a denial of a right of property or of liberty secured by the due process clause.” *Snowden v. Hughes*, 321 U.S. 1, 7 (1944). Any property interest or liberty in a school board position, then, must be created and defined by Arkansas law. *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577-578 (1972). Arkansas does not recognize a common law property interest in elected office. *See, Coffelt v. Bryant*, 238 Ark. 363, 371, 381 S.W.2d 731, 735 (1964) (Even an unlawful denial by state action of a right to state political office is not a denial of a right of property or liberty secured by the Due Process Clause).

Springer and Ross allege that their protected interests are established by Ark. Code Ann. § 6-13-608(a), which sets the length of the term of an elected school board member, and Ark. Code Ann. § 6-13-620, which establishes the powers and duties of a school district's board. Neither of these statutes purports to condition or limit the power of the State to remove directors. Section 6-13-620 says nothing of the terms or limits of a board member's service. Section 6-13-608(a) simply says that directors are to have terms of office of not less than three years or more than five. In no way do these statutes limit the power of the General Assembly to remove or replace directors. Indeed, the Arkansas Constitution provides that the "supervision of the schools ... shall be vested in and confided to, such officers as may be provided for by the General Assembly." Ark. Const. Art. 14, § 4. As the more recent and specific enactment, Arkansas Code section 6-15-430 controls, and grants the State Board the very power at issue here – the power to remove the school board or cause the district to operate without a school board. Consequently, neither Springer nor Ross has a protected property interest to support standing.

In an apparent attempt to create a liberty interest where none exists, Springer and Ross allege in conclusory terms that the State Board acted in part to impair their right to free speech. No facts are alleged in support of a causal relationship between the statements alleged and the State Board's action. The facts alleged do not show either Ross or Springer was singled out for removal based on their alleged speech; the entire school board was displaced.

**B. THE COMPLAINT DOES NOT STATE AN EQUAL PROTECTION CLAIM AGAINST THE STATE DEFENDANTS.**

The Plaintiffs contend that the State Board's assumption of the authority of the LRSD board violated their rights to equal protection under the Fourteenth Amendment to the U.S. Constitution. The Plaintiffs also allege, in conclusory fashion, that the State Board's action created a "badge of slavery" and violated the Fifteenth Amendment. Amended Complaint at ¶ 136.

The Supreme Court has never recognized a separate cause of action based on "badges of slavery." The Court has instead relied on Congress' identification of such "badges of slavery" in civil rights legislation. *See, e.g., City of Memphis v. Greene*, 451 U.S. 100 (1981); *Palmer v. Thompson*, 403 U.S. 217 (1971) (noting that the Thirteenth Amendment empowers Congress to outlaw "badges of slavery" and noting that Congress passed no law regulating the activity at issue in *Palmer*). The Fifteenth Amendment, of course, relates to impairment of the right to vote on account of race. There is no factual allegation that any Plaintiff has been deprived of this right. As a matter of law the Amended Complaint states no cause of action arising from "badges of slavery" or the Fifteenth Amendment.

To meet the burden of establishing their equal protection claim the Plaintiffs must plead and prove facts demonstrating that the State Board's action was motivated by discriminatory intent or purpose. *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252, 265 (1977).

"Discriminatory purpose implies that the decisionmaker ... selected or reaffirmed a

particular course of action at least in part ‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable group.” *Personnel Adm’r of Massachusetts v. Feeney*, 442 U.S. 256, 279 (1979). Official action will not be held unconstitutional solely because it results in a racially disproportionate impact. *Arlington Heights*, 429 U.S. at 265.

In *Arlington Heights* the Court identified factors to be considered in determining whether official action was motivated by discriminatory intent or purpose: (1) whether the decision bears more heavily on one race than another, (2) the historical background of the decision, (3) the sequence of events leading up to the decision, (4) departures from normal procedure, (5) substantive departures, particularly if the factors usually considered important by the decision maker strongly favor a decision contrary to the one reached, and (6) legislative or administrative history. *Arlington Heights*, 429 U.S. at 267-268. In an apparent attempt to touch each of these factors, the Amended Complaint refers to largely unrelated events that bear no relationship to the intent of the State Board, and actions by board members that have no relationship to their intent.

#### **1. The impact of the assumption of authority.**

The State Board’s assumption of the authority of the LRSD board affected the entire district. Its action equally affected all students, parents, and members of the LRSD board, regardless of race or other classification. The Amended Complaint alleges instances of disparities in achievement, facilities and other aspects of the LRSD schools, and alleges that many of the schools’ student bodies are



predominantly black. *See, e.g.*, Amended Complaint at ¶¶ 7, 9, 11, 12, 24, 26, 30, 33, 34, 41, 47, 52, 53, 63-133. But the Plaintiffs allege no facts demonstrating that the State Board's action had any more or less effect on students of one race or another. The nature of the impact alleged is purely demographic – under the facts alleged any district wide action potentially affects black students disproportionately. The existence or awareness of the potential consequences of the State's action is not proof of discriminatory purpose. *Friends of Lakeview v. Beebe*, 578 F.3d 753 (8<sup>th</sup> Cir. 2009). The incidental impact of the State Board's action does not support an inference of racially motivated intent or purpose.

## **2. Historical background, sequence of events, and administrative history.**

### Historical background.

The Amended Complaint refers to a number of past events or circumstances that are wholly unrelated to the State Board's decision to require the district to operate without a board of directors under the supervision of the superintendent. Specifically, the Plaintiffs contend that between 2009 and 2013 the ADE did not properly administer or oversee federal programs or grants aimed at remedying achievement gaps, and that during the same period the ADE obtained waivers of the federally imposed requirement that all students achieve 100% proficiency. Amended Complaint at ¶¶ 149-155. The only reference to anything remotely related to racial considerations alleges that the waiver “only holds the ADE accountable for groups that are not race specific.” Amended Complaint at ¶ 152.

The Fourteenth Amendment does not require separate consideration of race specific groups; in fact, the use of racial classifications is reviewed with strict scrutiny and must be narrowly tailored to achieve a compelling government interest. *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007). “[O]fficial action that treats a person differently on account of his race or ethnic origin is inherently suspect.” *Fisher v. University of Texas at Austin*, \_\_\_ U.S. \_\_\_, 133 S. Ct. 2411 (2013). Utilizing non-race specific criteria is not evidence of discriminatory purpose.

Moreover, all claims against the State and its agencies related to acts or omissions before November 2013, have been released by an agreement reached in the case of *Little Rock School District v. Pulaski County Special School District*, et al. (“PCSD case”).<sup>3</sup> On August 21, 2014, this Court, in the PCSD case, approved a settlement, among all parties, of the State’s obligations under a 1989 settlement agreement. PCSD case, ECF 5063. The settlement agreement, signed between November 18 and 21, 2013, provides that the parties release the State “from any and all ... claims ... that they have or may have against the State of Arkansas arising out of any claims that were or could have been made in connection with this litigation.” The Plaintiffs, who are bound by the settlement, cannot create new claims out of circumstances that existed at the time of the release.

The Plaintiffs also contend that the ADE delayed in 2014-2015, and in other years, disbursement of Title I funds to the LRSD. Amended Complaint at ¶¶ 156-

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<sup>3</sup> United States District Court for the Eastern District of Arkansas, case number 4:82-cv-866-DPM

162. There are no facts stated, however, indicating that alleged delays in funding to the entire district were somehow racially motivated. The Plaintiffs simply note that some of the schools affected have majority black student bodies. These allegations suggest only the Plaintiffs believe the ADE did not properly fulfill its day to day duties, but in no way do the facts alleged bear upon the purpose or motive behind the State Board action at issue in this case.

The Plaintiffs refer to the approval and opening of the eStem open charter school, but do not explain how this is evidence of discriminatory purpose or motive. Amended Complaint at ¶¶ 139-148. The essence of the allegation is that the eStem charter school has a detrimental effect on the LRSD budget and that eStem's mix of students by race, special education population and other characteristics does not match the LRSD. The Amended Complaint states no facts that could reasonably lead to even an inference that approval of eStem included considerations of race that exhibited discriminatory intent. Indeed, when LRSD and the Joshua Intervenors challenged the State's approval of eStem, and other Pulaski County charter schools, this Court found "little, if any" effect on desegregation efforts in Pulaski County and found that the net loss of students to charter schools is "at the margin." PCSD case order entered January 17, 2013, ECF 4809, at 20, 23. And, like many of the Plaintiff's other allegations, any claims related to the approval of eStem are precluded by the 2013 settlement agreement.

The Plaintiffs further allege that Vicki Saviers ("Saviers") had a role in the opening of eStem before she was a member of the State Board and later, as a State

Board member, made a motion to increase the maximum enrollment of eStem. These circumstances do not impart any insight into the later decision of the State Board upon an entirely different subject – the assumption of authority over the LRSD because multiple schools were academically distressed. At best they demonstrate that Saviers approved of the eStem school – as did many other individuals.

The Amended Complaint next refers to the ADE's 2013 approval of another open enrollment charter school, Quest Middle School. Amended Complaint at ¶ 167. The Plaintiffs imply that the ADE and State Board specifically discriminated against minority students by approving a school to be located in a “majority white, upscale section of west Little Rock,” but allege no facts demonstrating that the decision was racially motivated.

The Plaintiffs appear to allege that, on appeal of the decision approving the Quest School, the State Board failed to fully consider the likely racial and socio-economic makeup of the Quest School. They point to arguments made by counsel for LRSD and Pulaski County Special School District, in which counsel “challenged the contention that the school would enroll a significant percentage of minority and low income students.” Amended Complaint at ¶ 168. In effect, the Plaintiffs complain that the State Board's decision was *race neutral* because arguments about the potential racial and socio-economic characteristics of the new school's student body did not carry the day for opponents of the school. The Plaintiffs disagree with

the State Boards' action, but allege nothing tying approval to a purpose or intent to discriminate.

In this, and other circumstances, the Plaintiffs mistake the LRSD for a district that is not unitary – where expressly using race as a factor may be required. LRSD has, of course, been declared fully unitary.<sup>4</sup> The State Board may not use race as a determinative factor absent a compelling interest – and any such action must be narrowly tailored to achieve that compelling interest. *Parents Involved in Community Schools*, 551 U.S. 701. Thus, declining to employ race as a determinative factor is not evidence of discriminatory purpose.

Sequence of events and administrative history.

The Amended Complaint identifies a number of events leading up to the State Board's decision to assume authority. None of the facts alleged bear any relationship to discriminatory intent or purpose.

As to the ADE, the Amended Complaint first refers to an emergency rule change promulgated by the ADE and adopted by the State Board. Amended Complaint at ¶¶ 179, 183. The ACTAAP and Academic Distress Rules were amended in 2014 – first by an emergency rule and later a final rule – in response to changes in the governing law. The revised rules apply the standard for academic distress at both the district and the school level. The change is entirely race neutral. The final rule, a copy of which is attached as Exhibit A, makes no distinction between students of different races, and makes no distinction between

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<sup>4</sup> 2007 WL 624054 (E.D. Ark., Feb. 23, 2007) affirmed 561 F.3d 746 (8<sup>th</sup> Cir. 2009).

schools or school districts with predominately black student bodies and other schools. The academic distress standards apply equally to every school district in the State of Arkansas. Laws that are facially neutral are not subject to equal protection attack absent proof that the law was “effectively drawn for racial purposes.” *Washington v. Seattle School District No. 1*, 458 U.S. 457, 470 (1982).

The Amended Complaint does not allege (nor could it accurately do so) that the standards chosen for the new rule were intended to discriminate between “white school districts” and “black school districts.” The allegation that all the schools so far declared in academic distress have majority black student populations does not support an inference of discriminatory intent. *See* Amended Complaint at ¶ 182. The rule is race neutral and there is no allegation of facts that, if accepted as true, would demonstrate some ulterior, race related motive in the standards set by the rule.

The Plaintiffs allege that the ADE did not provide the LRSD board members copies of letters declaring LRSD schools in academic distress. Amended Complaint at ¶¶ 181, 203-204. Assuming (as we must at this stage of the litigation) that this allegation is true, it is not evidence of an irregularity that implies pretext. The ACTAAP and Academic Distress Rules, at section 10.04.2, require only notice to the superintendent and the school board president. Exhibit A, page 31. The Amended Complaint concedes that the superintendent received notice. Plaintiffs do not allege that ADE failed to send notice to the LRSD board president. There is nothing in the Amended Complaint to suggest that the ADE intentionally failed to notify the

members of the LRSD board. It was not required to do so. This, like all the other circumstances alleged, is entirely race neutral.

Like the allegations about the ADE's role, the Amended Complaint alleges a series of race neutral statements and circumstances by or about State Board members in an attempt to create the appearance of discriminatory purpose on the part of the State Board. The implication of intentional bias that the Plaintiffs would draw is based upon two flawed assumptions: (1) that any action against a majority black school district must be racially motivated, and (2) any action that could have the effect of favoring schools that are not majority black must be racially motivated.

First, the Plaintiffs imply that State Board member Saviers is biased. The pertinent facts alleged are that she: (1) actively participated in the opening and management of the eStem charter school before becoming a member of the State Board, (2) as a member of the State Board made a motion to increase eStem's allowable enrollment, (3) voted in favor of approving the Quest Middle School of West Little Rock open enrollment charter school, (4) was appointed chair of a State Board committee to study chronically underperforming school districts, (5) rejected Springer's request to reschedule a State Board meeting, (6) made the motion that led to the assumption of authority over the LRSD, (7) made reports to the State Board concerning the Academic Distress Committee meetings, (8) in one of her reports to the State Board did not mention that the LRSD would be given another chance to appeal designated academic distress determinations, and (9)

recommended a State Board meeting be held “regarding possible sanctions against the LRSD” pursuant to Ark. Code Ann. § 6-15-430. Amended Complaint at ¶¶ 139, 145, 168, 177, 223, 262, 264, 270. The Plaintiffs allege in conclusory fashion that Saviers “... by her participation in the opening and operation of the eStem Charter School and her participation in the approval of the Quest charter school evidenced an intention to favor the white community in the LRSD.” Amended Complaint at ¶178. This is a conclusion – not a fact - and as such is not “entitled to be assumed true.” *Iqbal*, 556 U.S. at 664. And it is based on the legally and logically flawed assumption that anyone who favors charter schools is engaged in decision making that is intended to discriminate.

Saviers’ statements and actions do not, without more, demonstrate an intent or purpose to discriminate based on race. *Gallagher v. Magner*, 619 F.3d 823, 832 (8<sup>th</sup> Cir. 2010)(“Facially race-neutral statements, without more, do not demonstrate racial animus on the part of the speaker.”). The Plaintiffs do not allege that Saviers (or any other State Board member) has made statements or taken actions consistent with any form of racial bias – much less an intent or purpose that played a role in her vote to assume authority over the LRSD.

The relatively small number of acts attributed to other members of the State Board are equally race neutral. The Plaintiffs refer to an email attributed to Jay Barth (“Barth”) and attached to the Amended Complaint as Exhibit 4. In the email Barth references a favorable view of conversion charter schools and a proposal by “Dexter” (presumably then LRSD Superintendent Dexter Suggs) that is



characterized as “probably a conversion charter model.” Amended Complaint at ¶ 205. The Plaintiffs contend this demonstrates “back-room deal making” by Suggs, but there is no suggestion that this sort of policy related discussion is anything but race neutral.

The Plaintiffs contend that State Board Chair Sam Ledbetter “became offended” when Springer requested the rescheduling of a State Board meeting, said nothing at the meeting at which the assumption of authority was approved, and voted in favor of the assumption of authority. Amended Complaint at ¶¶ 197, 219. Again, these statements and actions bear no relationship to the question of race, or even the reasons of the State Board for approving the assumption of authority.

The Plaintiffs next allege that “multiple members of the State Board were aware Suggs was deliberately seeking to cause state takeover ...” Amended Complaint at ¶ 219. This conclusory statement is neither supported by facts, nor does it support in any way the conclusion that State Board members even considered race in casting their votes.

The assumption of authority over the LRSD was approved at a January 28, 2015, meeting. The Amended Complaint alleges that, at this meeting, State Board members did not ask questions of the ADE staff, did not discuss or ask questions about the plans submitted by LRSD, and did not discuss the basis for removing school board members. Amended Complaint at ¶ 220. But, the Plaintiffs concede that eight of the nine State Board members did speak, and that board member Barth offered a motion to continue a cooperative effort with the LRSD. Amended

Complaint at ¶ 222. There is no allegation of facts showing that there was anything unusual about the process that was followed – or that anything race based or even race conscious was discussed by the State Board.

In an attempt to create the appearance of some nefarious motives (though not necessarily race related), the Plaintiffs contend that superintendent Suggs at least twice made unidentified statements to the State Board “intended to lead to the actions ultimately taken” by the State Board, and that members of the State Board did not “probe the basis” for his statements. Amended Complaint at ¶¶ 198, 207, 219. The Plaintiffs never describe the statements allegedly made, nor do they allege any basis for State Board members to believe that the unidentified statements made by Suggs were false, misleading, or directed at action motivated by racial considerations.

The remaining allegations about the State Board are wholly inconsequential. The Amended Complaint alleges that (1) the minutes of a meeting of the State Board that referenced academically distressed schools did not specifically mention the LRSD, (2) a State Board meeting on January 7, 2015, did not refer to three of the LRSD schools identified as academically distressed, and did not mention a November 25, 2014, letter notifying LRSD of academic distress designations or superintendent Suggs’ appeal and (3) at the January 28, 2015, board meeting there was no reference to two of the LRSD schools listed in the earlier notices of academic distress. Assuming these facts to be true, they demonstrate only that the minutes

or discussions did not on each occasion refer to each and every detail of the LRSD's academic distress problem.

The balance of the allegations concerning the State Board and the ADE are complaints about the qualifications of Commissioner Key, the appointed superintendent Baker Kurrus, and the alleged absence of progress in improving the LRSD. None of these allegations have anything to do with the State Board's intent on January 28, 2015, when it decided to assume authority. These allegations are complaints about matters of policy and state law.

### **3. Alleged departures from normal procedure.**

The Plaintiffs allege that ADE's emergency rule which, among other things, set a tougher standard for academic distress, was not properly adopted and therefore "never lawfully in effect." Amended Complaint at ¶ 179. Apparently they mean to suggest that this is evidence of discriminatory purpose. The Plaintiffs recite no facts supporting their conclusion that the revised ACTAAP and Academic Distress Rules were not properly promulgated or approved. They simply allege the conclusion. The public record, however, reveals that the rule of which Plaintiffs complain was properly adopted.<sup>5</sup>

The State Board approved the ACTAAP and Academic Distress Rules for emergency adoption on April 10, 2014. The minutes of the State Board's action reflect that the proposed revisions to the rules were in response to legislation

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<sup>5</sup> Materials that are part of the "public record" may be considered without converting a motion to dismiss to a motion for summary judgment. *Stahl v. United States Department of Agriculture*, 327 F.3d 697, 700 (8<sup>th</sup> Cir. 2003); *Porous Media v. Pall Corp.*, 186 F.3d 1077, 1079 (8<sup>th</sup> Cir. 1999).

enacted in the 2013 legislative session. See Exhibit B. The Arkansas Administrative Procedures Act, as written at that time, provided for emergency adoption of rules to be in effect for up to 120 days without further notice or approval. Ark. Code Ann. § 25-15-204(c) (2014 Repl.).<sup>6</sup>

The ADE published notice of the proposed final rule on April 13, 2014, setting a May 12, 2014, deadline for public comments. The final rule was approved by the State Board at its June 12, 2014, meeting. See Exhibit C. The Arkansas Legislative Council reviewed the final rule on August 6, 2014, and the approved final rule was filed with the Secretary of State the same day. See Exhibit D, which is the file marked Arkansas Register Transmittal Sheet.

The process exactly follows that required by Arkansas' APA: publication, and opportunity for public comment, and review by the Arkansas Legislative Council. The APA requires only substantial compliance. *See*, Ark. Code Ann. § 25-15-204(h). It is undisputed that, at the time of the first notice of academic distress, each of the LRSD schools listed qualified under the emergency rule as "academically distressed."

The Amended Complaint does not describe any irregularities in the adoption of the revised ACTAAP and Academic Distress Rules. The promulgation and approval process reflected in the public record do not support an inference that the ADE or State Board intended by the rule change to discriminate based on race.

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<sup>6</sup> The Act has since been amended to provide for legislative review in accordance with the requirements of Amendment 92 to the Arkansas Constitution.

Finally, it is worth noting that the ADE and State Board adopted the final version of the rules effective September 2014. The academic distress standards upon which the State Board based its action against LRSD mirrored the standards prescribed in the emergency rule. The Plaintiffs do not challenge the validity of the final rule, which was in full force and effect when the State Board voted to assume authority over the LRSD.

