

**ARKANSAS DEPARTMENT OF EDUCATION  
RULES GOVERNING  
BACKGROUND CHECKS ~~AND LICENSE REVOCATION~~  
, 2015**

**1.00 REGULATORY AUTHORITY AND PURPOSE**

- 1.01 These rules shall be known as Arkansas Department of Education Rules Governing Background Checks ~~and License Revocation~~.
- 1.02 The State Board of Education enacts these Rules pursuant to its authority as set forth in Ark. Code Ann. §§ 6-11-105, 6-17-410, 6-17-411, 6-17-414, 6-17-421, 25-15-201 *et seq.*, and ~~Act 455 of 2013~~ Act 1089 of 2015.
- 1.03 It is the purpose of these rules to set forth the requirements for a criminal background check and a Child Maltreatment Central Registry check for:
- 1.03.1 Each first-time applicant for a license issued by the State Board of Education;
- 1.03.2 Each applicant for his or her license renewal;
- 1.03.3 Each applicant for initial employment in a licensed staff position with ~~a public school district or open enrollment public charter school~~ an educational entity;
- 1.03.4 Each applicant for initial employment or non-continuous reemployment in a non-licensed staff position with ~~a public school district, open enrollment public charter school, or education service cooperative~~ an educational entity; and
- 1.03.5 Each preservice teacher.
- 1.04 It is further the purpose of these rules to prescribe the procedure for ~~revocation, suspension~~ revoking, suspending, or placing on probation of an educational license when an applicant is disqualified for licensure on the basis of a background check under these rules.
- 1.05 It is further the purpose of these rules to clarify whose criminal records check and Child Maltreatment Central Registry check fees shall be paid by the Department of Education.
- 1.06 It is further the purpose of these rules to clarify that superintendents and ~~charter school~~ directors of educational entities shall have the responsibility of reporting licensure violations of teachers and fraudulent acts by Fiscal Officers to the State Board.

## 2.00 DEFINITIONS

For the purposes of these rules:

- 2.01 **“Affected District”** means a public school district that loses territory or students as a result of annexation, consolidation, or detachment.
- 2.02 **“Applicant”** includes any individual:
- 2.02.1 Applying for his or her first license to be issued by the State Board of Education;
  - 2.02.2 Applying for his or her license renewal;
  - 2.02.3 Seeking initial employment in a licensed staff position with ~~a public school district or open-enrollment public charter school~~ an educational entity;
  - 2.02.4 Seeking initial employment or non-continuous reemployment in a non-licensed staff position with ~~a public school district, open-enrollment public charter school, or education service cooperative~~ an educational entity;
  - 2.02.5 Seeking initial employment as a Fiscal Officer of a public school district or open-enrollment public charter school;
  - 2.02.6 Seeking registered volunteer status pursuant to the Arkansas Registered Volunteers Program Act, Ark. Code Ann. § 6-22-101 *et seq.*; or
  - 2.02.7 Who is a preservice teacher.
- 2.03 **“Breach of Fiduciary Trust”** means the wrongful misappropriation by a person of any fund or property, which had lawfully been committed to him or her in a fiduciary character.
- 2.04 **“Department”** means the Arkansas Department of Education.
- 2.05 **“Educational entity”** means ~~a school district, an open-enrollment public charter school, or an education service cooperative~~ :
- 2.05.1 The Department of Education; or

2.05.2 An entity that is identified by the Department as a local education agency, except that for a public school operated by a school district the school district is the educational entity.

2.06 **“Employment”** includes any contract of hire, whether written or oral, whether express or implied, for any type of work on behalf of an educational entity, whether full-time or part-time, and whether permanent or temporary.

2.06.1 “Employment” also specifically includes without limitation:

2.06.1.1 Service as a substitute teacher, whether paid or unpaid;

2.06.1.2 Student teacher internships in a supervised clinical practice, whether paid or unpaid; and

2.06.1.3 Volunteer work pursuant to the Arkansas Registered Volunteers Program Act, Ark. Code Ann. § 6-22-101 *et seq.*

2.07 **“Fiscal Officer”** means any licensed or non-licensed employee of a public school district, open enrollment public charter school, or education service cooperative an educational entity who has any right, duty, or responsibility to access funds of a school district the educational entity in excess of five thousand dollars (\$5,000), specifically including without limitation superintendents, Fiscal Officers and bookkeepers.

2.08 **“Fraud”** means all acts, omissions and concealments involving a breach of a legal or equitable duty and resulting in damage to another.

2.09 **“Fraudulent Act”** means an act:

2.09.1 Performed willfully and with the specific intent to deceive or cheat for the purpose of either causing some financial loss to another or bringing about some financial gain to the actor; and

2.09.2 For which the actor has pleaded guilty or nolo contendere to or has been found guilty by any court in this state, by a court in another state, or by a federal court.

2.10 **“Initial employment”** means the first time that an applicant has been employed by a public school district, open enrollment public charter school, or education service cooperative an educational entity.

- 2.11 **“Law enforcement officer”** means a state police officer, a city police officer, a sheriff or a deputy sheriff.
- 2.12 **“Letter of provisional eligibility”** means a six-month, non-renewable letter of provisional eligibility for licensure issued by the State Board of Education to an applicant for first-time licensure during the period that a criminal records check and Child Maltreatment Central Registry check are being conducted.
- 2.13 **“Non-continuous reemployment”** means employment in ~~a public school district, open enrollment public charter school, or education service cooperative~~ an educational entity by an applicant who was previously employed by the same entity but not at any point during the immediately preceding school year.
- 2.14 **“Non-licensed staff position”** means a position with ~~a public school district, open enrollment public charter school, or education service cooperative~~ an educational entity, which position does not require the holder of the position to possess an Arkansas teacher’s license.
- 2.14.1 “Non-licensed staff position” includes a:
- 2.14.1.1 Parental monitor on a school bus as permitted under A.C.A. § 6-19-127;
- 2.14.1.2 Staff position for which the non-licensed staff person is either paid directly by the educational entity or by an outside vendor under contract with the educational entity to staff the position; and
- 2.14.1.3 Designated employee position with the Department.
- 2.15 **“Preservice teacher”** means an unlicensed person ~~admitted to~~ accepted or enrolled in a teacher preparation program approved by the Department ~~that is offered by an institution of higher education in this state.~~
- 2.16 **“Receiving or resulting public school district”** means a public school district that is created or gains territory or students as the result of a consolidation, annexation, or detachment.
- 2.17 **“State Board”** means the Arkansas State Board of Education.
- 2.18 **“Supervised clinical practice”** means the placement of a preservice teacher by a teacher preparation program approved by the Department at the educational entity for the purpose of the student completing an

internship or a student teaching experience required by the teacher education program.

Source: Ark. Code Ann. §§ 6-17-410, 6-17-414, and 6-17-421, as amended by Act 1089 of 2015.

### **3.00 LICENSURE, LICENSE RENEWALS, AND LICENSE REVOCATION**

- 3.01 Unless a waiver is granted pursuant to this Section 3.0, the State Board shall not issue a license or license renewal to, and shall revoke, suspend, or place on probation the existing license of any individual who:
- 3.01.1 Has pled guilty, pled nolo contendere to, or been found guilty of any offense that will or may result in license revocation under Ark. Code Ann. § 6-17-410