The Plaintiffs argue that the State Board was required to make specific findings in support of its decision to assume authority, and that it failed to do so. Amended Complaint at ¶ 228. The Plaintiffs are simply wrong on the law. Neither the cited statute nor the ACTAAP and Academic Distress Rules require findings. The statutory provision and rule referred to in the Amended Complaint concern the State Board's option to return control *after* an assumption of authority in the case of academic distress of an entire district, and require a determination, not written "findings." Ark. Code Ann. § 6-15-430(a)(7); ACTAAP and Academic Distress Rule 11.02. The sub-section that does apply in this case likewise refers to returning control, not the initial assumption of authority, and does not require "findings." Ark. Code Ann. § 6-15-430(b)(10). Neither Arkansas law nor the ADE's rules require written findings before an assumption of authority. Consequently, absence of written findings, where none is required, is not evidence of an ulterior motive.

The Amended Complaint contends that LRSD representatives were afforded only 20 minutes to present their position at the State Board's January 28, 2015, meeting – the meeting at which the assumption of authority was approved.

Amended Complaint at ¶ 217. But the Amended Complaint concedes that the LRSD was given an opportunity to make written submissions. Amended Complaint at ¶ 209. Significantly, the Plaintiffs have identified no circumstance suggesting that the process followed varied from the State Board's ordinary or usual order of business.

The Amended Complaint further alleges that the ADE staff did not recommend the assumption of authority. Amended Complaint at ¶ 221. Plaintiffs allege no facts, however, suggesting that this is out of the ordinary.

#### **4. Alleged substantive departures.**

The Plaintiffs complain that the State Board did not classify the entire LRSD as academically distressed, implying that such a classification was a predicate to assuming authority over the LRSD. Amended Complaint at ¶184. But the law does not require this. The State Board had the right under state law to assume authority over the entire district based upon even one school being classified as academically distressed. Ark. Code Ann. § 6-15-430(b)(9). The ADE's rules specifically implement the process. ACTAAP and Academic Distress Rules 3.02.1, 3.02.2, 11.01 et seq., 11.02.9. Following the terms of a race neutral law is not evidence of discriminatory purpose.

To be sure, the Amended Complaint alleges that the ADE and the State Board lacked authority to "act as they did." *See, e.g.*, Amended Complaint at ¶ 211. But these are conclusions – not facts – and as such need not be considered true when challenged by a motion to dismiss. *Iqbal*, 556 U.S. at 678.

The facts stated in the Amended Complaint neither individually nor collectively evidence discriminatory intent on the part of the State Board or ADE officials. To state a claim the Plaintiffs must allege “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.*, quoting *Twombly*, 550 U.S. at 570. The plausibility standard “asks for more than a sheer possibility that a defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678.

Where official action is alleged to violate the Equal Protection Clause “[t]he inquiry is a practical one designed to determine whether the decisionmaker’s actions ... could not ‘reasonably be explained without reference to racial concerns’.” *Clients’ Council v. Pierce*, 711 F.2d 1406, 1409 (8<sup>th</sup> Cir.1983)(quoting *Columbus Board of Education v. Penick*, 443 U.S. 449, 461 (1979)). It bears repeating here that the Plaintiffs must plead and prove a racially discriminatory intent or purpose to show a violation of the Equal Protection Clause. *Village of Arlington Heights*, 429 U.S. at 265.

Giving the Plaintiffs the benefit of every doubt, the facts alleged (as opposed to conclusions) demonstrate a disagreement about the merits of the State Board’s decision to assume authority over the LRSD, and a contention that the ADE and State Board should have done more to assist the LRSD. The facts alleged do not show that any member of the State Board or any employee of the ADE acted with the intent or purpose to discriminate.

Indeed, assuming the allegations of the Amended Complaint to be true, it might be said by some that the alleged deficiencies in the LRSD begged for change.

The Plaintiffs contend that black students and parents bear a disproportionate part of the burden of these deficiencies. It is equally, if not more, plausible on the facts alleged that the action of the State Board potentially benefits the parent and student Plaintiffs in this case.

**C. THE AMENDED COMPLAINT DOES NOT STATE A SECTION 1985 CLAIM AGAINST THE STATE DEFENDANTS.**

Section III of the Amended Complaint asserts a conspiracy claim, pursuant to 42 U.S.C. § 1985, alleging generally a conspiracy among the “State Actors.” Section III fails to state a claim for two reasons.

In order to prove the existence of a civil rights conspiracy under § 1985(3), the [plaintiff] must prove: (1) that the defendants did “conspire,” (2) “for the purpose of depriving, either directly or indirectly, any person or class of persons of equal protection of the laws, or equal privileges and immunities under the laws,” (3) that one or more of the conspirators did, or caused to be done, “any act in furtherance of the object of the conspiracy,” and (4) that another person was “injured in his person or property or deprived of having and exercising any right or privilege of a citizen of the United States.” 42 U.S.C. § 1985(3).

*Davis v. Jefferson Hospital Association*, 685 F.3d 675, 684 (8<sup>th</sup> Cir. 2012). The purpose element requires proof of a class-based invidiously discriminatory animus. *Id.* at 684-685. Because the Amended Complaint fails to state facts demonstrating intent or purpose to discriminate, there can be no cause of action under 42 U.S.C. § 1985.

Whether or not the Amended Complaint states an equal protection claim the Plaintiffs’ section 1985 claim fails as a matter of law because it relies exclusively on



acts of the ADE and the State Board. Amended Complaint Section III. The intra-corporate conspiracy doctrine dictates that a government entity cannot conspire with itself through its agents acting within the scope of their employment. *L.L. Nelson Enterprises, Inc. v. County of St. Louis, Mo.*, 673 F.3d 799, 812 (8<sup>th</sup> Cir. 2012). Because Plaintiffs' section 1985 claims rely exclusively on the conduct of state officers and agents it fails, as a matter of law, to state a claim.

**III. THE AMENDED COMPLAINT IS BARRED BY THE ELEVENTH AMENDMENT AND SOVEREIGN IMMUNITY TO THE EXTENT IT SEEKS RELIEF BASED ON ALLEGED FAILURES TO COMPLY WITH ARKANSAS LAW OR TO PROPERLY PERFORM ADMINISTRATIVE DUTIES**

The Amended Complaint is ostensibly couched in terms of an equal protection challenge, but in the end asks this Court to “void the takeover of the LRSD ... on the ground that the Arkansas Department of Education and the State Board of Education were without authority under their own rules ....” Amended Complaint at page 72, subparagraph (b). The Amended Complaint is replete with references to alleged failures of the ADE in administering federal programs and in utilizing available measures to improve the LRSD. Amended Complaint sections II(C), II(D), and II(E).

The State Defendants are immune from any suit that seeks relief based on state law:

A federal court's grant of relief against state officials on the basis of state law, whether prospective or retroactive, does not vindicate the supreme authority of federal law. On the contrary, it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law. Such a result conflicts

directly with the principles of federalism that underlie the Eleventh Amendment.

*Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 106 (1984). Thus, any claim that the Plaintiffs are entitled to relief because the ADE or the State Board did not comply with state law, or failed in some way to properly carry out administrative duties, is barred by sovereign immunity and the Eleventh Amendment to the U.S. Constitution.

#### **IV. THE ADE IS NOT SUBJECT TO SUIT**

The ADE, an agency of the State of Arkansas, is specifically named as a defendant. Amended Complaint at ¶ 58. As an agency of the State of Arkansas the ADE is not subject to suit in this Court. It is clear, of course, that in the absence of consent a suit in which the State or one of its agencies or departments is named as the defendant is proscribed by the Eleventh Amendment. *Pennhurst* 465 U.S. at 100. The Amended Complaint does not allege (nor could it) that the State of Arkansas has waived its immunity. Consequently, the ADE must be dismissed based upon the sovereign immunity of the State of Arkansas.

#### **V. COMMISSIONER KEY IS NOT A PROPER PARTY**

The Amended Complaint alleges that Commissioner of Education Johnny Key is sued in his official capacity as an individual “designated to serve, in effect as the LRSD School Board.” Amended Complaint at ¶ 59. The Plaintiffs have failed to

state a claim for which relief can be granted against Key because he does not serve “in effect” as the LRSD school board.

As Commissioner, Key is the administrative head of the ADE. The Commissioner’s responsibilities include performance of such “duties as are designated by the state board [of education] and by statute.” Ark. Code Ann. § 6-11-102(b)(3). The State Board directed the then Commissioner “to assume all authority of the [LRSD] board of directors as may be necessary for the day-to-day governance of the school district” pursuant to Ark. Code Ann. § 6-15-430. This assignment did not transform the Commissioner of Education into an official or employee of the LRSD. For this reason, the Amended Complaint states no claim against Commissioner Key.

Any claims the Plaintiffs may hold against the LRSD may be asserted directly against the district. Arkansas Code section § 6-13-102(a) provides that “[e]ach school district in the state shall be a body corporate, may contract and be contracted with, and may sue and be sued in its corporate name.” This includes (but is not limited to) lawsuits brought under 42 U.S.C. § 1983. *Stevenson v. Blytheville School Dist. No. 5*, 955 F.Supp.2d 955 (E.D. Ark. 2013), *appeal dismissed as moot*, 762 F.3d 765 (2014)(public school district established under the laws of Arkansas is amenable to suit under 42 U.S.C. § 1983). The LRSD, not Commissioner Key, is the appropriate defendant with respect to any claims related to the acts or omissions of the LRSD.

### **CONCLUSION**

The Amended Complaint alleges a wide variety of circumstances and numerous conclusions, but the allegations of fact, taken as true, do not individually or in the aggregate state an equal protection claim plausible on its face. At most the Amended Complaint demonstrates a controversy about the practices and needs of the LRSD and about the State's attempts to address them. The Eleventh Amendment to the United States Constitution withholds from the District Courts jurisdiction to decide these state law and policy issues. Because the Amended Complaint fails to state an equal protection claim the State Defendants should be dismissed. In addition, Key is entitled to dismissal because he is not a proper party on the facts alleged.

Respectfully submitted,  
LESLIE RUTLEDGE  
ATTORNEY GENERAL

By: /s/ Patrick Hollingsworth  
LEE RUDOFISKY, Solicitor General  
Arkansas Bar No. 2015105  
(501) 682-8090  
ROSALYN L. MIDDLETON, Assistant  
Attorney General  
Arkansas Bar No. 2001257  
(501) 682-8122  
PATRICK HOLLINGSWORTH, Assistant  
Attorney General  
Arkansas Bar No. 84075  
(501) 682-1051  
323 Center Street, Suite 200  
Little Rock, AR 72201-2610  
Facsimile: (501) 682-2591  
[lee.rudofsky@arkansasag.gov](mailto:lee.rudofsky@arkansasag.gov)  
[rosalyn.middleton@arkansasag.gov](mailto:rosalyn.middleton@arkansasag.gov)  
[patrick.hollingsworth@arkansasag.gov](mailto:patrick.hollingsworth@arkansasag.gov)

Attorneys for the State Defendants

**CERTIFICATE OF SERVICE**

I, Patrick Hollingsworth, hereby certify that on February 10, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which shall send notification of such filing to the following:

John W. Walker  
JOHN W. WALKER, P.A.  
1723 Broadway  
Little Rock, AR 72206  
501-374-3758  
501-374-4187 (facsimile)  
Email: [johnwalkeratty@aol.com](mailto:johnwalkeratty@aol.com)

Robert Pressman  
22 Locust Avenue  
Lexington, MA 02421  
781-862-1955  
Email: [ehpressman@verizon.net](mailto:ehpressman@verizon.net)

Austin Porter  
PORTER LAW FIRM  
323 Center Street  
Little Rock, AR 72201  
501-244-8200  
Email: [aporter5640@aol.com](mailto:aporter5640@aol.com)

Gale B. Stewart  
1723 Broadway  
Little Rock, AR 72206  
501-374-3758  
501-374-4187 (facsimile)  
Email: [letchworth1942@comcast.net](mailto:letchworth1942@comcast.net)

Christopher Heller (#81083)  
Friday, Eldredge & Clark  
400 West Capitol, Suite 2000  
Little Rock, AR 72201-3493  
(501) 370-1506  
[heller@fridayfirm.com](mailto:heller@fridayfirm.com)

/s/ Patrick Hollingsworth  
Patrick Hollingsworth

Arkansas Department of Education Rules Governing the  
Arkansas Comprehensive Testing, Assessment and Accountability Program (ACTAAP)  
and the Academic Distress Program  
September 2014

1.0 Regulatory Authority

- 1.01 These Rules shall be known as the Arkansas Department of Education Rules Governing the Arkansas Comprehensive Testing, Assessment and Accountability Program (ACTAAP) and the Academic Distress Program.
- 1.02 The State Board of Education promulgated these Rules pursuant to Ark. Code Ann. §§ 6-11-105, 6-15-401 et seq., 6-15-2009, and 25-15-204 and Acts 600, 1073, 1081 and 1429 of 2013.
- 1.03 These Rules reflect the decision of the United States Department of Education (US Ed) to grant flexibility to the Arkansas Department of Education (ADE) from certain provisions of the Elementary and Secondary Education Act (ESEA). As indicated throughout these Rules, certain provisions of these Rules shall only apply during time periods designated by the US Ed for which the ADE receives flexibility from certain provisions of ESEA.
- 1.04 These Rules include the applicable requirements formerly contained within the Arkansas Department of Education Rules Governing Public School End-of-Course Assessments and Remediation.

2.0 Purposes of Rules

- 2.01 To develop a single comprehensive testing, assessment and accountability program, which applies to and governs all public schools and public school districts in Arkansas.
- 2.02 To develop a single comprehensive testing, assessment and accountability program which utilizes the most current and effective testing, evaluation, and assessment research information designed to achieve the following purposes:
  - 2.02.1 Set clear academic standards that are periodically reviewed and revised;
  - 2.02.2 Establish professional development standards for all administrators, teachers and instructional support personnel;
  - 2.02.3 Establish expected achievement levels;
  - 2.02.4 Report on student achievement and other indicators;
  - 2.02.5 Provide evaluation data;

- 2.02.6 Recognize academic success and failure;
- 2.02.7 Apply awards and sanctions; and
- 2.02.8 Comply with current federal and state law and State Board rules and regulations.
- 2.03 To ensure that all students in the public schools of Arkansas have an equal opportunity to demonstrate grade-level and subject area academic proficiency through the application of knowledge and skills in the core academic subjects consistent with state curriculum frameworks, performance standards and assessments.
- 2.04 To improve student learning and classroom instruction and to support high academic standards for all students, including identifiable subgroups, by establishing the provisions, procedures and requirements for the student assessment program.
- 2.05 To require point-in-time intervention when it is determined that a student(s) is not performing at grade level or subject area academic proficiency.
- 2.06 To outline testing and assessment security and confidentiality requirements.
- 2.07 To establish a program to identify, evaluate, assist and advise public schools and public school districts in academic distress.
- 3.0 Definitions – For the purpose of these Rules, the following terms mean:
  - 3.01 “Academic Content Standards” – standards that are approved by the State Board of Education and that set the skills to be taught and mastery level for each grade and content area.
  - 3.02 “Academic Distress:”
    - 3.02.1 A classification assigned to any public school district:
      - 3.02.1.1 In which 49.5% or less of its students achieve proficient or advanced in math and literacy on the state-mandated criterion referenced assessments administered in that district for the most recent three (3) year period; or
      - 3.02.1.2 Has a Needs Improvement (Priority) school within the school district that has not made the progress required under the school’s Priority Improvement Plan (PIP).



3.02.2 A classification assigned to any public school:

- 3.02.2.1 In which 49.5% or less of its students achieve proficient or advanced in math and literacy on the state-mandated criterion referenced assessments administered in that district for the most recent three (3) year period; or
- 3.02.2.2 Is a Needs Improvement (Priority) school that has not made the progress required under the school's Priority Improvement Plan (PIP).

3.02.3 The ADE shall re-establish the thresholds listed in Sections 3.02.1 and 3.02.2 of these Rules when the Partnership for Assessment of Readiness for College and Careers (PARCC) assessments become fully operational.

3.03 "Academic Improvement Plan (AIP)" – a plan detailing supplemental or intervention and remedial instruction, or both, in deficient academic areas for any student who is not proficient on a portion or portions of the state-mandated Arkansas Comprehensive Assessment Program. Academic improvement plans shall be created and implemented by appropriate teachers, counselors, and any other pertinent school personnel. All academic improvement plans shall be reviewed annually and revised to ensure an opportunity for student demonstration of proficiency in the targeted academic areas on the next state-mandated Arkansas Comprehensive Assessment Program. A cumulative review of all academic improvement plans shall be part of the data used by the school in creating and revising its comprehensive school improvement plan. All academic improvement plans shall be subject to review by the Department of Education.

NOTE: For the purposes of these Rules, "Academic Improvement Plan (AIP)" and "Individualized Academic Improvement Plan (IAIP)" may be used interchangeably.

- 3.04 "ACT" – the ACT assessment for college placement administered by ACT, Inc.
- 3.045 "Adequate Yearly Progress" – the level of academic performance required of public schools or school districts on the state-mandated augmented criterion-referenced, or norm-referenced assessments and other indicators as required in the Arkansas Comprehensive Testing, Assessment, and Accountability Program, which shall comply with the Elementary and Secondary Education Act as reauthorized in the No Child Left Behind Act of 2001.
- 3.06 "Advanced Placement Test" – the test administered by the College Board for a high school preparatory course that incorporates the topics specified by the College Board on its standard syllabus for a given subject area and is approved by the College Board.

- 3.07 “Approved Early Reading Assessments” – Those assessments that identify students’ strengths and weaknesses in all of the elements of reading as described in the Report of the National Reading Panel.
- 3.08 “Approved Intensive Reading Program” – Programs of high-quality instruction that include the essential elements of reading described in the Report of the National Reading Panel.
- 3.09 “Annexation” – The joining of an affected school district or part of the school district with a receiving district under Ark. Code Ann. § 6-153-1401 et seq. or § 6-13-1601 et seq.
- 3.10 “Arkansas Comprehensive Assessment Program” –The testing component of Arkansas Comprehensive, Testing, Assessment and Accountability Program, which shall consist of: (1) developmentally appropriate, augmented, criterion-referenced, or norm-referenced assessments in kindergarten through grade twelve (K-12) as determined by the State Board; (2) Any other assessments as required by the State Board; 3)other assessments that are based on researched best practices as determined by qualified experts that would be in compliance with federal and state law; and (4) end-of-course examinations for designated grades and content areas, and the high school literacy assessment.
- 3.11 “Arkansas Comprehensive Testing, Assessment and Accountability Program” – a system of measurement and reporting designed to ensure that all students in the public schools of this state demonstrate academic achievement through the application of knowledge and skills in core academic subjects consistent with state curriculum frameworks and performance standards. During the time periods designated by the US Ed for which the ADE may receive flexibility from certain provisions of ESEA as set forth in Section 13.00 of these Rules, the measurement system will ensure that all students in the public schools of Arkansas demonstrate performance and growth toward College and Career Readiness.
- 3.12 “Arkansas Comprehensive School Improvement Plan (ACSIP)” – the individual school’s comprehensive plan developed by a local school team and based on priorities indicated by assessment and other pertinent data and designed to provide an opportunity for all students to demonstrate proficiency on all portions of the state-mandated Arkansas Comprehensive Assessment Program. This plan shall be reviewed annually by the district and monitored by the Arkansas Department of Education in accordance with Ark. Code Ann. § 6-15-426.
- 3.13 “Assessment” means an examination instrument designed to measure certain levels of knowledge; as measured by established requisite scale scores, for those academic courses that are the subject of end-of-course testing as required by these Rules.

- 3.14 “Augmented Test” – An assessment required by state statute, rule or regulation which combines both criterion-referenced and norm-referenced instruments.
- 3.15 “Awards” – financial or other recognition of a public school structured to recognize schools that demonstrate and maintain high performance over time and to recognize schools that demonstrate growth on the state-mandated indicators. Awards also can be used to highlight individual schools so that their practices can be adopted in other schools and districts across the state.
- 3.16 “Benchmarks/Grade-Level Benchmarks” – Academic Content Standards and/or grade-level statements of what a student should know and be able to do. The Grade-Level Benchmarks provide guidance to classroom teachers in planning instruction aligned with the Academic Content Standards.
- 3.17 “Board” or “State Board” – The Arkansas State Board of Education.
- 3.18 “College and career readiness” means the acquisition of the knowledge and skills a student needs to be successful in future endeavors, including:
  - 3.18.1 Successfully completing credit-bearing, first-year courses at a postsecondary institution; and
  - 3.18.2 Embarking on a chosen career.
- 3.19 “College and career readiness assessment” means a set of criterion-referenced assessments of a student’s acquisition of the knowledge and skills the student needs to be successful in future endeavors, including credit-bearing, first-year courses at a postsecondary institution, such as two-year or four-year college, trade school, or technical school, or to embark on a career.
- 3.20 “Consolidation” – The joining of two (2) or more school districts or parts of the school districts to create a new single school district under Ark. Code Ann. § 6-153-1401 et seq. or § 6-13-1601 et seq.
- 3.21 “Criterion-Referenced Test (CRT)” – an assessment required by state statute, rule or regulation which is designed by the State to measure student performance/achievement on the State’s Academic Content Standards.
- 3.22 “Department” or “ADE” – The Arkansas Department of Education.
- 3.23 “District Improvement Plan” – a district-wide plan coordinating the actions of the various comprehensive school improvement plans within a school district. The main focus of the district improvement plan shall be to ensure that all students demonstrate proficiency on all portions of state-mandated Arkansas Comprehensive Assessment Program.

- 3.24 “Early Intervention” – short-term, intensive, focused, individualized instruction developed from ongoing, daily, systematic diagnosis that occurs while a child is in the initial, kindergarten through grade one (K -1), stages of learning early reading, writing, and mathematical strategies to ensure acquisition of the basic skills and to prevent the child from developing poor problem-solving habits that become difficult to change. The goal is to maintain a student’s ability to function proficiently at grade level.
- 3.25 “Elementary School” – public school(s) having some combination of grades kindergarten through four (K – 4).
- 3.26 “Essential Elements – Early Reading” Comprehension – Ability to understand and communicate; Decoding and Word Recognition (Phonics) – Ability to match the letters of written language and the individual sounds of spoken language in order to read and write words; Fluency – Ability to read text accurately, and with expression, volume, phrasing, smoothness and appropriate pace; Phonemic Awareness – Ability to hear and manipulate the sounds of spoken language; Vocabulary – Ability to understand words and their meanings in order to communicate and comprehend effectively.
- 3.27 “Grade Level” – appropriate grade classification indicated by the performance of a student (or group of students) at the proficient or advanced level on state-mandated Arkansas Comprehensive Assessment Program tests.
- 3.28 “End-of-Course Assessment” – a criterion-referenced assessment taken during a course of study set by the State Board of Education:
- (a) to determine whether a student demonstrates, according to a requisite scale score established by rule of the State Board, attainment of sufficient knowledge and skills to indicate a necessary and satisfactory mastery of the subject level content in that end-of-course assessment; and
- (b) for which failure to meet that requisite scale score requires sufficient remediation before a student is entitled to receive full academic credit for the course.
- 3.29 “High School” –grades nine through twelve (9-12).
- 3.30 “High School Literacy Assessment” – an end-of-level literacy assessment given to all students in grade eleven (11).
- 3.31 “Individualized Academic Improvement Plan (IAIP)” – a written plan detailing supplemental or intervention and remedial instruction, or both, in deficient areas for any student who has not met the requisite scale score on an end-of-course assessment.

NOTE: For the purposes of these Rules, “Academic Improvement Plan (AIP)” and “Individualized Academic Improvement Plan (IAIP)” may be used interchangeably.

- 3.32 “Individualized Education Program (IEP)” – a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with 34 C.F.R. 300.320 through 300.324.
- 3.33 “Intensive Reading Improvement Plan (IRI)” – An intervention program for any K-2 student identified with substantial reading difficulties.
- 3.34 “International Baccalaureate Assessment” – an assessment administered by the International Baccalaureate Organization for a course offered under the International Baccalaureate Diploma Program.
- 3.35 “Longitudinal Tracking” –tracking individual student yearly academic achievement gains based on scheduled and annual assessments.
- 3.36 “Middle School” or “Middle Level”– grades five through eight (5 – 8).
- 3.37 “No Child Left Behind Act” – the No Child Left Behind Act of 2001 as signed into federal law on January 8, 2002.
- 3.38 “Norm-Referenced Test (NRT)” – an assessment required by state law, rule or regulation to measure the performance/achievement of Arkansas students relative to the achievement of students who comprised the norm or standardization group for a particular commercial instrument, which may include the assessments developed under the Partnership for Assessment of Readiness for College and Careers (PARCC).
- 3.39 “Parent” – a parent, parents, legal guardian, a person standing in loco parentis, or legal representative, as appropriate, of a student, or the student if the student is eighteen (18) years of age or older.
- 3.40 “Participation in Remediation” - The amount of student involvement required in a student academic improvement plan that addresses those deficiencies for that student.
- 3.41 “Pass Rate” – The pass rate for the Benchmark Exams and the developmental appropriate assessments for K – 2 shall be proficiency.
- 3.42 “Point-in-Time Intervention and Remediation” – intervention and remediation applied during the academic year upon the discovery that a student is not performing at grade level.
- 3.43 “Public School District/Public School” – those school districts and schools (including open-enrollment charter schools) created pursuant to Title 6 of the Arkansas Code and subject to the Arkansas Comprehensive Testing, Assessment and Accountability Program specifically excluding those schools or educational programs created by or receiving authority to exist

under §6-15-501; §9-28-205, and §12-29-301 through §12-29-310, or other provisions of Arkansas law.

- 3.44 “Reconstitution” – a reorganization intervention in the administrative unit or governing body of a public school district, including without limitation the suspension, reassignment, replacement, or removal of a current superintendent or the suspension, removal, or replacement of some or all of the current school board members, or both.
- 3.45 “Remediation” – a process of using diagnostic instruments to provide corrective, specialized supplemental instruction to help a student in grades two through four (2-4) overcome academic deficiencies. For students in grades five through twelve (5-12), remediation shall be a detailed, sequential set of instructional strategies, implemented to remedy any academic deficiencies indicated by below-basic or basic performance on the state-mandated augmented, criterion-referenced, or norm-referenced assessments. Remediation shall not interfere with or inhibit student mastery of current grade level academic learning expectations.
- 3.46 “Safe Harbor” – An alternate method of demonstrating Adequate Yearly Progress under the No Child Left Behind Act determined by decreasing the percent of students not performing at the proficient level on the Criterion Referenced Assessments by at least ten percent. Safe Harbor can only be applied if the school meets the secondary indicator condition and tests 95% or more of eligible students. Safe harbor shall not apply during the time periods designated by the US Ed for which the ADE may receive flexibility from certain provisions of ESEA as set forth in Section 13.00 of these Rules.
- 3.47 “Sanction” – intervention by the state to assist teaching and learning at a public school or a public school district that fails to meet expected performance goals on the state-mandated criterion-referenced assessments and/or other indicators.
- 3.48 “SAT” – the standardized college entrance examination administered by the College Board.
- 3.49 “School Improvement” – the initial classification applied to a school that fails to meet adequate yearly progress for two successive years. During the time periods designated by the US Ed for which the ADE may receive flexibility from certain provisions of ESEA, the classifications and interventions for schools in need of improvement shall be as set forth in Section 13.00 of these Rules.
- 3.50 “Secure Examination or Assessment” – an assessment instrument, materials or other student achievement evaluation method required by State statute, rule or regulation that is administered to assess student performance or achievement and takes place on the dates specified on the testing/assessment calendar developed by the Commissioner of the Department.

- 3.51 “Starting Point” – a specific figure for grade-level clusters K- 5, 6-8, and 9-12 in the content areas of literacy and mathematics which was derived by determining the school at the 20th percentile in the state based on total enrollment, among all schools ranked by the percentage of students at the proficient level, using data for the 2001-2002 school year or subsequent year for which there is a recalculation.
- 3.52 “Substantial Reading Deficiency” – a determination for first and second grade students who score in the Below Basic Category on the State Reading Assessment in the previous school year and for kindergarten students who are rated as Delayed in both oral communication and written language on the Uniform Reading Scale (URS).
- 3.53 Uniform School Readiness Screening” - uniform, objective evaluation procedures that are geared to either kindergarten or first grade, as appropriate, and developed by the State Board and specifically formulated for children entering public school for the first time.

#### 4.0 Academic Content Standards

- 4.01 The Board shall establish clear, specific, challenging academic content standards, which define what students shall know and be able to do in each content area. Instruction in all public schools shall be based on these academic content standards.
- 4.02 The Board shall establish a schedule for periodic review and revision of academic content standards to ensure that Arkansas academic content standards are rigorous and equip students to compete in the global workforce. For each review, the Department will provide the following:
  - 4.02.1 Study and consideration of academic content standards from across the nation and international levels as appropriate;
  - 4.02.2 Study and consideration of evaluations from national groups or organizations as appropriate;
  - 4.02.3 Revisions by committees composed of Arkansas teachers and instructional supervisory personnel from public schools, assisted by teachers from institutions of higher education;
  - 4.02.4 Review and input by the Departments of Higher Education and Career Education as well as community members; and
  - 4.02.5 Public dissemination of revised academic content standards at the Board meeting and on the Department web site.
- 4.03 The Board shall provide for external review of academic content standards by nationally recognized content experts in the discipline/area under consideration.

- 4.04 The Board shall establish a clear, concise system of reporting the academic performance of each school on the state's mandated augmented criterion-referenced or norm-referenced assessments, that conform with the requirements of current state and federal law.
- 4.05 Academic standards for every level of the grades kindergarten through twelve (K-12) education system and education financial resources shall be aligned with student performance expectations at each level of the grades kindergarten through twelve (K-12) education system.
- 4.06 The State Board voted to participate in the Common Core State Standards for English Language Arts (ELA) and Mathematics in July 2010. The Common Core State Standards can be found at:

<http://www.corestandards.org/the-standards>

The Common Core State Standards for ELA and Mathematics, as they existed on July 9, 2012, are hereby incorporated into these Rules by reference.

## 5.0 Arkansas Comprehensive Assessment Program

The Board shall establish a statewide assessment system for grades K through 12 to be implemented in each public school in the State by the Department. All districts shall comply with the requirements of the assessment system. Failure to do so shall result in a recommendation to the Board for Probationary status or loss of accreditation as set out in the Standards for Accreditation, or for other intervention or sanction as allowed or required by these rules, state or federal law. The Arkansas Department of Education shall transition to the PARCC assessments by the 2014-2015 school year.

School district boards of directors shall not establish school calendars that jeopardize or limit the valid testing and comparison of student learning gains.

Every student attending an Arkansas public school shall participate in the statewide program of educational assessments required in Ark. Code Ann. §§ 6-15-419, 6-15-433, 6-15-2009 and established by the State Board.

### 5.01 Kindergarten, Grade One and Grade Two

- 5.01.1 The Board shall adopt and the Department shall implement a developmentally appropriate uniform school readiness screening to validate a child's school readiness as part of a comprehensive evaluation design. The Department shall require that all school districts administer the uniform school readiness-screening to each kindergarten student in the district upon the student's entry into kindergarten. Children who enter public school for the first time in first grade must be administered the uniform school readiness screening developed for use in the first grade.



- 5.01.2 Grades 1 and 2: The Department shall select a developmentally appropriate assessment to be administered to all students in first grade and second grade in reading and mathematics.
- 5.02 Criterion-Referenced Tests - Grades three through eight and high school
- 5.02.1 The Department shall develop and implement an augmented, criterion-referenced, or norm-referenced assessment as follows: (1) Grades three (3) through eight (8) which measures application of knowledge and skills in English language arts and mathematics and science in Grades 5 and 7; (2) End-of-Course testing in Algebra I, Geometry and Biology; (3) High school literacy that measures application of knowledge and skills in English language arts; and (4) social studies as funds are available and approved by the State Board of Education.
- 5.02.2 All criterion-referenced assessments shall be based on the Arkansas Curriculum Frameworks and Academic Content Standards.
- 5.02.3 All students in Grades 3 – 8 as well as all students enrolled in courses for which End-of-Course assessments are administered, shall take the criterion-referenced assessments on the testing dates established by the Department. This requirement includes the high school literacy assessment. This authority shall include field testing and any other requirements needed to establish fully-developed assessment instruments and methodologies.
- 5.02.4 Each school district shall administer augmented criterion-referenced assessments to its students according to procedures established by the Commissioner of Education and specified in the applicable assessment administration materials.
- 5.02.5 Accounting for Students with Disabilities and Limited English Proficient Students
- 5.02.5.1 Each student in the specified grades or courses shall participate as outlined in the test coordinator's handbook. A student shall participate in the Arkansas Alternate Assessment Program only upon the formal determination of the student's individual education program (IEP) committee, as documented in the student's individual educational program.
- 5.02.5.2 The Individual Education Program (IEP) committee shall determine whether participation in the standard state assessment program is appropriate for students with IEPs. Students with disabilities for whom it is deemed inappropriate to take the standard state assessments (augmented

benchmarks, End-of-Course, and High School Literacy) with the established accommodations shall participate in the Arkansas Alternate Assessment Program following the guidelines established by the Board.

5.02.5.3 Scores for students with disabilities shall be reported with other assessment results from the school.

5.02.5.4 English Learners (ELs) shall participate in all required criterion referenced assessments. ELs may access state approved accommodations provided such accommodations have been recommended by the language proficiency assessment committee and are used regularly in classroom instruction and assessment.

5.02.5.5 ELs with less than one year in a U.S. school will not be required to take the State required literacy benchmark test or the High School Literacy Assessment. Districts may exercise this option. ELs must take the appropriate mathematics and science tests.

#### 5.02.6 End-of-Course Assessments

5.02.6.1 Every student attending an Arkansas public school in Arkansas shall participate in the actual course and statewide program of end-of-course assessments as designated by the State Board.

5.02.6.2 Every student required to participate in the statewide program of educational assessments required by Ark. Code Ann. § 6-15-2009 shall not receive credit on his or her transcript for Algebra, Geometry, Biology, or any other course that requires an end-of-course assessment for which the student has not received the requisite scale score on a general end-of-course assessment, until the student is identified as having participated in remediation through an individual academic improvement plan.

5.02.6.3 The individual academic improvement plan shall include remediation activities focuses on those areas for need for students who failed to meet the requisite score on an end-of-course assessment.

5.02.6.4 For the purpose of an end-of course assessment, remediation does not require that a student retake

a subsequent end-of-course assessment in order to receive academic credit for a course.

- 5.02.6.5 The end-of-course assessment program shall be maintained in such a manner as to meet the requirements of state and federal law, including the full range of students with disabilities.
- 5.02.6.6 The superintendent of each public school district shall be responsible for the proper administration of Ark. Code Ann. § 6-15-2009 and these Rules to implement the requirements of Ark. Code Ann. § 6-15-2009.
- 5.02.6.7 To the extent that a public school district is determined to have knowingly failed to administer the provisions of applicable law or these Rules, the superintendent's license shall be subject to probation, suspension, or revocation under Ark. Code Ann. § 6-17-410.
- 5.02.6.8 The ADE shall establish and publish by Commissioner's Memo each school year an end-of-course assessment cycle for end-of-course assessments that shall be strictly followed by school districts unless a school district has received a written waiver from the ADE because of a catastrophic occurrence.
- 5.02.6.9 The ADE shall prepare and develop the form of end-of-course assessments along with any and all documents, manuals, forms and protocols necessary for the proper administration, completion, submission and scoring of the assessment. The assessment shall be composed of sections that may include both multiple choice and open-response test items.
- 5.02.6.10 All Arkansas laws and ADE rules governing test administration, security and confidentiality that apply to examinations given to Arkansas public schools from K-12 grade shall apply in full to all end-of-course assessments and alternative assessments set forth under Ark. Code Ann. § 6-15-2009.
- 5.02.6.11 The ADE shall take steps to ensure that the end-of-course assessments are properly aligned with state standards and that professional development training is available for teachers teaching courses for which an end-of-course assessment is required.

- 5.02.6.12 In administering the assessments under Ark. Code Ann. § 6-15-2009 and these Rules, the school district shall provide state-approved accommodations for students with state-recognized disabilities and for English language learners as allowed by law and ADE rules.
- 5.02.6.13 The ADE shall establish and promulgate by way of these Rules the requisite scale score requirement for any Arkansas public school student taking each end-of-course assessment and alternative assessment.

#### 5.03 Norm-Referenced Tests

- 5.03.1 The Board shall adopt a norm-referenced test to be administered in grade 3 through grade 9 in mathematics and reading and in science at grades 5 and 7, which shall be administered by the Department annually.
- 5.03.2 Each school district shall administer the norm-referenced tests to its students according to procedures established by the Department and specified in the applicable test administration materials.

#### 5.04 National Assessment of Educational Progress

- 5.04.1 Selected schools shall participate in any and all components of the National Assessment of Educational Progress (NAEP).
- 5.04.2 Any school that fails to participate in the administration of any NAEP assessment shall be reported to the Board and may be subject to probationary status as set out in the Standards for Accreditation.

#### 5.05 Test Administration

- 5.05.1 The Department shall establish mandatory training sessions for local district testing coordinators and other appropriate school personnel to ensure understanding of the administration of assessments and effective use of assessment reporting data to improve classroom instruction and learning to provide program evaluation;
- 5.05.2 The superintendent or his/her designee in each school district shall be responsible for coordinating all local assessment activities including:
  - 5.05.2.1 Scheduling testing times of all affected campuses according to the testing calendar developed by the Department;

5.05.2.2 Ensuring that security is maintained as specified in the appropriate testing administration materials;

5.05.2.3 Ensuring that all district personnel involved in the testing have been properly trained as specified by the Department;

5.05.2.4 Ensuring that all testing instruments are administered to all students according to the procedures established by the Commissioner of Education and specified in the applicable assessment administration materials;

5.05.2.5 Ensuring that all assessment documents and student identification information are properly and accurately coded;

5.05.2.6 Attesting whether ALL students have participated in the appropriate grade-level assessment(s); and

5.05.2.7 Recommending for adoption by local school boards a school calendar that in no way jeopardizes or limits the valid testing and comparison of students' learning gains.

5.05.3 The appropriate test administration materials shall specify any allowable accommodations available to students participating in the administration of standard state assessments.

5.05.4 All students enrolled in a State-tested grade shall be accounted for in the Arkansas Comprehensive Assessment Program.

5.06 A Technical Advisory Committee composed of nationally-recognized testing experts and psychometricians shall be selected by the Commissioner of Education and shall advise the Department in all technical aspects of the assessment system.

5.07 Test Security and Confidentiality

5.07.1 Violation of the security or confidential integrity of any test or assessment is prohibited.

5.07.2 The Board shall sanction a person who engages in conduct prohibited by this section. Sanctions shall be considered and imposed in compliance with the Department's rules Governing Alleged Testing Improprieties or in the Department's Rules Governing Background Checks and License Revocation, as appropriate. Additionally, the Board may sanction a school district or school, or both, in which conduct prohibited in this section occurs. Sanctions imposed by the Board may include without limitation one (1) or more of the following:

5.07.2.1 Revocation, suspension, or probation of an individual's license,

- 5.07.2.2 Issuance of a letter of reprimand to a licensed individual to be placed in his or her state ~~personnel~~ professional licensure file;
  - 5.07.2.3 Additional training or professional development to be completed by a licensed individual within the time specified;
  - 5.07.2.4 Additional professional development to be administered by the school district or open-enrollment public charter school to all licensed school district personnel involved in test administration within the time specified;
  - 5.07.2.5 Issuance of a letter of warning to the school district or open-enrollment public charter school; and
  - 5.07.2.6 Establishment of a school district or open-enrollment public charter school plan containing strict test security guidelines that will implement procedures to ensure the security and confidential integrity of all assessment instruments.
  - 5.07.2.7 Professional development required pursuant to this section as a result of violating test security or confidentiality may be in addition to professional development required for licensure.
- 5.07.3 Procedures for maintaining the security and confidential integrity of all testing and assessment instruments and procedures shall be specified in the appropriate test or assessment administration instructions. Conduct that violates the security or confidential integrity of a test or assessment is defined as any departure from either the requirements established by the Commissioner of Education for the administration of the assessment or from the procedures specified in the applicable test administration materials. Conduct of this nature may include, but is not limited to, the following acts and omissions:
- 5.07.3.1 Viewing secure assessment materials;
  - 5.07.3.2 Duplicating secure assessment materials;
  - 5.07.3.3 Disclosing the contents of any portion of secure assessment materials;
  - 5.07.3.4 Providing, suggesting, or indicating to an examinee a response or answer to any secure assessment items;

- 5.07.3.5 Aiding or assisting an examinee with a response or answer to any secure assessment item;
- 5.07.3.6 Changing or altering any response or answer of an examinee to a secure assessment item;
- 5.07.3.7 Failing to follow the specified testing procedures or to proctor students;
- 5.07.3.8 Failing to administer the assessment on the designated testing dates;
- 5.07.3.9 Encouraging or assisting an individual to engage in the conduct described herein;
- 5.07.3.10 Failing to report to the appropriate authority that an individual has engaged in conduct set forth in this section;
- 5.07.3.11 Failing to follow the specified procedures and required criteria for alternate assessments; or
- 5.07.3.12 Failing to return the secured test booklets to the testing company in a timely manner.

5.07.4 The superintendent of each school district shall develop procedures to ensure the security and confidential integrity of all assessment instruments and test items. The superintendent shall be responsible for immediately notifying the Department in writing of conduct that violates the security or confidential integrity of an examination or assessment.

## 6.0 Student Performance Levels

- 6.01 The Board shall establish four (4) performance levels for each criterion-referenced assessment administered as part of ACTAAP. The Board shall establish five (5) performance levels for the Alternate Assessment for Students with Disabilities as part of ACTAAP. Those performance levels shall be: (1) Not Evident; (2) Emergent; (3) Supported Independence; (4) Functional Independence; and (5) Independent. Performance levels shall be established for mathematics, reading/language arts and science independently. Additionally, the Board shall establish a pass/proficiency rate for each end-of-course assessment.
- 6.02 The Board shall establish four (4) performance levels for Grades K-2 for the norm-referenced assessment administered as part of the Arkansas Comprehensive Assessment Program for reading and mathematics. The following numerical scores define those performance levels.

Mathematics Norm Referenced Assessment standard score cut scores*				
Grade	Below Basic	Basic	Proficient	Advanced
K	0-120	121-128	129-136	137-400
1	0-134	135-146	147-159	160-400
2	0-148	149-164	165-181	182-400

\*Lowest possible standard score value is 80

Reading Norm-Referenced Assessment standard score cut scores*				
Grade	Below Basic	Basic	Proficient	Advanced
K	0-119	120-127	128-137	138-400
1	0-136	137-145	146-158	159-400
2	0-153	154-165	166-182	183-400

\*Lowest possible standard score value is 80

6.03 The following numerical scores define the performance levels on the criterion-referenced assessments and on the Alternate Assessments for Students with Disabilities for Not Evident, Emergent, Supported Independence, Functional Independence and Independent. Functional Independence and Independent are considered to be grade level.

Mathematics Criterion Referenced Assessments (Augmented Benchmark Exams) Scale Score Ranges				
Grade	Below Basic	Basic	Proficient	Advanced
3	0 - 408	409 – 499	500 - 585	586 & above
4	0 - 494	495 – 558	559 - 639	640 & above
5	0 - 543	544 – 603	604 - 696	697 & above
6	0 - 568	569 – 640	641 - 721	722 & above
7	0 - 621	622 – 672	673 - 763	764 & above
8	0 - 654	655 – 699	700 - 801	802 & above

Literacy Criterion Referenced Assessments (Augmented Benchmark Exams) Scale Score Ranges				
Grade	Below Basic	Basic	Proficient	Advanced
3	0 - 329	330 - 499	500 - 653	654 & above
4	0 - 353	354 - 558	559 - 747	748 & above
5	0 - 381	382 - 603	604 - 798	799 & above
6	0 - 416	417 - 640	641 - 822	823 & above
7	0 - 425	426 - 672	673 - 866	867 & above
8	0 - 506	507 - 699	700 - 913	914 & above

Science Criterion Referenced Assessments (Augmented Benchmark Exams) Scale Score Ranges				
Grade	Below Basic	Basic	Proficient	Advanced
5	0 - 153	154 - 199	200 - 249	250 & above
7	0 - 151	152 - 199	200 - 249	250 & above



<b>End-of-Course Algebra I Scale Score Ranges</b>			
Below Basic	Basic	Proficient	Advanced
0 - 151	152 - 199	200 - 249	250 & above

<b>End-of-Course Geometry Scale Score Ranges</b>			
Below Basic	Basic	Proficient	Advanced
0 - 151	152 - 199	200 - 249	250 & above

<b>End-of-Course Biology Scale Score Ranges</b>			
Below Basic	Basic	Proficient	Advanced
0 - 145	146 - 199	200 - 249	250 & above

<b>Grade 11 Literacy Scale Score Ranges</b>			
Below Basic	Basic	Proficient	Advanced
0 - 168	169 - 199	200 – 227	228 & above

<b>Mathematics Alternate Assessment for Students with Disabilities Scale Score Ranges</b>					
Grade	Not Evident	Emergent	Supported Independence	Functional Independence	Independent
3	520 - 672	673 - 703	704 – 708	709 - 723	724 - 733
4	523 - 673	674 - 707	708 – 712	713 - 721	722 - 736
5	545 - 674	675 - 708	709 – 713	714 - 725	726 - 733
6	535 - 677	678 - 708	709 – 714	715 - 722	723 - 731
7	478 - 675	676 - 705	706 – 713	714 - 720	721 - 731
8	484 - 697	698 - 717	718 – 725	726 - 727	728 - 738

<b>Literacy Alternate Assessment for Students with Disabilities Scale Score Ranges</b>					
Grade	Not Evident	Emergent	Supported Independence	Functional Independence	Independent
3	487- 663	664 - 685	686 – 710	711 - 730	731 - 734
4	503 - 672	673 - 692	693 – 712	713 - 727	728 - 733
5	545 - 664	665 - 692	693 – 717	718 - 730	731 - 735
6	518 - 637	638 - 684	685 – 709	710 - 721	722 - 732
7	464 - 620	621 - 674	675 – 708	709 - 722	723 - 736
8	442 - 622	623 - 690	691 – 719	720 - 726	727 - 742

<b>Science Alternate Assessment for Students with Disabilities Scale Score Ranges</b>					
Grade	Not Evident	Emergent	Supported Independence	Functional Independence	Independent
5	563 - 700	701 - 718	719 - 723	724 - 730	731 - 736
7	490 - 670	671 - 688	689 - 705	706 - 720	721 - 733

<b>Grade 9 Mathematics Alternate Assessment for Students with Disabilities</b>				
<b>Scale Score Ranges</b>				
Not Evident	Emergent	Supported Independence	Functional Independence	Independent
0 - 99	100 -149	150 -199	200 - 249	250 - 300

<b>Science Grade 10 Alternate Assessment</b>				
<b>Scale Score Ranges</b>				
Not Evident	Emergent	Supported Independence	Functional Independence	Independent
486 - 600	601 - 664	665 - 692	693 - 715	716 - 742

<b>Grade 11 Literacy Alternate Assessment for Students with Disabilities</b>				
<b>Scale Score Ranges</b>				
Not Evident	Emergent	Supported Independence	Functional Independence	Independent
483 - 595	596 - 655	656 – 680	681 - 692	693 - 740

## 7.0 Student Accountability

- 7.01 By the year 2013-2014 all students are expected to perform at the proficient level or above.
- 7.02 Students identified as failing to achieve at the proficient level on a) the state mandated CRT (as referenced in Section 6.04 tables: Mathematics Criterion Referenced Assessments, Science Criterion Referenced Assessments, Literacy Criterion Referenced Assessments), b) students in grade K scoring delayed on either written language or oral communications and scoring delayed in mathematics on the state mandated uniform readiness screening (as referenced in Section 3.46 Uniform School Readiness Screening); and c) students in grades 1 and 2 not scoring proficient on the state mandated NRT(as referenced in Section 6.02 tables, Mathematics Norm Referenced Assessment standard score cut scores and Reading Norm-Referenced Assessment standard score cut scores), shall be evaluated by school personnel, who shall jointly develop a remediation plan with the student's parents. The remediation plan (AIP or if appropriate IRI) will assist the student in achieving the expected standard and will describe the parent's role and responsibilities as well as the consequences for the student's failure to participate in the plan.
- 7.02.1 The AIP shall be prepared using the format designed by the Department of Education. However, the local school may adjust the format as deemed necessary.
- 7.02.2 The AIP shall be developed cooperatively by appropriate teachers and/or other school personnel knowledgeable about the student's performance or responsible for the remediation in consultation with the student's parents. An analysis of student strengths and

deficiencies based on test data and previous student records shall be available for use in developing the plan. The plan shall be signed by the appropriate school administrator and the parent/guardian.

- 7.02.3 The AIP should be flexible, should contain multiple remediation methods and strategies, and should include an intensive instructional program different from the previous year's regular classroom instructional program. Examples of strategies and methods include, but are not limited to, computer assisted instruction, tutorial, extended year, learning labs within the school day, Saturday school, double blocking instruction in deficient areas during the school day, extended day etc.
- 7.02.4 The AIP shall include formative assessment strategies and shall be revised periodically based on results from the formative assessment.
- 7.02.5 The AIP shall include standards-based supplemental/remedial strategies aligned with the child's deficiencies.
- 7.02.6 A highly qualified teacher and/or a highly qualified paraprofessional under the guidance of a highly qualified teacher shall provide instructional delivery under the AIP.
- 7.02.7 The AIP should contain an implementation timeline that assures the maximum time for remedial instruction.
- 7.02.8 AIPs should be individualized; however, similar deficiencies based on test data, may be remediated through group instruction.
- 7.02.9 In any instance where a student with disabilities identified under the Individuals with Disabilities Education Act has an Individualized Education Program (IEP) that already addresses any academic area or areas in which the student is not proficient on state-mandated augmented, criterion-referenced, or norm-referenced assessments, the individualized education program shall serve to meet the requirement of an AIP.
- 7.03 Retention for failure to participate in the Academic Improvement Plan
  - 7.03.1 The public school district where the student is enrolled shall notify the student's parent, guardian, or caregiver of the parent's role and responsibilities as well as the consequences for the student's failure to participate in the plan. This notice may be provided via student handbooks issued to students.
  - 7.03.2 A student in grades three (3) through eight (8), identified as not meeting the requisite scale score on the criterion-referenced assessment and failing to participate in the subsequent AIP shall be retained and shall not be promoted to the next appropriate

grade until the student is deemed to have participated in the AIP or the student passes the benchmark assessment for the current grade level in which the student is retained. The local district shall determine the extent of the required participation in remediation as set forth in the student academic improvement plan.

- 7.03.3 Any student required to take an end-of-course assessment who is identified as not meeting the requisite scale score for a particular assessment shall participate in the remediation activities as required by the student's individualized AIP in the school year that the assessment results are reported in order to receive academic credit on his or her transcript for the course related to the end-of-course assessment.

7.03.3.1 The individualized AIP shall include remediation activities focused on those areas in which a student failed to meet the requisite scale score of an end-of-course assessment.

7.03.3.2 A student who is identified as not meeting the requisite scale score for an end-of-course assessment shall not receive academic credit on his or her transcript for the courses related to the end-of-course assessment until the student is identified as having participated in remediation through an individualized AIP.

- 7.03.4 Remedial activities and instruction provided during high school shall not be in lieu of English language arts, mathematics, science, history or other core courses required for graduation.

- 7.03.5 Any student who does not score at the Proficient level on the criterion-referenced assessments in English language arts and mathematics shall continue to be provided with remedial or supplemental instruction until the expectations are met or the student is not subject to compulsory school attendance.

- 7.03.6 Any student that has an AIP and fails to remediate, but scores at the Proficient level on the criterion-referenced assessments, shall not be retained.

- 7.03.7 Students not proficient on the High School Literacy Test shall participate in a remediation program.

- 7.03.8 The State Board may require remediation activities and an individualized academic improvement plan for a student in grade eleven (11) or below who does not meet the requisite scale score for a particular college and career readiness measurement.

7.03.8.1 The State Board may require that the individualized academic improvement plan include one (1) or more opportunities for a student to retake the measurement.

7.03.8.2 For the purpose of a college and career readiness measurement, remediation shall not require that a student pass a subsequent college and career readiness measurement in order to graduate from an Arkansas high school.

- 7.04 The results of end-of-course assessments shall become a part of each student's transcript or permanent record. Each course for which a student completes the ~~general~~ end-of-course assessment shall be recorded with the performance level (advanced, proficient, basic or below-basic).
- 7.05 Each year the ADE shall make public item and task prototypes for the English language arts and mathematical assessments required by these rules or a selection of actual items and tasks from the most recent assessments.
- 7.06 The Department shall implement a statistical system that shall provide the best analysis of classroom, school, and school district effects on student progress based on established, value-added longitudinal calculations, which shall measure the difference in a student's previous year's achievement compared to the current year achievement for the purposes of improving student achievement, accountability, and recognition.
- 7.07 The approach used by the Department shall be in alignment with federal statutes and developed in 2004-2005 to collect data to allow research and evaluation of student achievement growth models.
- 7.08 The approach shall include value-added longitudinal calculations with sufficient transparency in the model's conception and operation to allow others in the field to validate or replicate the results and an assessment of the model's accurateness in relation to other models.
- 7.09 Reading Deficiency for Students in Kindergarten through Grade Two
  - 7.09.1 Any student who exhibits a substantial deficiency in reading, based upon statewide assessments conducted in grades kindergarten through two (K-2), or through teacher observations, shall be provided intensive reading instruction utilizing a scientifically-based reading program. The intensive instruction shall systematically, explicitly, and coherently provide instruction in the five essential elements of reading as defined in Section 3.23. The student shall continue to be provided with intensive reading instruction until the reading deficiency is corrected.
  - 7.09.2 The State Board of Education established performance levels for kindergarten, grade 1 and grade 2 that define substantial difficulties in reading based on the state-mandated, developmentally appropriate assessment. The state-mandated Uniform Screening Readiness (USR) instrument shall be used to determine substantial reading difficulty for kindergarten students.

- 7.09.3 All kindergarten students exhibiting substantial difficulties in reading will be evaluated by school personnel for the purpose of diagnosing specific reading difficulties. This evaluation will occur within 30 days of receiving the USR results.
- 7.09.4 Within 30 days of the beginning of school, grade 1 and grade 2 students exhibiting substantial difficulties in reading will be evaluated by school personnel for the purpose of diagnosing specific reading difficulties. However, in those school years in which the State Board of Education shall revise the performance levels schools shall be allowed 30 days from the date of the final approval to conduct the evaluation.
- 7.09.5 The evaluation shall include the Dynamic Indicators of Basic Early Literacy Skills (DIBELS).
- 7.09.6 School personnel shall develop an Intensive Reading Improvement plan (IRI) that describes the intervention program for any student identified with substantial reading difficulty. The IRI shall be developed cooperatively by appropriate teachers and/or other school personnel knowledgeable about the student's performance or responsible for remediation.
- 7.09.7 The IRI shall contain an implementation timeline that assures the maximum time for remedial instruction. The intervention shall occur during the regular school day whenever possible, but may include extended day when appropriate. The intervention shall supplement, and not supplant, core classroom instruction.
- 7.09.8 The IRI shall include valid and reliable progress monitoring assessments to measure student growth toward the grade level benchmarks in each essential element of reading.
- 7.09.9 The intensive reading instruction provided under the IRI shall utilize strategies that are aligned with scientifically-based reading research.
  - 7.09.9.1 The intensive instruction shall systematically, explicitly and coherently provide instruction in the five essential areas of reading. The intensity and focus of the instruction shall be based on the evaluation results, teacher observation, and data from progress monitoring assessments. The intervention plan shall be revised periodically to reflect student needs as indicated on progress monitoring assessments.
  - 7.09.9.2 The IRI should be individualized; however, similar deficiencies may be remediated through group instruction.

7.09.9.3 A highly qualified teacher and/or a highly qualified paraprofessional under the guidance of a highly qualified teacher shall provide instruction under the IRI.

7.09.9.4 The intervention shall continue until the child has reached grade level benchmarks in all essential areas of reading.

7.09.10 Student achievement in each of the essential elements shall be monitored monthly after students complete the intervention. Students who are not meeting current expectations shall be provided additional interventions.

7.09.11 In any instance where a student with disabilities identified under the Individuals with Disabilities Act has an IEP that already addresses reading deficiencies, the individual education program shall serve to meet the requirements of the IRI.

7.10 The parent or guardian of any student identified with a substantial reading deficiency shall be notified in writing to include the following:

7.10.1 That the child has been identified as having a substantial deficiency in reading;

7.09.2 A description of the current services that are provided to the child; and,

7.09.3 A description of the proposed supplemental instructional services and supports that will be provided to the child that are designed to remediate the identified area of reading deficiency.

## 8.0 School Accountability

NOTE: Consult Section 13.00 of these Rules for applicable ESEA flexibility provisions as approved by the US Ed on June 29, 2012.

8.01 The Department of Education shall provide analyses of data produced by the Arkansas Comprehensive Assessment Program and other reliable measures of student learning to determine classroom, school, and school district academic performance.

8.02 Student performance trend data shall be included in the components used in developing objectives of the school improvement plan, internal evaluations of instructional and administrative personnel, assignment of staff, allocation of resources, acquisition of instructional materials and technology, performance-based budgeting, and assignment of students into educational programs of the local school program.

8.03 Each school shall develop one (1) Arkansas Comprehensive, School Improvement Plan (ACSIP) focused on student achievement. This requirement is intended to focus the school and school district annually on the school's performance rate data for the purposes of improving

student performance based on data and the performance of students on the state assessment system.

- 8.04 The purpose of ACSIP is to provide equal opportunity for all students, including identifiable subgroups, to meet the expected performance rate levels established by the Board on all State assessments.
- 8.05 Consistent with the No Child Left Behind Act, each school must make adequate yearly progress (AYP), based primarily on the administration of the criterion-referenced assessments described in Section 5.02. In order to make AYP, a school or school district must—
- Demonstrate that at least 95 percent of all students and of students in each applicable subgroup, as provided in Section 8.06, at the tested grade levels, participated in the assessments;
  - Meet or exceed the annual measurable performance levels described in Section 9.0, based on the percentages of students scoring proficient or above on the assessments, overall and for each applicable subgroup; or alternatively, if the total group or any subgroup does not meet the annual measurable performance levels, demonstrate that the percentage of students in that subgroup who did not meet the proficient level for that year decreased by 10 percent of that percentage from the preceding school year and that the subgroup made progress on one additional academic indicator; and
  - Show progress for all students on an additional academic indicator, which shall be graduation rate for high schools and percent attendance for elementary and middle schools.
- 8.06 The following subgroups must be included in the school/school district data disaggregation:
- 8.06.1 Students with Disabilities;
- 8.06.2 Students who are English Language Learners;
- 8.06.3 Economically Disadvantaged Students; and
- 8.06.4 Ethnic Subgroups;
- 8.06.4.1 Caucasian
  - 8.06.4.2 African American
  - 8.06.4.3 Hispanic
- 8.07 A school must meet AYP criteria overall and for each of these subgroups that meets the minimum group size as determined by the Department of Education and approved by the U.S. Department of Education.



- 8.08 The Department will determine AYP separately for mathematics and literacy, using appropriate statistical treatments. Based on the single statewide starting point described in this section, annual performance levels assure that ALL students will reach proficient by school year 2013-2014.
- 8.09 The Department will determine for each school in the state the percent of students performing at the proficient or advanced levels. This percentage will be determined by computing the sum of students proficient or advanced for the current year or the most recent three years across each grade for which there is a criterion-referenced assessment. That sum is divided by the total number of students assessed for that year or across those three years and grades. This number shall include students taking alternate assessments. The percentage shall be determined separately for mathematics and reading/literacy.
- 8.10 The AYP starting point regarding percent proficient on state assessments will be determined for grade-level clusters K- 5; 6 – 8; and 9 – 12 and separately for mathematics and reading/literacy.
- 8.11 The AYP starting point will be determined by ranking each school within the grade-level by the percent proficient. Additionally, the ranking will include the total student enrollment for those grades using October 1, 2002, data or October 1 of a subsequent year for which there is a recalculation.
- 8.12 The goal of NCLB is for all students to be proficient in language arts and math by 2014. Therefore, the Department of Education will determine the “starting point” for AYP as set forth in Section 3.44 above.
- 8.13 The following table establishes the starting point and projected performance level for each year of the twelve years addressed by the No Child Left Behind Act.

#### **Calculating AYP and Annual Expected Performance Levels**

	K-5 Math	K-5 Literacy	6-8 Math	6-8 Literacy	9-12 Math	9-12 Literacy
Year 05-06	40.00	42.40	29.10	35.20	29.20	35.50
Year 06-07	47.50	49.60	37.96	43.30	38.05	43.56
Year 07-08	55.00	56.80	46.83	51.40	46.90	51.63

Year 08-09	62.50	64.00	55.69	59.50	55.75	59.69
Year 09-10	70.00	71.20	64.55	67.60	64.60	67.75
Year 10-11	77.50	78.40	73.41	75.70	73.45	75.81
Year 11-12	85.00	85.60	82.28	83.80	82.30	83.88
Year 12-13	92.50	92.80	91.14	91.90	91.15	91.94
Year 13-14	100.00	100.00	100.00	100.00	100.00	100.00

8.14 Each year, in determining whether a school has met the target of percent proficient for that school year as listed on the chart, the Department shall compare the school's percent proficient in the appropriate grade-level cluster and content area with the statewide projected goal for that year. A school shall be deemed to have met AYP for a particular year for a particular grade-level cluster and content area as long as the school attains at least the statewide projected goal.

8.15 Individual Schools identified by the Department as failing to meet established levels of academic achievement shall be subject to sanctions as specified in school improvement or academic distress.

8.16 Schools/School Districts exemplifying exceptional performance levels and/or growth patterns shall be recognized for exemplary performance and will be eligible to participate in the rewards program.

## 9.0 Accountability

NOTE: Consult Section 13.00 of these Rules for applicable ESEA flexibility provisions as approved by the US Ed on June 29, 2012. Sections 9.13 and 9.14 of these Rules continue to apply along with Section 13.00 of these Rules.

Schools failing to meet Adequate Yearly Progress as determined under these Rules shall be classified subject to the following consequences.

9.01 A school will be identified in alert status if it has not made AYP in the same subject (Mathematics or Literacy) for one year.

9.02 A school will be identified as in Improvement Status if it has not made AYP in the same subject (Mathematics or Literacy) for two consecutive years.

9.03 A school in Alert Status or Improvement Status that fails to make AYP, but does not fail to make AYP in the same subject for two consecutive years, will remain in its existing status for the following school year.

- 9.04 The first year a school fails to meet expected performance levels, that school shall be classified as on Alert Status. Any school classified on Alert Status shall be required to review and/or revise the school's ACSIP Plan with special attention given to State designated subgroup(s) which failed to meet expected performance levels.
- 9.05 The local school board president and the superintendent of a public school or school district identified by the Department in school improvement shall be notified in writing by the Department, via certified mail, return receipt requested, and the school district shall have a right to appeal to the Commissioner of the Department. The written appeal must be received in the Office of the Commissioner of Education within thirty (30) calendar days of the receipt of notice.
- 9.06 The second year a school fails to make Adequate Yearly Progress, that school shall be classified as Year 1 of School Improvement. Any school classified in Year 1 of School Improvement shall offer eligible students choice options to another school in the district not in school improvement.
- 9.07 The third year a school fails to make Adequate Yearly Progress, that school shall be classified as Year 2 of School Improvement. Any school classified in Year 2 of School Improvement shall offer eligible students supplementary educational services in keeping with federal guidelines in addition to continued consequences from Year 1 of School Improvement.
- 9.08 Should a school fail to make Adequate Yearly Progress in the fourth year, the Board shall advance that school into corrective action. Schools in corrective action must continue to offer consequences from School Improvement Year 2, and the school must implement a plan, with the approval of the Department, having specified corrective actions.
- 9.09 Should a school fail to make Adequate Yearly Progress in the fifth year, the Board shall advance that school into restructuring. In restructuring the Department may require the school to dismiss staff and administrators, annex the school to another school that is not in school improvement, and/or take other such action as deemed necessary by the Department and the Board.
- 9.10 Once a school has been identified in school improvement, that school must meet the standard(s) for which it failed to meet for two consecutive years to be considered for removal.
- 9.11 Schools that receive Title I funds must meet all funding requirements as specified by federal guidelines. Schools that do not receive Title I funds must implement programming in keeping with the school's ACSIP Plan as revised.
- 9.12 Schools designated in year two or greater of school improvement shall participate in a scholastic audit conducted by the Department of Education (or its designees).

- 9.12.1 Results of the scholastic audit shall be presented to the superintendent within four (4) weeks of completing the scholastic audit. The audit shall make recommendations to improve teaching and learning for inclusion in the comprehensive school improvement plan.

#### 9.13 Recognition Awards

- 9.13.1 Pursuant to Ark. Code Ann. § 6-15-2107m schools performing at the top twenty percent (20%) of all public schools in Arkansas in combined student performance, student academic growth, and, for a secondary school, graduate rate, are eligible for Arkansas School Recognition Program rewards and performance-based funding.

#### 9.14 Sanctions

- 9.14.1 Any school or district that is involved in substantiated test security violations will not be eligible to receive the “school of excellence” performance rating.

### 10.0 School District Accountability

NOTE: During the time periods designated by the US Ed for which the ADE may receive flexibility from certain provisions of ESEA, the school district accountability provisions found in Section 13.00 of these Rules shall apply. Sections 10.04 through 10.07 of these Rules shall remain in place even during time periods designated by the US Ed for which the ADE may receive flexibility from certain provisions of ESEA.

- 10.01 The Department annually reviews each district to determine whether the district is making AYP in the following way.
  - 10.01.1 Determine the collective status for all the schools within a district within each grade-level grouping (K-5; 6-8 and 9-12);
  - 10.01.2 Determine the district percent of participation across each grade level group; and
  - 10.01.3 Determine the district status on secondary indicator across each grade-level group.
  - 10.01.4 A district shall be in school improvement when all levels within a district fail to meet performance standards for two consecutive years in the same subject. A district having status of School Improvement shall be removed from that status when any one level meets the performance standard for two consecutive years in that subject.
- 10.02 Before identifying a district for district improvement, the Department will provide the district with an opportunity to review the data on which the

identification is based. The district may appeal the identification, and the Department will decide the appeal within 30 days.

- 10.03 Each district identified for district improvement shall within three months of identification develop or revise a district improvement plan that complies with the requirements of the No Child Left Behind Act, including the requirement that it spend not less than 10% of its Part A, Title I funds on professional development for each fiscal year in which the district is identified for improvement. The district shall initiate implementation of the plan expeditiously, but not later than the beginning of the next school year after the school year in which the district was identified for improvement. The Department will provide technical assistance to districts in developing and implementing improvement plans under this section.
- 10.04 Academic Distress – Procedures for Identification, Classification and Appeal of Public School and Public School Districts in Academic Distress
  - 10.04.1 A public school or public school district which meets the definition of “Academic Distress” set forth in Section 3.02 of these rules shall be designated in Academic Distress.
  - 10.04.2 Within thirty calendar days (30) after the release of the state assessment results by the Department or upon making a determination that a school district has a Needs Improvement –Priority school within the school district that has not made the progress required under the school’s Priority Improvement Plan (PIP), the Department shall identify all public schools and public school districts in Academic Distress and shall notify in writing each school district superintendent and board president of the public school and public school districts via certified mail, return receipt requested.
  - 10.04.3 Any school district identified or in which a public school is identified in academic distress may appeal to the State Board by filing a written appeal with the Commissioner of Education via certified mail, return receipt requested, within thirty (30) calendar days of receipt of the written notice of academic distress status from the Department.
  - 10.04.4 The State Board shall hear the appeal of the school district within sixty (60) days of receipt of the written appeal in the Commissioner’s office.
  - 10.04.5 The State Board’s determination shall be final, except that a school district may appeal to Pulaski County Circuit Court under the Arkansas Administrative Procedure Act, Ark. Code Ann. § 25-15-201, et seq.
  - 10.04.6 A school district or public school identified by the Department as being in academic distress shall be classified as a school

district or public school in academic distress upon final determination by the State Board.

#### 10.05 Time Limitation of Academic Distress Status

- 10.05.1 Except as otherwise set forth in these Rules and Ark. Code Ann. § 6-15-429 and § 6-15-430, a public school or public school district identified as in academic distress shall have no more than five (5) consecutive school years from the date of classification of academic distress status to be removed from academic distress status.
- 10.05.2 The State Board may at any time take enforcement action on any school district in academic distress status including without limitation, annexation, consolidation, or reconstitution of a school district pursuant to Ark. Code Ann. § 6-13-1401 et seq. and the authority of Title 6, Chapter 15, Subchapter 4 of the Arkansas Code.
- 10.05.3 The State Board may take enforcement action at any time on a public school in academic distress under these Rules and Title 6, Chapter 15, Subchapter 4 of the Arkansas Code.
- 10.05.4 Except as otherwise set forth in these Rules and Ark. Code Ann. § 6-15-429 and §6-15-430(d), a public school or school district shall not be allowed to remain in academic distress status for a time period greater than five (5) consecutive school years from the date of the classification of academic distress status.
- 10.05.5 The State Board may grant additional time for a public school or school district to remove itself from academic 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 academic distress during the relevant time period due to impossibility caused by external forces beyond the control of the public school or school district.
- 10.05.6 If a public school or school district classified as being in academic distress fails to be removed from academic distress status within the allowed five-year time period and has not been granted additional time under these Rules or Ark. Code Ann. § 6-15-429, the State Board shall annex, consolidate, or reconstitute the public school or school district before July 1 of the next school year.

#### 10.06 Procedures for assisting school districts in academic distress

- 10.06.1 Within thirty (30) calendar days of classification by the State Board, each public school and public school district in

academic distress shall develop and file with the Department a modified Comprehensive School Improvement Plan (District Plan) to target and address any area in which the public school or public school district is experiencing academic distress.

- 10.06.2 Within fifteen (15) calendar days of classification by the State Board, the Department shall assign a team of educators to evaluate the public school or public school district and determine the need for on-site technical assistance or technical assistance via distance technology.
  - 10.06.3 The team of educators shall evaluate and make recommendations to the public school or public school district superintendent within sixty (60) calendar days following the school's or district's classification as being in academic distress.
  - 10.06.4 Public schools and public school districts classified as being in academic distress shall provide access to all school and district assessment, instruction, personnel and academic records and reports to assist the team in the formulation of the recommendations for improvement.
  - 10.06.5 The Department, with assistance from the team of educators, shall review the data relative to the academic status and performance of students in the academically distressed public school or public school district.
  - 10.06.6 Following the on-site review, the team of educators will submit a written set of recommendations to the academically distressed public school or public school district.
  - 10.06.7 The Department shall provide relevant technical assistance to each identified public school or public school district based upon the needs identified in the Comprehensive School Improvement Plan.
- 10.07 Procedures for evaluating and removal of public schools and public school districts from academic distress status
- 10.07.1 The Department shall review and annually report to the Board the academic conditions existing in each academically distressed public school or public school district.
  - 10.07.2 A public school or public school district designated in Academic Distress shall be removed from Academic Distress only upon vote of a majority of the quorum present of the State Board and only after the Department has certified in writing to the State Board that the school district has corrected all criteria for being classified as in academic distress.

## 11.0 State Board Authority

11.01 The Board shall have the following authority regarding any public school district in academic distress:

- 11.01.1 Remove permanently, reassign, or suspend on a temporary basis the superintendent of the school district and:
  - 11.01.1.1. Appoint an individual in place of the superintendent to administratively operate the school district under the supervision and approval of the Commissioner of Education; and
  - 11.01.1.2 Compensate from school district funds the individual appointed to operate the school district;
- 11.01.2 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 required by law;
- 11.01.3 Require the school district to operate without a board of directors under the supervision of the superintendent or an individual or panel appointed by the Commissioner of Education;
- 11.01.4 Waive the application of Arkansas law, with the exception of The Teacher Fair Dismissal Act of 1983, Ark. Code Ann. § 6-17-1501 et seq., and the Public School Employee Fair Hearing Act, Ark. Code Ann. § 6-17-1701 et seq., or the corresponding State Board rules and regulations;
- 11.01.5 Require the annexation, consolidation, or reconstitution of the school district;
- 11.01.6 In the absence of a board of directors, direct the Commissioner to assume all authority of the board of directors as may be necessary for the day-to-day governance of the school district;
- 11.01.7 Return the administration of the school district to the former board of directors or to a newly elected board of directors if:
  - 11.01.7.1 The Department of Education certifies in writing to the State Board and to the school district that the school district has corrected all issues that caused the classification of academic distress; and



- 11.01.7.2 The State Board determines that the school district has corrected all issues that caused the classification of academic distress; and
- 11.01.8 Take any other necessary and proper action, as determined by the State Board, that is allowed by law.
- 11.02 The State Board shall have the following authority regarding any public school in academic distress:
  - 11.02.1 Require the reorganization of the public school or reassignment of the administrative, instructional, or support staff of the public school;
  - 11.02.2 Require the public school to institute and fully implement a student curriculum and professional development for teachers and administrators that are based on state academic content and achievement standards, with the cost to be paid by the school district in which the public school is located;
  - 11.02.3 Require the principal of the public school to relinquish all authority with respect to the public school;
  - 11.02.4 Waive the application of Arkansas law or the corresponding State Board rules, with the exception of:
    - 11.02.4.1 The Teacher Fair Dismissal Act of 1983, Ark. Code Ann. § 6-17-1501 et seq.; and
    - 11.02.4.2 The Public School Employee Fair Hearing Act, Ark. Code Ann. § 6-17-1701 et seq.;
  - 11.02.5 Under The Teacher Fair Dismissal Act of 1983, Ark. Code Ann. § 6-17-1501 et seq., reassign or remove some or all of the licensed personnel of the public school and replace them with licensed personnel assigned or hired under the supervision of the Commissioner;
  - 11.02.6 Remove the public school from the jurisdiction of the school district in which the public school is located and establish alternative public governance and supervision of the public school;
  - 11.02.7 Require closure or dissolution of the public school;
  - 11.02.8 Remove permanently, reassign, or suspend on a temporary basis the superintendent of the school district in which the public school is located. If the State Board takes an action under Section 11.02.8 of these Rules, it may appoint an individual in place of the superintendent to administratively operate the school district under the supervision and approval

of the commissioner and compensate the appointed individual;

- 11.02.9 Take one (1) or more of the actions under Section 11.01 of these Rules concerning the public school district where the school is located;
- 11.02.10 Return the administration of the school district to the former board of directors or to a newly elected board of directors if:
  - 11.02.10.1 The Department certifies in writing to the State Board and to the school district that the public school has corrected all issues that caused the classification of academic distress and that no public school within the school district is classified as being in academic distress; and
  - 11.02.10.2 The State Board determines the public school has corrected all issues that caused the classification of academic distress and that no public school within the school district is classified as being in academic distress; and
- 11.02.11 Take any other appropriate action allowed by law that the State Board determines is needed to assist and address a public school classified as being in academic distress.
- 11.03 If the State Board or the Commissioner assumes authority over a public school district in academic distress under Sections 11.01 or 11.02 of these Rules, the State Board may pursue the following process for returning a public school district to the local control of its residents:
  - 11.03.1 During the second school year following a public school's or school district's classification of academic distress status, the State Board shall determine the extent of the public school or school district's progress toward correcting all criteria for being classified as in academic distress;
  - 11.03.2 If the State Board determines that sufficient progress has been made by a public school or school district in academic distress toward correcting all issues that caused the classification of academic distress, but the public school or school district has not yet resolved all issues that caused the classification of academic 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.
    - 11.03.2.1 The members of the community advisory board shall be residents of the school district and shall serve on a voluntary basis without compensation.

- 11.03.2.2 The Department 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.
- 11.03.2.3 The duties of a community advisory board include without limitation:
  - 11.03.2.3.1 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 academic distress;
  - 11.03.2.3.2 Seeking community input from the residents of the school district regarding the progress of the public school or school district toward correcting all issues that caused the classification of academic distress;
  - 11.03.2.3.3 Conducting hearings and making recommendations to the Commissioner regarding personnel and student discipline matters under the appropriate district policies;
  - 11.03.2.3.4 Working to build community capacity for the continued support of the school district; and
  - 11.03.2.3.5 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 academic distress.
  - 11.03.2.3.6 The members of the community advisory board shall serve at the pleasure of the Commissioner until the school district is returned to local control and a permanent board of directors is elected and qualified; or the State Board annexes, consolidates, or reconstitutes the school district under Ark. Code Ann. § 6-15-430 or under another provision of law;

- 11.03.2.4 By April 1 of each year following the appointment of a community advisory board under 11.03.2 of these Rules, the State Board shall determine the extent of the public school or school district's progress toward correcting all issues that caused the classification of academic distress and shall:
- 11.03.2.4.1 Allow the community advisory board to remain in place for one (1) additional year;
  - 11.03.2.4.2 Return the school district to local control by calling for the election of a newly elected board of directors if the Department certifies in writing to the State Board and to the school district that the public school or school district has corrected all issues that caused the classification of academic distress and that no public school within the school district is classified as being in academic distress; and the State Board determines the public school or school district has corrected all issues that caused the classification of academic distress and that no public school within the school district is classified as being in academic distress; or
  - 11.03.2.4.3 Annex, consolidate, or reconstitute the school district pursuant to Title 6 of the Arkansas Code.
- 11.03.2.5 If the State Board 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.
- 11.03.2.6 If the State Board calls for an election of a new school district board of directors, 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.

- 11.03.2.6.1 The interim board of directors shall consist of either five (5) or seven (7) members.
  - 11.03.2.6.2 The members of the interim board of directors shall be residents of the school and otherwise eligible to serve as school district board members under applicable law.
  - 11.03.2.6.3 The members of the interim board of directors shall serve on a voluntary basis without compensation.
- 11.04 If, by the end of the fifth school year following the public school or public school district's classification of academic distress status, the public school or school district in academic distress has not corrected all issues that caused the classification of academic distress, the State Board, after a public hearing, shall consolidate, annex, or reconstitute the school district pursuant to Ark. Code Ann. § 6-15-430.
  - 11.04.1 The State Board may grant additional time for a public school or school district to remove itself from academic 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 academic distress during the relevant time period due to impossibility caused by external forces beyond the control of the public school or school district.
- 11.05 Nothing in these Rules shall be construed to prevent the Department or the State Board from taking any of the actions listed in these Rules or in Ark. Code Ann. § 6-15-430 at any time to address public schools and school districts in academic distress.
- 11.06 To transition to and implement the Common Core State Standards, the Board shall have the authority to:
  - 11.06.1 Modify curriculum and assessment requirements;
  - 11.06.2 Adopt new curriculum and assessment requirements; and
  - 11.06.3 Direct the Department of Education to:
    - 11.06.3.1 Propose to the state board rules and procedures; and
    - 11.06.3.2 Develop the professional development needed to train educators on the transition and implementation.

## 12.0 School Choice and Academic Distress

12.01 Any student attending a public school or public school district classified as being in academic distress ~~shall~~ is automatically ~~be~~ eligible and entitled under the Public School Choice Act of 2013, Ark. Code Ann. § 6-18-1901 et seq., or the Arkansas Opportunity Public School Choice Act of 2004, Ark. Code Ann. § 6-18-227, to transfer to another public school or public school district not in academic distress during the time period that the resident public school or public school district is classified as being in academic distress.

12.02 The cost of transporting the student from the resident district to the nonresident district shall be the cost of the resident district under the Arkansas Opportunity Public School Choice Act of 2004, Ark. Code Ann. § 6-18-227.

## 13.00 Elementary and Secondary Education Act (ESEA) Flexibility Provisions

On June 29, 2012, the United States Department of Education (US Ed) approved the Arkansas Department of Education's (ADE) request for flexibility from certain provisions of the ESEA. The approved ESEA flexibility request can be found at:

[http://www.arkansased.org/public/userfiles/ESEA/AR\\_ESEA\\_Flexibility\\_Amended\\_1025\\_2012.pdf](http://www.arkansased.org/public/userfiles/ESEA/AR_ESEA_Flexibility_Amended_1025_2012.pdf)

The ADE's ESEA flexibility request, as it existed on July 9, 2012, is hereby incorporated into these Rules by reference. Key components of the ESEA flexibility requirements are noted below.

13.01 The US Ed approved the following waivers of ESEA for the State of Arkansas:

13.01.1 The requirements in ESEA section 1111(b)(2)(E)-(H) that prescribe how an SEA must establish annual measurable objectives (AMOs) for determining adequate yearly progress (AYP) to ensure that all students meet or exceed the State's proficient level of academic achievement on the State's assessments in reading/language arts and mathematics no later than the end of the 2013–2014 school year. Arkansas requested this waiver to develop new ambitious but achievable AMOs in reading/language arts and mathematics in order to provide meaningful goals that are used to guide support and improvement efforts for the State, LEAs, schools, and student subgroups.

13.01.2 The requirements in ESEA section 1116(b) for an LEA to identify for improvement, corrective action, or restructuring, as appropriate, a Title I school that fails, for two consecutive years or more, to make AYP, and for a school so identified and its LEA to take certain improvement actions. Arkansas requested this waiver so that an LEA and its Title I schools need not comply with these requirements.

- 13.01.3 The requirements in ESEA section 1116(c) for an SEA to identify for improvement or corrective action, as appropriate, an LEA that, for two consecutive years or more, fails to make AYP, and for an LEA so identified and its SEA to take certain improvement actions. Arkansas requested this waiver so that it need not comply with these requirements with respect to its LEAs.
- 13.01.4 The requirements in ESEA sections 6213(b) and 6224(e) that limit participation in, and use of funds under the Small, Rural School Achievement (SRSA) and Rural and Low-Income School (RLIS) programs based on whether an LEA has made AYP and is complying with the requirements in ESEA section 1116. Arkansas requested this waiver so that an LEA that receives SRSA or RLIS funds may use those funds for any authorized purpose regardless of whether the LEA makes AYP.
- 13.01.5 The requirement in ESEA section 1114(a)(1) that a school have a poverty percentage of 40 percent or more in order to operate a schoolwide program. Arkansas requested this waiver so that an LEA may implement interventions consistent with the turnaround principles or interventions that are based on the needs of the students in the school and designed to enhance the entire educational program in a school in any of its priority and focus schools that meet the definitions of “priority schools” and “focus schools,” respectively, set forth in the document titled *ESEA Flexibility*, as appropriate, even if those schools do not have a poverty percentage of 40 percent or more.
- 13.01.6 The requirement in ESEA section 1003(a) for an SEA to distribute funds reserved under that section only to LEAs with schools identified for improvement, corrective action, or restructuring. Arkansas requested this waiver so that it may allocate section 1003(a) funds to its LEAs in order to serve any of the State’s priority and focus schools that meet the definitions of “priority schools” and “focus schools,” respectively, set forth in the document titled *ESEA Flexibility*.
- 13.01.7 The provision in ESEA section 1117(c)(2)(A) that authorizes an SEA to reserve Title I, Part A funds to reward a Title I school that (1) significantly closed the achievement gap between subgroups in the school; or (2) has exceeded AYP for two or more consecutive years. Arkansas requested this waiver so that it may use funds reserved under ESEA section 1117(c)(2)(A) for any of the State’s reward schools that meet the definition of “reward schools” set forth in the document titled *ESEA Flexibility*.
- 13.01.8 The requirements in ESEA section 2141(a), (b), and (c) for an LEA and SEA to comply with certain requirements for improvement plans regarding highly qualified teachers. Arkansas requested this waiver to allow the SEA and its LEAs to focus on

developing and implementing more meaningful evaluation and support systems.

13.01.9 The limitations in ESEA section 6123 that limit the amount of funds an SEA or LEA may transfer from certain ESEA programs to other ESEA programs. Arkansas requested this waiver so that it and its LEAs may transfer up to 100 percent of the funds it receives under the authorized programs among those programs and into Title I, Part A.

13.01.10 The requirements in ESEA section 1003(g)(4) and the definition of a Tier I school in Section I.A.3 of the School Improvement Grants (SIG) final requirements. Arkansas requested this waiver so that it may award SIG funds to an LEA to implement one of the four SIG models in any of the State's priority schools that meet the definition of "priority schools" set forth in the document titled *ESEA Flexibility*.

13.02 US Ed Flexibility Principle 1: College and Career-Ready Expectations for All Students

13.02.1 Definition of College and Career Ready: The acquisition of the knowledge and skills a student needs to be successful in all future endeavors including credit-bearing, first-year courses at a postsecondary institution (such as a two- or four-year college, trade school, or technical school) or to embark successfully on a chosen career. The State Board will make its determination of the requisite scale score of student performance on college and career readiness measurements used for college placement in conjunction with the Arkansas Higher Education Coordinating Board.

13.02.1 The State Board voted to participate in the Common Core State Standards for English Language Arts (ELA) and Mathematics in July 2010.

13.02.2 The following timeline will lead to full implementation of the Common Core State Standards during the 2013-2014 school year:

13.02.2.1 Grades K-2 implemented the Common Core State Standards during the 2011-2012 school year.

13.02.2.2 Grades 3-8 will implement the Common Core State Standards during the 2012-2013 school year.

13.02.2.3 Grades 9-12 will implement the Common Core State Standards during the 2013-2014 school year.



13.03 US Ed Flexibility Principle 2: State-Developed Differentiated Recognition, Accountability and Support

- 13.03.1 The requirements contained within Section 13.03 of these rules shall comprise the Arkansas Differentiated Accountability, Recognition and Tiered-Support System (DARTSS).
- 13.03.2 The goals of DARTSS are, without limitation:
  - 13.03.2.1 To move toward a unified federal and state accountability system beginning in 2012-2013; and
  - 13.03.2.2 To establish the flexibility and opportunity to direct additional resources to schools with the lowest achieving students.
- 13.03.3 DARTSS differs from the current ESEA accountability system in the following ways:
  - 13.03.3.1 The ESEA goal of 100 percent (100%) proficient by 2013-2014 is hereby replaced with a new goal of reducing proficiency gaps by half by the 2016-2017 school year.
  - 13.03.3.2 Traditional ESEA accountability status labels are replaced by accountability and assistance levels for all schools.
  - 13.03.3.3 Adequate Yearly Progress (AYP) is replaced with accountability levels based upon Annual Measurable Objectives (AMOs) for public schools and school districts.
  - 13.03.3.4 Performance (proficiency), growth and graduation rate indicators will now use a minimum N, or sample size, of 25 students for accountability purposes.
  - 13.03.3.5 DARTSS will place enhanced focus on subgroups through the Targeted Achievement Gap Group (TAGG).
  - 13.03.3.6 Federal SES and school choice requirements are replaced by supports and interventions responsive to identified needs of students and schools.

13.04 The following groups of students will be included in DARTSS for the purposes of determining accountability status for school districts and schools:

- 13.04.1 All Students Group: All students in the school and school district.

- 13.04.2 Targeted Achievement Gap Group (TAGG), which includes the following students:
  - 13.04.2.1 Economically Disadvantaged;
  - 13.04.2.2 English Learners (EL); and
  - 13.04.2.3 Students with Disabilities (SWD).
- 13.05 The following groups of students will be included in DARTSS for the purposes of ACSIP and ESEA reporting:
  - 13.05.1 African-American;
  - 13.05.2 Hispanic;
  - 13.05.3 White;
  - 13.05.4 Economically Disadvantaged;
  - 13.05.5 English Learners; and
  - 13.05.6 Students with Disabilities.
- 13.06 Each group of students shall be measured according to the following Annual Measurable Objectives (AMOs):
  - 13.06.1 Math Proficiency;
  - 13.06.2 Math Growth (Grades 4-8);
  - 13.06.3 Literacy Proficiency;
  - 13.06.4 Literacy Growth (Grades 4-8); and
  - 13.06.5 Graduation Rate (High School).
- 13.07 AMO Calculations
  - 13.07.1 The ADE shall give schools and school districts full credit for meeting a particular AMO when the growth, performance or graduation rate meets or exceeds ninety-four percent (94%).
  - 13.07.2 The ADE shall initially calculate performance (proficiency) and growth AMOs based upon 2011 test results.
  - 13.07.3 The ADE shall use a lagging graduation rate in its annual accountability determination.

13.07.3.1 The ADE shall calculate graduation rate AMOs using 2010 four-year cohort graduation rates in accordance with its flexibility proposal.

13.07.4 AMO calculations will be based upon a minimum N of 25. For schools with too few students to calculate the AMO in 2011, the AMO calculations shall be based on a two (2)-year weighted average.

13.07.5 In order to be eligible to be classified as Achieving or Exemplary, schools and school districts must test ninety-five percent (95%) of students in the All Students and TAGG groups.

#### 13.08 DARTSS Accountability Labels

13.08.1 School districts shall be broadly classified as either:

13.08.1.1 Achieving; or

13.08.1.2 Needs Improvement.

13.08.1.3 School districts will be broadly classified based upon criteria similar to that used for the classification of individual schools. To be classified as "Achieving," a school district must meet performance or growth AMOs for math and literacy for All Students and the TAGG, as well as graduation rate AMOs for All Students and the TAGG.

13.08.2 ADE engagement and school district autonomy shall be determined by the extent of the needs identified within the district. The extent of needs will be identified based upon the presence of identified Needs Improvement Focus and Needs Improvement Priority schools in the district, the number and type of AMOs not met for performance, growth, and graduation rate, and the number of district AMOs not met for performance, growth and graduation rate.

13.08.3 Individual schools within school districts shall be classified as one of the following:

13.08.3.1 Exemplary;

13.08.3.2 Achieving;

13.08.3.3 Needs Improvement;

13.08.3.4 Needs Improvement (Focus); or

13.08.3.5 Needs Improvement (Priority).

13.08.3.5.1 Within a time period determined by the ADE, a school classified as a Needs Improvement (Priority) school must develop and file with the ADE a Priority Improvement Plan (PIP) that is integrated into the school's ACSIP plan.

13.08.3.5.2 A school district with a Needs Improvement (Priority) school that has not made the progress required under the school's Priority Improvement Plan (PIP) may be identified by the ADE as a school district in academic distress.

13.08.4 The following table lists the ADE engagement and district autonomy associated with school accountability status:

Status	Description	ADE Engagement/District Autonomy
<b>Exemplary</b>	<ul style="list-style-type: none"> <li>• High Performance</li> <li>• High Progress</li> <li>• High TAGG high performance</li> <li>• High TAGG high progress</li> </ul>	<ul style="list-style-type: none"> <li>• Very low ADE engagement</li> <li>• Very high district autonomy</li> </ul>
<b>Achieving</b>	<ul style="list-style-type: none"> <li>• Three-year ACSIP – Meet all performance, graduate rate and growth AMOs for All Students Group and TAGG</li> <li>• One-year ACSIP – Meet all performance and graduation rate AMOs for All Students Group and TAGG, but miss growth AMOs for All Students Group or TAGG</li> </ul>	<ul style="list-style-type: none"> <li>• Very low ADE engagement</li> <li>• High district autonomy</li> </ul>
<b>Needs Improvement</b>	<ul style="list-style-type: none"> <li>• Does not meet performance, graduation rate or growth AMOs for All Students and TAGG</li> </ul>	<ul style="list-style-type: none"> <li>• Low to moderate ADE engagement</li> <li>• Moderate district autonomy</li> </ul>

<b>Needs Improvement – Focus</b>	<ul style="list-style-type: none"> <li>Schools with largest, persistent gaps between non-TAGG and TAGG students</li> <li>Graduation rates less than sixty percent (60%) over a period of several years and which are not classified as Needs Improvement – Priority schools.</li> </ul>	<ul style="list-style-type: none"> <li>High ADE engagement</li> <li>Low district autonomy</li> </ul>
<b>Needs Improvement – Priority</b>	<ul style="list-style-type: none"> <li>Schools with persistently lowest achievement in math and literacy over three years for the All Students Group</li> <li>Graduation rates less than sixty percent (60%) over a period of several years.</li> </ul>	<ul style="list-style-type: none"> <li>Very high ADE engagement</li> <li>Low district autonomy</li> </ul>

### 13.09 Strategic Use of Title I Funds

- 13.09.1 School districts may use the flexibility granted by the US Ed to help lowest performing schools make targets by:
- 13.09.1.1 Serving the lowest performing schools with Title I and/or NSLA funding using the most appropriate methods aligned to identified student and adult learning needs;
  - 13.09.1.2 Designating any Needs Improvement (Focus) or Needs Improvement (Priority) school as a Title I schoolwide program school, even if the school does not have a poverty percentage of forty percent (40%) or more; and
  - 13.09.1.3 Transferring up to one hundred percent (100%) of the school district's Title II-A funds into Title I and using them for Title I purposes.

13.09.2 School districts have the following continuing obligations for the use of Title I-A Funds:

- 13.09.2.1 Prioritize the school district's lowest achieving students in its lowest performing schools;
- 13.09.2.2 Allocate Title I-A funds equal to the scope of the problem; and
- 13.09.2.3 Demonstrate alignment of federal and NSLA allocations sufficient to support implementation of interventions.

#### 13.10 Process for Notification and Review

13.10.1 Prior to the first possible day of school, as defined by Ark. Code Ann. § 6-10-106, the Arkansas Department of Education shall notify the school board president and superintendent of each public school district of the following in writing, via certified mail, return receipt requested:

- 13.10.1.1 The school district's preliminary classification under Section 13.08.1 of these rules; and
- 13.10.1.2 The preliminary classification of each individual school within a school district under Section 13.08.3 of these rules.

13.10.2 Contemporaneous with the notice required by Section 13.10.1 of these rules, the Arkansas Department of Education shall make available to the school board president and superintendent the data upon which the preliminary classifications of school districts and individual public schools were based.

13.10.3 School districts shall have thirty (30) days from receipt of the notification required by Section 13.10.1 of these rules to review the data upon which the preliminary classifications of school districts and individual public schools were based, to submit to the Arkansas Department of Education any requests for corrections to the data, and to submit any other reason(s) for which the preliminary classifications should be modified. School districts may request revisions to the preliminary classifications for school districts and individual public schools during the same thirty (30) day period.

13.10.4 Prior to January 1 of each school year, the Arkansas Department of Education shall review the information submitted by school districts pursuant to Section 13.10.3 of these rules and publish a final classification for each school district and individual public school.

13.11 US Ed Flexibility Principle 3: Supporting Effective Instruction and Leadership

Arkansas's requirements for supporting effective instruction and leadership may be found in the Teacher Excellence and Support System (Ark. Code Ann. § 6-17-2801 et seq.) and the Arkansas Department of Education Rules Governing the Teacher Excellence and Support System.

**Minutes  
State Board of Education Meeting  
Thursday, April 10, 2014**

The State Board of Education met Thursday, April 10, 2014, in the auditorium of the Department of Education building. Chair Brenda Gullett called the meeting to order at 10:02 a.m.

Present: Brenda Gullett, Chair; Sam Ledbetter, Vice-Chairman; Alice Mahony; Dr. Jay Barth; Vicki Saviers; Toyce Newton; Diane Zook; Alexia Weimer, Teacher of the Year; and Dr. Tom Kimbrell, Commissioner.

Present via conference call: Mireya Reith

Absent: Joe Black

**Consent Agenda**

Ms. Mahony asked to pull C-6 from the consent agenda.

Dr. Barth moved, seconded by Ms. Zook, to approve the consent agenda less C-6. The motion carried unanimously.

Mr. Ledbetter moved, seconded by Ms. Newton to expunge the passage of the consent agenda. The motion carried unanimously.

Mr. Ledbetter requested C-8 be pulled from the consent agenda.

Mr. Ledbetter moved, seconded by Ms. Mahony to approve the consent agenda less C-6 and C-8. The motion carried unanimously.

Items included in the Consent Agenda:

- Minutes -March 20, 2014
- Minutes -March 21, 2014
- Minutes -March 28, 2014
- Newly Employed, Promotions and Separations
- Review of Loan and Bond Applications
- Consideration for Awarding Waiver Days - Bergman School District
- Consideration of the Recommendation of the Professional Licensure Standards Board for Case#13-029 – Michelle Williams Abernathy
- Consideration of the Recommendation of the Professional Licensure Standards Board for Case #13-158 – Louis Henry Wallman
- Consideration of the Recommendation of the Professional Licensure Standards Board for Case #13-173 – Douglas Otto Caldwell
- Consideration of the Voluntary Surrender of Arkansas Educator's License – Case



#13-181 and Case #14-092 – Jacqueline Nichole Winberry

- Consideration of the Recommendation of the Professional Licensure Standards Board for Case #T14-001– James Eric Henry
- Consideration of the Recommendation of the Professional Licensure Standards Board for Case #14-032 – Christopher Bradley Thompson
- Consideration of the Recommendation of the Professional Licensure Standards Board for Case #14-044 – Callie Marie Langley

### **Action Agenda**

#### **C-6 Report on Waivers to School Districts for Teachers Teaching Out of Area for Longer than Thirty (30) Days, Ark. Code Ann. §6-17-309.**

Ms. Zook made a motion, seconded by Dr. Barth, to approve the report on waivers to school districts for teachers teaching out of area for longer than thirty (30) days, Ark. Code Ann. §6-17-309. The motion carried unanimously.

#### **C-8 Consideration for Awarding Waiver Days - North Little Rock School District**

Commissioner Kimbrell said the North Little Rock School District requested a waiver of the 178 days of instruction by allowing the district to make up 1.5 instructional days at an alternative time. Dr. Kimbrell said he is concerned that this waiver request does not fit into the guidelines provided to other districts.

Mr. Kelly Rodgers, Superintendent of North Little Rock School District, said the district requested to make up the 4 hours and 40 minutes of instructional time that was missed due to two late starts and one early dismissal due to inclement weather.

Ms. Mahony made a motion, seconded by Mr. Ledbetter, to deny the inclement weather waiver request from North Little Rock School District. Ms. Zook voted no. The motion carried.

#### **A-1 Consider Removal of Western Yell County School District from Fiscal Distress Classification effective April 10, 2014**

Assistant Commissioner Mike Hernandez said the Western Yell County School District was classified in Fiscal Distress for the 2012-2013 school year. The Department conducted on-site technical evaluations and assistance, off-site assistance, and analysis of the financial status of the Western Yell County School District. The Department reported that the Western Yell County School District has currently corrected all criteria for being removed from Fiscal Distress. The Department recommended removal of the Western Yell County School District from Fiscal Distress

effective April 10, 2014. The Board was requested to accept and approve this petition in compliance with Ark. Code Ann. §6-20-1908(c), which requires a District in Fiscal Distress to petition the State Board of Education for removal from Fiscal Distress status after the Department has certified in writing that the school district has corrected all criteria for being classified in Fiscal Distress and has complied with all Department recommendations and requirements for removal from Fiscal Distress.

Mr. Ledbetter made a motion, seconded by Ms. Newton, to approve removal of Western Yell County School District from fiscal distress classification effective April 10, 2014. The motion carried unanimously.

### **A-2 Petition by the Augusta School District to Close the Cotton Plant Elementary School**

Department General Counsel Jeremy Lasiter said on February 19, 2014, the Augusta School District petitioned the State Board of Education for an order to close the Cotton Plant Elementary campus. The State Board of Education considered this petition pursuant to Ark. Code Ann. § 6-20-602(b)(2) and the Arkansas Department of Education Rules Governing the Closure of Isolated Schools.

Dr. Ray Nassar, Superintendent of Augusta School District, spoke in favor of closing the Cotton Plant Elementary School. Mr. Jesse Jones, city councilman, spoke in opposition to closing the Cotton Plant Elementary School.

Ms. Newton made a motion, seconded by Ms. Reith, to approve the petition by the Augusta School District to close the Cotton Plant Elementary School. Ms. Mahony voted no. The motion carried.

### **A-3 Consideration of the Involuntary Administrative Consolidation of the Stephens School District into One (1) or More School Districts**

Department General Counsel Jeremy Lasiter said pursuant to Ark. Code Ann. § 6-13-1601 et seq., the State Board of Education shall administratively consolidate the Stephens School District with or into one (1) or more school districts by May 1, 2014 to be effective July 1, 2014. The Stephens School District's average daily membership fell below three hundred fifty (350) students for the 2011-2012 and 2012-2013 school years. The Stephens School District did not submit a voluntary petition for administrative consolidation or annexation. The Attorney General provided an advisory opinion. Mr. Lasiter outlined the options available to the Board.

Attorney Clay Fendley, representing Stephens School District, said the best interest of the students would be served by keeping the Stephens campus open by consolidating with the Nevada County School District.

Mrs. Terry Teutshe spoke in opposition to the consolidation with Nevada County. She said she supports the tri-county proposal.

Commissioner Kimbrell said the desegregation and any consolidation order would have to be reviewed by the presiding federal court.

Ms. Patsy Hughey, Superintendent of Stephens School District, spoke in favor of consolidation with Nevada County School District.

Mr. Harry Brown, mayor of Stephens, asked the Board to consider keeping the Stephens campus open.

Mr. Fendley said he continued to advance all arguments included in the proposal and he requested the Board consolidate Stephens with Nevada County School District.

Ms. Whitney Moore, attorney representing the Camden Fairview School District, Nevada County School District and Magnolia School District, asked the Board to consider that the Stephens School District be involuntarily consolidated with the three districts along county lines. She said Nevada County is not supportive of consolidation with Stephens School District and Nevada County only.

Mr. Henry Moore, Mayor of McNeil, asked the Board to do what is best long term for McNeil students.

Upon a request from the Board, Dr. Kimbrell made a recommendation to the Board to consolidate the Stephens School District along county lines with the Camden Fairview, Magnolia, and Nevada School Districts. Dr. Kimbrell provided a written recommendation to the State Board, which addressed the specifics of the proposed consolidation.

Mr. Ledbetter made a motion, seconded by Dr. Barth, for immediate consideration of the action agenda item. The motion carried unanimously.

Dr. Barth made a motion, seconded by Ms. Saviers, to approve the involuntary administrative consolidation of the Stephens School District into three school districts, as itemized in the Department's recommendation. Mr. Ledbetter, Dr. Barth, Ms. Reith, Ms. Saviers, and Ms. Zook voted yes. Ms. Mahony and Ms. Newton voted no. The final vote was 5-2. The motion carried.

#### **A-4 Consideration of Report and Recommendations from the Special Board Committee- Lee County School District**

Ms. Vicki Saviers, Chair of Special Board Committee, said on March 28, 2014 at the Special Board Meeting, Chair Gullett appointed a special committee to study chronically underperforming school districts. Chair Gullett requested Ms. Saviers, Ms. Newton, and

Mr. Ledbetter serve on the special committee, with Ms. Saviers serving as chair of the committee. The Special Committee met Monday, April 7, in the ADE Auditorium.

Ms. Saviers said many people attended the meeting. She said the committee heard about the wonderful students in Lee County and how eager the students are to learn. She said the district has demonstrated limited progress. She said due to fiscal issues, the district will need to reduce staff to meet the budgetary restrictions. The committee was pleased to have an honest conversation about the data. She said the committee met Wednesday, April 9, to write the report that was submitted to the Board.

Ms. Newton said this approach was very helpful to have the time to talk with people about school progress. She said it is the responsibility of all to ensure students have the opportunity to learn and progress.

Superintendent Willie Murdock disagreed with an item in the report stating that transcripts and the master schedule were previous issues.

Ms. Saviers made a motion, seconded by Ms. Newton, to remove the school board and superintendent pursuant to Arkansas Code.

Mr. Ledbetter made a substitute motion, seconded by Dr. Barth, to remove the Lee County School District board of directors and to place the district under the direction of the Commissioner, but not remove the superintendent. Ms. Zook, Ms. Reith, Dr. Barth, Mr. Ledbetter, and Ms. Gullett voted yes. Ms. Saviers and Ms. Newton voted no. Ms. Mahony abstained. The motion passed.

#### **A-5 Consideration to Decrease the School Board Membership for Ouachita School District**

Department General Counsel Jeremy Lasiter said on March 21, 2014, the Ouachita School District petitioned the State Board of Education to reduce the size of its board of directors from seven (7) members to five (5) members pursuant to Ark. Code Ann. § 6-13-634. He said upon a showing that the decrease in the number of board members will be for the benefit of the Ouachita School District; the State Board of Education may enter an order to decrease the number of directors for the Ouachita School District to five (5) members.

Mr. Ron Kissire, Superintendent of Ouachita School District, said the district requests to reduce the board members from seven to five because of the small size of the district.

Mr. Ledbetter explained he is no relation to any of the Ouachita school board members with the same name.

Mr. Ledbetter made a motion, seconded by Ms. Newton, to approve the decrease of the school board membership for Ouachita School District from seven members to five

members. The motion carried unanimously.

#### **A-6 Consideration of Adoption of the Next Generation Science Standards**

Director of Curriculum and Instruction Dr. Tracy Tucker said a comprehensive timeline and a set of the Next Generation Science Standards (NGSS) were submitted to the Arkansas State Board of Education (SBE). She said in 2011, the SBE voted to delay the state-required revision of the Arkansas Science Curriculum Frameworks for two years in lieu of the development of the NGSS and the commitment Arkansas made to engage in this work as a NGSS lead state. While working throughout the development of the NGSS, the ADE facilitated a broad-based committee to provide input, feedback, and suggestions on drafts of the work. The final version of the NGSS was released in April 2013. She said after this release, the Curriculum and Instruction Unit seated another committee of educators to review the final NGSS and complete tasks to inform the state-level work when moving forward with a request for adoption. A majority of this committee (88%) felt that these standards were better than the current Arkansas Science Curriculum Frameworks and all members of the committee noted that these standards were supportive of the work in Arkansas around STEM. Dr. Tucker said this same committee noted that Arkansas will need to see more science education in the earlier grades, more emphasis on engineering and technology, and more focus on developing scientifically literate students. Dr. Tucker, on behalf of the Curriculum and Instruction Unit in the Division of Learning Services, requested the Board consider the NGSS for adoption in Arkansas. She said if adopted the Department would begin additional work with the standards to create a new set of K-12 science curriculum frameworks that will replace the current Arkansas Science Curriculum Frameworks. She presented a timeline that referenced the work schedule to prepare for implementation of these new standards including creating professional development for educators to prepare for the new standards, constructing supporting tools and materials for schools to assist in implementation, developing high school courses aligned to the new standards, and updating assessments to measure the new standards.

Dr. Tucker introduced the leadership team, Science Specialist Michele Snyder, Science Program Manager Cathy Mackey, and Assessment Specialist Jimmy Blevins, who will collaborate to lead the science work. She said the team will report periodically to the Board on the stages of the work.

Ms. Saviers made a motion, seconded by Ms. Zook, to endorse the Next Generation Science Standards plan. The motion carried unanimously.

#### **A-7 End-of-Semester Reviews of Open-Enrollment Public Charter Schools in the Initial Year of Operation: Northwest Arkansas Classical Academy, Premier High School of Little Rock, and Quest Middle School of Pine Bluff**

Charter School Director Mary Perry said Ark. Code Ann. § 6-23-406 required the

Department to conduct an end-of-semester review of each open enrollment public charter school in its initial school year of operation and report to the State Board on the charter school's overall financial condition and condition of student enrollment. She said at the March 20, 2014 State Board of Education meeting, the Board pulled the report from the consent agenda and requested a follow-up discussion.

Dr. Edwin Strickland, State Director for Responsive Education Solutions, said the attendance numbers included students who did not show up for school. The school decided not to recruit more students because the enrolled students required much intervention. Mr. James Taylor, CFO for Responsive Education Solutions, said the organization will recruit additional students for next school year. He said the organization is committed to these schools and will not close these schools.

Dr. Barth made a motion, seconded by Ms. Newton, to accept the report of the end-of-semester reviews of open-enrollment public charter schools in the initial year of operation for Northwest Arkansas Classical Academy, Premier High School of Little Rock, and Quest Middle School of Pine Bluff. The motion carried unanimously.

A-8, A-9, A-10, A-11, and A-13 were considered together.

**A-8 Charter Authorizing Panel Action on Request for Open-Enrollment Public Charter School Amendments: Arkansas Virtual Academy (ARVA)**

**A-9 Charter Authorizing Panel Action on Request for Open-Enrollment Public Charter School Amendments: Benton County School of the Arts**

**A-10 Charter Authorizing Panel Action on Request for Open-Enrollment Public Charter School Amendment: Northwest Arkansas Classical Academy**

**A-11 Charter Authorizing Panel Action on Request for Open-Enrollment Public Charter School Amendment: Premier High School of Little Rock**

**A-13 Charter Authorizing Panel Action on Request for Open-Enrollment Public Charter School Amendment: Quest Middle School of Pine Bluff**

Ms. Newton made a motion, seconded by Ms. Saviers, to not review the Charter Authorizing Panel Action on the Open-Enrollment Public Charter School Amendments for Arkansas Virtual Academy (ARVA), Benton County School of the Arts, Northwest Arkansas Classical Academy, and Quest Middle School of Pine Bluff. The motion carried unanimously.

**A-12 Charter Authorizing Panel Action on Request for Open-Enrollment Public Charter School Amendment: Quest Middle School of West Little Rock**

Charter School Director Mary Perry said the Charter Authorizing Panel approved the

application for Quest Middle School of West Little Rock on November 14, 2013. The charter was approved to open in the 2014-2015 school year and to serve students in grades 6-12 with a maximum enrollment of 490. On March 21, 2014, Quest Middle School of West Little Rock appeared before the Charter Authorizing Panel and requested an amendment to the current charter. She said the panel unanimously approved the amendment requested by Quest Middle School of West Little Rock. Pursuant to Ark. Code Ann. § 6-23-701 et seq., the Little Rock School District and the Pulaski County Special School District requested the Board conduct a hearing at a future meeting to review the decision made by the Charter Authorizing Panel.

Mr. Chris Heller, attorney for LRSD, requested the Board review the CAP action.

Mr. James Taylor, CFO for Responsive Education Solutions, asked the Board to not review the CAP action.

Dr. Barth made a motion, seconded by Ms. Mahony, to review the Charter Authorizing Panel Action on the Open-Enrollment Public Charter School Amendments for Quest Middle School of West Little Rock. Mr. Ledbetter, Dr. Barth, Ms. Mahony, Ms. Newton, Ms. Reith, and Ms. Saviers voted yes. Ms. Zook voted no. The final vote was 6-1. The motion carried.

#### **A-14 Consider Recommendation of New Praxis Physical Education and Health Test**

Public School Program Advisor for the Office of Educator Effectiveness Michael Rowland reported that Educational Testing Service (ETS) facilitated a test review for Arkansas physical education and health faculty on Thursday, February 27, 2014. Representatives from ETS, including one physical education and health specialist, reviewed test data from a 2013 ETS multi-state standard setting study for the Praxis™ Health and Physical Education: Content Knowledge (5857) and from a 2010 ETS multi-state standard setting study for the Praxis™ Physical Education: Content and Design (5095). At its January 2014 meeting, the State Board of Education (SBE) followed the ADE recommendation to replace the Praxis™ Health and Physical Education: Content Knowledge (5856) with the Praxis™ Health and Physical Education: Content Knowledge (5857) with a passing score of 160 effective September 1, 2014; however, after reviewing test data, the PE and health faculty recommend adopting the -1 standard error of measurement (SEM) score of 155 as the passing score for PE and Health educator licensure. He reported a SEM represents the uncertainty associated with a test score allowing states flexibility to choose a score higher or lower than the study value (passing score). At its September 2010 meeting, the SBE adopted the Praxis™ Physical Education: Content and Design (5095) with a cut score of 169 that went into effect January 1, 2011. Representatives from ETS suggested that using both the Praxis™ Health and Physical Education: Content Knowledge (5857) and the Praxis™ Physical Education: Content and Design (5095) was unnecessary since both tests covered the same general physical education and health content competencies. Two

recommendations resulted from the PE and health faculty meeting: (1.) Adopt the -1 Standard Error of Measurement (SEM) score of 155 (on a 100 - 200 scale) instead of the study value of 160 for the Praxis™ Health and Physical Education: Content Knowledge (5857), and (2.) Drop the Praxis™ Physical Education: Content and Design (5095).

Dr. Barth made a motion, seconded by Ms. Mahony, to approve the New Praxis Physical Education and Health Test. The motion carried unanimously.

#### **A-15 Consider Recommendation of New Praxis Music Licensure Test**

Public School Program Advisor for the Office of Educator Effectiveness Michael Rowland said at its February 2012 meeting, the State Board of Education followed the ADE recommendation to replace three (3) Praxis™ music tests, the Praxis™ Music: Concepts and Processes (0111)\*, the Praxis™ Music: Analysis (0112), and the Praxis™ Music: Content Knowledge (0113), with the Praxis™ Music: Content and Instruction (5114) effective September 1, 2012. Arkansas's current pass rate on the Praxis™ Music: Content and Instruction (5114) is 50.27%. To address the low pass rate, Educational Testing Service (ETS) facilitated a test review for Arkansas music education faculty on Thursday, January 9, 2014. The following consensus was reached as the best option for Arkansas's educator licensure exam in music: (1.) Drop the current Praxis™ Music: Content and Instruction (5114), which contains 84 multiple-choice questions, 22 based on recorded musical excerpts, and 3 constructed response questions, and (2.) Adopt the Praxis™ Music: Content Knowledge (5113), which contains 120 four-option multiple-choice questions; 30 based on recorded musical excerpts. The study value (recommended passing score) from a 2011 ETS multi-state standard setting study for the Praxis™ Music: Content Knowledge (5113), which included three Arkansas music educators, is 161 with a -1 Standard Error of Measurement (SEM) score of 157 (on a 100 - 200 scale). He reported a SEM represents the uncertainty associated with a test score allowing states flexibility to choose a score higher or lower than the study value. The ADE recommended dropping the Praxis™ Music: Content and Instruction (5114) and adopting the Praxis™ Music: Content Knowledge (5113) with a cut score of 157 effective immediately. Candidates may continue to take the current Praxis™ Music: Content and Instruction (5114) with a cut score of 162 until December 31, 2014.

Ms. Zook made a motion, seconded by Ms. Newton, to approve the New Praxis Music Licensure Test. The motion carried unanimously.

#### **A-16 Consideration for Emergency Adoption: Proposed Revisions to the Arkansas Department of Education Rules Governing the Arkansas Comprehensive Testing, Assessment and Accountability Program and the Academic Distress Program**



Department General Counsel Jeremy Lasiter said Acts 600, 1073, 1081 and 1429 of 2013 resulted in several revisions to Arkansas laws related to the Arkansas Comprehensive Testing, Assessment and Accountability Program (ACTAAP) and the Academic Distress Program. The proposed revisions include revisions made necessary by the above-listed acts. He said the rules include relevant language from the current Arkansas Department of Education Rules Governing Public School End-of-Course Assessments and Remediation. Department staff recommended the combination of the ACTAAP and End-of-Course rules and that the existing End-of-Course rules be repealed. Department staff requested the State Board of Education grant emergency adoption to the proposed rules.

The Board discussed many items in the rules. Ms. Mahony noted two areas for revision. Mr. Lasiter said the emergency rules lasts four months.

Ms. Mahony made a motion, seconded by Ms. Zook, to table for additional study, review and revision of the proposed revisions to the Arkansas Department of Education Rules Governing the Arkansas Comprehensive Testing, Assessment and Accountability Program and the Academic Distress Program.

Ms. Mahony and Ms. Zook withdrew their motion and second.

Mr. Ledbetter made a motion, seconded by Ms. Saviers, to approve for emergency adoption with immediate revisions to the Arkansas Department of Education Rules Governing the Arkansas Comprehensive Testing, Assessment and Accountability Program and the Academic Distress Program. The motion carried unanimously.

#### **A-17 Consideration for Emergency Adoption: Rules Governing Professional Development**

Professional Licensure Standards Board (PLSB) Attorney Cheryl Reinhart said the Department recommended changes to the Arkansas Department of Education Rules Governing Professional Development to implement changes made to the Arkansas Code regarding professional development under Act 2 of the First Extraordinary Session of 2013. Because the effective date of the rule is July 1, 2014, and school districts are planning now for the 2014-2015 school year professional development, the Department requested the State Board grant emergency adoption of the proposed rule.

Dr. Barth made a motion, seconded by Ms. Saviers, to approve for emergency adoption the Rules Governing Professional Development. The motion carried unanimously.

The Board considered A-18, A-19, A-20, A-21, and A-22 together.

#### **A-18 Consideration for Public Comment: Proposed Revisions to the Arkansas Department of Education Rules Governing the Arkansas Comprehensive Testing, Assessment and Accountability Program and the Academic Distress Program**

**A-19 Consideration for Public Comment: Proposed Repeal to the Arkansas Department of Education Rules Governing Public School End-of-Course Assessments and Remediation**

**A-20 Consideration for Public Comment: Proposed Revisions to the Arkansas Department of Education Rules Governing the Fiscal Assessment and Accountability Program**

**A-21 Consideration for Public Comment: Arkansas Department of Education Rules Governing Public Charter Schools**

**A-22 Consideration for Public Comment: Proposed Rules Governing Professional Development**

Dr. Barth made a motion, seconded by Mr. Ledbetter, to approve for public comment the proposed revisions to the Arkansas Department of Education Rules Governing the Arkansas Comprehensive Testing, Assessment and Accountability Program and the Academic Distress Program with immediate revisions, proposed repeal to the Arkansas Department of Education Rules Governing Public School End-of-Course Assessments and Remediation, proposed revisions to the Arkansas Department of Education Rules Governing the Fiscal Assessment and Accountability Program, proposed Arkansas Department of Education Rules Governing Public Charter Schools, and the proposed Rules Governing Professional Development. The motion carried unanimously.

The Board considered A-23, A-24, A-26, A-27 and A-29 together.

**A-23 Consideration for Final Approval: Arkansas Department of Education Rules Governing the School Worker Defense Program Advisory Board**

**A-24 Consideration for Final Approval: Arkansas Department of Education Rules Governing the Digital Learning Act of 2013**

**A-26 Consideration for Final Approval: Arkansas Department of Education Rules Governing Schools of Innovation**

**A-27 Consideration for Final Approval: Proposed Rules Governing Nontraditional Licensure Programs**

**A-29 Consideration for Final Approval: Proposed New Policies Governing Programs for Educator Licensure Offered by Institutions of Higher Education in Arkansas**

Ms. Saviers made a motion, seconded by Ms. Newton, to approve the Arkansas Department of Education Rules Governing the School Worker Defense Program Advisory Board, the Arkansas Department of Education Rules Governing the Digital

Learning Act of 2013, the Arkansas Department of Education Rules Governing Schools of Innovation, and the Rules Governing Nontraditional Licensure Programs. The motion carried unanimously.

**A-25 Consideration for Final Approval: Arkansas Department of Education Rules Governing Instructional Materials**

Department Attorney Kendra Clay said Act 511 of 2013 amended Ark. Code Ann. § 6-21-401 et seq. relating to instructional materials. Revisions to these rules include the necessary changes based on Act 511 of 2013. The State Board approved these revisions for public comment on February 13, 2014. Public comments were received and additional revisions were made to the rules. Department staff requested the State Board approve an additional comment period for these rules.

Ms. Saviers made a motion, seconded by Mr. Ledbetter, to approve the Arkansas Department of Education Rules Governing Instructional Materials for public comment. The motion carried unanimously.

**A-28 Consideration for Final Approval: Code of Ethics for Arkansas Educators**

Professional Licensure Standards Board (PLSB) Attorney Cheryl Reinhart said the Department recommended changes to the Rules Governing the Code of Ethics for Arkansas Educators adopted by the Professional Licensure Standards Board to revise the wording of Standard 2 and its accompanying guideline, revise Standard 6 and create a new Standard 7 out of the former Standard 6 and revise the wording of the accompanying guidelines, renumber and revise the wording and accompanying guideline of Standard 8, implement a technical change made in Act 454 of the 2013 Regular Session, and implement new provisions in the Code of Ethics under Act 1323. Department staff received public comments on the proposed rules and after careful consideration of the public comments and State Board member concerns made revisions to the proposed rules. Ms. Reinhart requested the State Board adopt these rules as final.

Dr. Barth made a motion, seconded by Ms. Saviers, to approve the Code of Ethics for Arkansas Educators. The motion carried unanimously.

Dr. Barth moved, seconded by Ms. Newton, to make a resolution to the PLSB to revisit the code of ethics and provide stronger language against discrimination of students. The motion carried unanimously.

**A-30 Consideration of Revocation of Teaching License – Heather Eshenbaugh**

A-30 was pulled from the agenda.

### **Nominating Committee Appointment**

Ms. Gullett appointed a nominating committee consisting of Ms. Mahony, chair; Ms. Reith; and Dr. Barth. The committee will bring nominations for Board Chair and Board Vice-Chair to the May Board meeting.

### **Special Committee Appointment**

Ms. Gullett said Arkansas is eligible to apply for a NASBE grant. Ms. Gullett appointed Dr. Barth to a special committee to work with Dr. Tracy Tucker and the Science team.

### **Special Committee Appointment**

Ms. Gullett appointed Ms. Diane Zook to serve on the Department's Dyslexia Committee.

### **Special Committee Appointment**

Ms. Gullett appointed a special committee including Ms. Mahony, chair, Ms. Reith, and Mr. Black to work with the ADE Communications Team to focus on parent involvement.

### **Recognition**

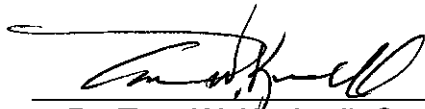
Ms. Mahony recognized Prescott School District because they sent envelopes home and asked parents to write encouraging notes to students during Benchmark Exam week.

### **Adjournment**

The meeting adjourned at 4:34 p.m.

*Minutes recorded by Deborah Coffman.*

  
Brenda Gullett, Chair

  
Dr. Tom W. Kimbrell, Commissioner

**Minutes  
State Board of Education Meeting  
Thursday, June 12, 2014**

The State Board of Education met Thursday, June 12, 2014, in the Auditorium of the Department of Education Building. Chair Brenda Gullett called the meeting to order at 10:15 a.m.

Present: Brenda Gullett, Chair; Sam Ledbetter, Vice-Chairman; Alice Mahony; Dr. Jay Barth; Vicki Saviers; Toyce Newton; Diane Zook; Mireya Reith; Joe Black; Alexia Weimer, Teacher of the Year; and Dr. Tom Kimbrell, Commissioner.

Absent: none

**Consent Agenda**

Correction of May minutes: Ms. Mahony requested the May 8, 2014, State Board minutes reflect the following revision to A-6, Hearing for Open-Enrollment Public Charter School amendment request for Quest Middle School of West Little Rock, Little Rock, Arkansas: Ms. Mahony said, "They were to have furnished the Board with a report from the city verifying the site could be used as a school and a traffic study that was based on the enrollment, in addition to the one that was done on March 19. In addition, there is verbiage saying no more students over "x" number at that school but on the website, *Arkansas Learns*, they list 2015-2016 as adding 9<sup>th</sup> grade to the site."

Ms. Cheryl Reinhart requested the Board pull C-12, Consideration of the Recommendation of the Professional Licensure Standards Board for Case #14-038 – Jason Ryan Hathcock, from the agenda.

Ms. Mahony moved, seconded by Ms. Reith to approve the consent agenda. The motion carried unanimously.

Items included in the Consent Agenda:

- Minutes - May 8, 2014
- Minutes - May 9, 2014
- Act 648 of 1993 Community Service Learning – Delta YES! Inc., Brinkley, Arkansas
- Arkansas Division of Volunteerism requests approval from the Arkansas State Board of Education for a new site as described in ACT 648 of 1993 Community Service Learning

- Review of Loan and Bond Applications
- Newly Employed, Promotions and Separations
- Final Report Fiscal Year 2013-14 Summary of Activities for the Standards Assurance Unit (SAU)
- Report on Waivers to School Districts for Teachers Teaching Out of Area for Longer than Thirty (30) Days, Ark. Code Ann. §6-17-309
- Consideration of the Recommendation of the Department of Education for a Waiver – Jennifer Clem, Pre-service Teacher
- Consideration of the Recommendation of the Professional Licensure Standards Board for Case #13-170 - Stephen Carlyle Thomas
- Consideration of the Recommendation of the Professional Licensure Standards Board for Case #14-001 – David Michael Walker
- Consideration of the Recommendation of the Professional Licensure Standards Board for Case #14-029 – Bradley Ralph Harris
- Consideration of the Recommendation of the Professional Licensure Standards Board for Case #14-043 – Deanna Lynn Longstreth
- Consideration of the Recommendation of the Professional Licensure Standards Board for Case #13-167 – Ashley Ann Walker
- Consideration of the Voluntary Surrender of License by William Bryan Smith in Professional Licensure Standards Board Case #14-139

### **Action Agenda**

#### **A-1 Consideration to approve the funding for the 2013-2014 Enhancement Grants**

Ms. Mary Kaye McKinney said the DHS Division of Child Care and Early Childhood Education requested approval to fund enhancement grants for 2013-2014.

Dr. Barth made a motion, seconded by Ms. Newton, to approve funding for the 2013-2014 Enhancement Grants. The motion carried unanimously.

#### **A-2 Consideration of Arkansas Better Chance 2014-2015 Grants**

Ms. Mary Kaye McKinney said the Division of Child Care and Early Childhood Education requested approval of the Arkansas Better Chance grants for the 2014-2015 year.

Mr. Black made a motion, seconded by Ms. Saviers, to approve the Arkansas Better Chance 2014-2015 Grants. The motion carried unanimously.

#### **A-4 Consider Removal of Dollarway School District from State Control,**

**effective October 1, 2014**

Assistant Commissioner of Public School Accountability John Hoy said on June 11, 2012, the State Board of Education found that the Dollarway School District violated the Standards for Accreditation of Arkansas Public Schools and School Districts (Standards for Accreditation) for two consecutive school years (2010-2011 and 2011-2012). Pursuant to Ark. Code Ann. § 6-15-207, the State Board of Education assumed authority over the Dollarway School District. The State Board reconstituted the leadership of the Dollarway School District by removing the superintendent and school board, and by making the Commissioner of Education responsible for the governance of the school district. The Dollarway School District has been free of any violations of the Standards for Accreditation for two consecutive school years (2012-2013 and 2013-2014). For that reason, the Arkansas Department of Education recommended that the State Board of Education remove the Dollarway School District from state authority, effective October 1, 2014 (after a school board is elected and receives training).

Dollarway School District Superintendent Bobby Acklin said Mr. Frank Anthony, the previous superintendent, had worked on some of the challenges prior to Mr. Acklin's assignment to the position. The district continues to struggle with finding and keeping qualified staff. Mr. Acklin said the staff is determined to keep the district open, the attendance is steady, literacy scores in high school increased this year and the finances of the district are stable. He said that district staff audited all student transcripts. Mr. Acklin said it would be a positive action for the community to regain control of the district.

Ms. Newton made a motion, seconded by Ms. Reith, to remove the Dollarway School District from state control, effective October 1, 2014. The motion carried unanimously.

**A-5 Drew Central School District Appeal**

Standards Assurance Monitoring Unit Leader Johnie Walters said the Drew Central School District appealed the assigned status of accredited – probationary to Drew Central High School. Mr. Walters said the district was in violation of Rule 9.03.4.4, requiring the district to teach two (2) units of the same Foreign Language to meet the requirements of the 38 courses mandated to be taught in Arkansas public schools, for example: 440000 Spanish I (1 unit) and 440020 Spanish II (1 unit) or 441000 French I (1 unit) and 441010 French II (1 unit).

Drew Central School District Superintendent Billy Williams said the high school did have an error in scheduling. He said the district made a correction and the Spanish II course was double blocked during second semester for a full credit.

Mr. Ledbetter made a motion, seconded by Ms. Saviers, to deny the Drew Central School District appeal. The motion carried unanimously.

#### **A-6 Cross County School District Appeal**

Standards Assurance Monitoring Unit Leader Johnie Walters said Cross County School District appealed the assigned status of accredited – probationary to Cross County New Tech High School. Mr. Walters said the district was in violation of Rule 9.03.4.7 requiring the district/high school to teach four (4) units of Social Studies to meet the requirements of the 38 courses mandated to be taught in Arkansas public schools: 470000 American History; 1 unit 471000 World History; 1 unit 472000 Civics; ½ unit 474300 Economics; ½ unit (if not taught as a CTE course) Social Studies elective(s); 1 unit or 1 ½ units if Economics is a CTE course.

Cross County School District Superintendent Carolyn Wilson said the issue was a coding error. She said that after Mr. Walters left the district, district employees went back through the information and found the error. The accountability report they ran showed a green light, so they did not have a reason to think they were not okay. She said the correct courses were being taught.

Dr. Barth made a motion, seconded by Ms. Zook, to approve the Cross County School District appeal. Ms. Newton voted no. The final vote was 7-1. The motion carried.

#### **A-7 Wynne School District Appeal**

Standards Assurance Monitoring Unit Leader Johnie Walters said Wynne School District appealed the assigned status of accredited – probationary to Wynne High School. Mr. Walters said the district was in violation of Rule 9.03.4.11.8 regarding the notification of the Arkansas Department of Education of intent to use an Advanced Placement (AP) course to meet the requirements of the 38 courses mandated to be taught in Arkansas public schools. The district has also appealed a violation of Rule 9.03.4.3 requiring the district/high school to teach six (6) units of Mathematics to meet the requirements of the 38 courses mandated to be taught in Arkansas public schools: 430000 Algebra I; 1 unit 431000 Geometry; 1 unit 432000 Algebra II; 1 unit 433000 Pre-Calculus; 1 unit Math Electives; 2 units.

Wynne School District Superintendent Carl Easley said students scheduled for transition math were moved into Algebra III. During second semester, some of the students were scheduled into Topics for Math.



Mr. Ledbetter made a motion, seconded by Dr. Barth, to deny the Wynne School District appeal. The motion carried unanimously.

The Board entered into executive session at 12:17 p.m. to discuss A-26, Consideration of Tony Wood as Commissioner of Education.

The Board exited executive session at 1:31 p.m. and took action on A-26.

**A-26 Consideration of Tony Wood as Commissioner of Education**

Ms. Zook made a motion, seconded by Ms. Saviers, to approve Tony Wood as Commissioner of Education. The motion carried unanimously.

**A-8 Arkadelphia School District Appeal**

Standards Assurance Monitoring Unit Leader Johnie Walters said Arkadelphia School District has appealed the assigned status of accredited – probationary to Arkadelphia High School. He said the district was in violation of Rule 9.03.4.11.8 regarding the notification of the Arkansas Department of Education of intent to use an Advanced Placement (AP) course to meet the requirements of the 38 courses mandated to be taught in Arkansas public schools.

Arkadelphia School District Superintendent Dr. Donnie Whitten said the high school was part of the AAIMS initiative and implemented three STEM projects. All 23 students enrolled in AP Physics; no one enrolled in Physics. The district failed to send a letter to the ADE.

Dr. Barth made a motion, seconded by Mr. Ledbetter, to approve the Arkadelphia School District Appeal. Ms. Mahony voted no. The final vote was 7-1. The motion carried.

**A-9 Lavaca School District Appeal**

Standards Assurance Monitoring Unit Leader Johnie Walters said Lavaca School District has appealed the assigned status of accredited – probationary to Lavaca High School. He said the district was in violation of Rule 9.03.4.11.8 regarding the notification of the Arkansas Department of Education of intent to use an Advanced Placement (AP) course to meet the requirements of the 38 courses mandated to be taught in Arkansas public schools.

Lavaca School District Superintendent Steve Rose said the district offered AP Calculus course. The district failed to send a letter to the ADE.

Ms. Newton made a motion to deny the Lavaca School District appeal. The motion died for lack of a second.

Mr. Ledbetter made a motion, seconded by Ms. Saviers, to approve the Lavaca School District appeal. Ms. Mahony, Dr. Barth and Ms. Newton voted no. The final vote was 5-3. The motion carried.

#### **A-10 Malvern School District Appeal**

Standards Assurance Monitoring Unit Leader Johnnie Walters said Malvern School District appealed the assigned status of accredited – probationary to Malvern High School. He said the district was in violation of Rule 9.03.4.11.8 regarding the notification of the Arkansas Department of Education of intent to use an Advanced Placement (AP) course to meet the requirements of the 38 courses mandated to be taught in Arkansas public schools.

Malvern School District Assistant Superintendent Janet Blair and Director of Concurrent Credit and AP Program Senior Guidance Counselor Jonathan Williams said students were double blocked in Algebra so the students could take a higher math class as seniors. No student took the Bridge to Algebra course.

Ms. Mahony made a motion to deny the Malvern School District appeal. The motion died for lack of a second.

Dr. Barth made a motion, seconded by Ms. Saviers, to approve the Malvern School District appeal. Ms. Newton and Ms. Mahony voted no. The final vote was 6-2. The motion carried.

#### **A-3 Final Accreditation Report Fiscal Year 2013-2014 - Summary of Accreditation for Arkansas Public Schools and School Districts**

Standards Assurance Monitoring Unit Leader Johnnie Walters said the report was submitted for compliance with A.C.A. § 6-15-102 (g) (1) and (2). Mr. Walters amended the report to include the above granted appeals.

Dr. Barth made a motion, seconded by Ms. Reith, to approve the final Accreditation Report Fiscal Year 2013-2014 - Summary of Accreditation for Arkansas Public Schools and School Districts with the appeals approved above. The motion carried unanimously.

#### **A-11 Fort Smith School District Appeal**

This item was pulled from the agenda.

#### **A-12 SIA Tech Little Rock Appeal**

This item was pulled from the agenda.

**A-13 Request Approval of Nominated Members for the Professional Licensure Standards Board to Replace Members Whose Terms are Expiring June 30, 2014.**

Assistant Commissioner Dr. Karen Walters said pursuant to § 6-17-422 members of the PLSB serve rotating terms. She said three (3) members of the Professional Licensure Standards Board would complete their three-year terms on June 30, 2014. She presented three nominations. Dr. Brad Baine, Dean of the College of Education of Williams Baptist University, was nominated for re-appointment by the Arkansas Association of Colleges for Teacher Education (ArACTE) to represent Private Institutions of Higher Education. Dr. Randy Willison, Superintendent of Batesville School District, was nominated for re-appointment by the Arkansas Association of Educational Administrators (AAEA) to represent public school superintendents. Ms. Lillian Hemphill, Social Studies teacher at Watson Chapel Jr. High School in the Watson Chapel School District, was nominated by the Arkansas Education Association (AEA) to represent Public School Classroom Teachers – Grades 4-8. Dr. Walters said the terms of these members would begin on July 1, 2014 and end on June 30, 2017.

Ms. Gullett recommended the Board receive training about the process of the PLSB board during the July work session or when the new board member joins the board.

Ms. Saviers made a motion, seconded by Ms. Reith, to approve the nominated members for the Professional Licensure Standards Board to replace members whose terms are expiring June 30, 2014. The motion carried unanimously.

**A-14 Presentation of Working Draft of a Plan for the Development and Implementation of Arkansas's K-12 Science Standards**

Curriculum and Instruction Director Dr. Tracy Tucker said she was pleased to present the first draft of a plan to guide and support the development and implementation of K-12 Science Standards. She said this plan is a collaborative effort between curriculum, assessment, professional development, communications, and external partners. The ADE website will house all information related to this on-going work under the Curriculum and Instruction page. The ADE state lead for this work is Ms. Michele Snyder, Program Advisor in the Curriculum and Instruction Unit.

Ms. Mahony and Dr. Barth will be attending a meeting focusing on K-12 Science. Dr. Barth said the ADE will be receiving a grant from NASBE for K-12 Science.

Ms. Saviers made a motion, seconded by Ms. Reith, to approve the working draft

of a plan for the development and implementation of Arkansas's K–12 Science Standards. The motion carried unanimously.

**A-15 Consideration for Final Approval: Proposed Revisions to the Arkansas Department of Education Rules Identifying and Governing the Arkansas Fiscal Assessment and Accountability Program**

Department General Counsel Jeremy Lasiter said Act 600 of 2013 resulted in several revisions to Arkansas laws related to fiscal distress. He said based upon those legislative revisions, on April 10, 2014, the State Board of Education approved for public comment proposed revisions to the Arkansas Department of Education Rules Identifying and Governing the Arkansas Fiscal Assessment and Accountability Program. The Arkansas Department of Education staff held a public hearing concerning the proposed revisions on April 29, 2014. The public comment period expired on May 12, 2014. The Arkansas Department of Education received public comments on the proposed revisions. Mr. Lasiter said the Arkansas Department of Education staff made no revisions to the proposed rules based upon the public comments received.

Dr. Barth made a motion, seconded by Ms. Newton, to approve the proposed revisions to the Arkansas Department of Education Rules Identifying and Governing the Arkansas Fiscal Assessment and Accountability Program. The motion carried unanimously.

**A-17 Consideration for Final Approval: Proposed Rules Governing How to Meet the Needs of Children with Dyslexia**

Department Deputy General Counsel Lori Freno-Engman said the proposed rules incorporated the requirements of Act 1294 of 2013 (codified at Ark. Code Ann. §§ 6-40-101 through 109) that school districts screen certain students for dyslexia, providing intervention, evaluation, services, and accommodations as warranted. She said the proposed rules also incorporate the requirement that the ADE develop a Dyslexia Resource Guide. The Board released the proposed rules for public comment on March 20, 2014; the public comment period ended April 22, 2014. She said comments were reviewed but no changes were made to the proposed rules. Section 6.03 was changed, however, to correct a typographical error and thus make the wording of that section consistent with the Act.

Ms. Zook said the dyslexia law has issues that hopefully will be addressed at the next legislative session, but the ADE team has worked diligently to meet the expectations of the law and rules. She recognized the work of Jane Dearworth and Kevin Beaumont.

Dr. Witonski said that an ADE employee has been hired to fill the dyslexia position. She said the resource guide is in first draft with a final draft expected by Fall 2014.

Ms. Courtney Salas-Ford, attorney for SPED, said a diagnosis for dyslexia alone is not enough to qualify under IDEA.

Mr. Ledbetter made a motion, seconded by Mr. Black, to approve the proposed Rules Governing How to Meet the Needs of Children with Dyslexia. Ms. Zook voted no. The final vote was 7-1. The motion carried.

#### **A-18 Consideration for Final Approval: ADE Rules Governing Instructional Materials**

Department attorney Kendra Clay said revisions to these rules were made to reflect the changes in Act 511 of 2013. She said the rules were released for public comment on February 13, 2014 and April 10, 2014. Public comments were received during both public comment periods and additional revisions to the rules were made.

Dr. Barth made a motion, seconded by Ms. Zook, to approve the ADE Rules Governing Instructional Materials. The motion carried unanimously.

#### **A-16 Consideration for Final Approval: Repeal of Arkansas Department of Education Rules Governing Public School End of Course Assessments and Remediation**

Department General Counsel Jeremy Lasiter said Acts 600, 1073, 1081 and 1429 of 2013 resulted in several revisions to Arkansas laws related to the Arkansas Comprehensive Testing, Assessment and Accountability Program (ACTAAP), Academic Distress Program, and End of Course Assessments and Remediation. He said the Arkansas Department of Education staff recommended the combination of the ACTAAP and End of Course rules, and the repeal of the existing End of Course rules. On April 10, 2014, the State Board of Education approved for public comment the proposed repeal of the End of Course rules. Arkansas Department of Education staff held a public hearing concerning the proposed repeal on April 29, 2014. The public comment period expired on May 15, 2014. The Arkansas Department of Education received no public comments on the proposed repeal.

Ms. Zook made a motion, seconded by Mr. Ledbetter, to repeal the Arkansas Department of Education Rules Governing Public School End of Course Assessments and Remediation. The motion carried unanimously.

**A-19 Consideration for Final Approval: ADE Rules Governing ACTAAP and the Academic Distress Program**

Department General Counsel Jeremy Lasiter said Acts 600, 1073, 1081 and 1429 of 2013 resulted in several revisions to Arkansas laws related to the Arkansas Comprehensive Testing, Assessment and Accountability Program (ACTAAP) and the Academic Distress Program. He said based upon those legislative revisions, on April 10, 2014, the State Board of Education approved for public comment proposed revisions to the Arkansas Department of Education Rules Governing the Arkansas Comprehensive Testing, Assessment and Accountability Program and the Academic Distress Program. Arkansas Department of Education staff held a public hearing concerning the proposed revisions on April 29, 2014. The public comment period expired on May 12, 2014. The Arkansas Department of Education received public comments on the proposed revisions and made a minor revision to Section 5.01.2 to make the provision consistent with Arkansas law.

Ms. Mahony made a motion, seconded by Ms. Zook, to approve the ADE Rules Governing ACTAAP and the Academic Distress Program. The motion carried unanimously.

**A-20 Consideration for Final Approval: ADE Rules Governing Public Charter Schools**

Department attorney Kendra Clay said the proposed revisions established a procedure for parties that request State Board review of Charter Authorizing decisions. She said the revisions also change the timeline for submission of amendment requests by current charter holders. The State Board released these rules for public comment on April 10, 2014. A public hearing was held on April 29, 2014. Ms. Clay said written comments were received, and changes to the rules were made.

Ms. Saviers made a motion, seconded by Ms. Newton, to approve the ADE Rules Governing Public Charter Schools. The motion carried unanimously.

**A-21 Consideration for Public Comment: Repeal of ADE Rules Governing the Issuance of Subpoenas by the Arkansas State Board of Education**  
Item was pulled from the agenda.

**A-22 Consideration for Public Comment: ADE Rules Governing State Board of Education Operating Guidelines**  
Item was pulled from the agenda.

The Board considered A-23 and A-24 together.

**A-23 Consideration for Emergency Approval: District Conversion Charter School New Application**

Department attorney Kendra Clay said the 2014 District Conversion Application includes additional prompts suggested by the Charter Authorizing Panel and updates the submission deadline for the 2014 application cycle.

**A-24 Consideration for Public Comment: District Conversion Charter School New Application**

Department staff attorney Kendra Clay said the 2014 District Conversion Application includes additional prompts suggested by the Charter Authorizing Panel and updates the submission deadline for the 2014 application cycle.

Dr. Barth made a motion, seconded by Mr. Black, for emergency approval of the District Conversion Charter School New Application and to approve for public comment the District Conversion Charter School New Application. The motion carried unanimously.

**A-25 Hearing on Revocation of Teaching License – Heather Eshenbaugh**  
This item was pulled from the agenda.

**A-27 Election of Officers: State Board of Education for 2014-2015**

Ms. Mahony presented the recommended slate of officers as Chairman, Sam Ledbetter; and Vice-Chairman, Toyce Newton.

The motion carried unanimously.

**Adjournment**

The meeting adjourned at 3:12 p.m.

*Minutes recorded by Deborah Coffman*

  
\_\_\_\_\_  
Sam Ledbetter, Chair

  
\_\_\_\_\_  
Tony Wood, Commissioner

# ARKANSAS REGISTER

## Transmittal Sheet

\* Use only for **FINAL** and **EMERGENCY RULES**

Secretary of State  
**Mark Martin**  
 State Capitol, Suite 026  
 Little Rock, Arkansas 72201-1094  
 (501) 682-3527  
[www.sos.arkansas.gov](http://www.sos.arkansas.gov)



For Office

Use Only:

Effective Date \_\_\_\_\_ Code Number \_\_\_\_\_

Name of Agency Arkansas Department of EducationDepartment Legal ServicesContact Jeremy C. Lasiter E-mail jeremy.lasiter@arkansas.gov Phone 501-682-4227Statutory Authority for Promulgating Rules Ark. Code Ann. 6-11-105, 6-15-401 et seq., 6-15-2009, 25-15-201 et seq.Rule Title: ADE Rules Governing ACTAAP and Academic Distress ProgramIntended Effective Date  
(Check One)

- ☐ Emergency (ACA 25-15-204)
- ☒ 30 Days After Filing (ACA 25-15-204)
- ☐ Other \_\_\_\_\_  
(Must be more than 30 days after filing date.)

	Date
Legal Notice Published	<u>April 13, 2014</u>
Final Date for Public Comment	<u>May 12, 2014</u>
Reviewed by Legislative Council	<u>August 6, 2014</u>
Adopted by State Agency	<u>June 12, 2014</u>

Electronic Copy of Rule submitted under ACA 25-15-218 by:

<u>Jeremy C. Lasiter</u>	<u>jeremy.lasiter@arkansas.gov</u>	<u>August 6, 2014</u>
Contact Person	E-mail Address	Date

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
 In Compliance with Act 434 of 1967 the Arkansas Administrative Procedures Act. (ACA 25-15-201 et seq.)

**RECEIVED**

AUG 06 2014 501-682-4227

BUREAU OF  
LEGISLATIVE RESEARCH

Phone Number

General Counsel

Title

August 6, 2014

Date

Signature

jeremy.lasiter@arkansas.gov

E-mail Address

FILED  
 REGISTER DIV.  
 AUG 6 2014  
 LITTLE ROCK, ARK.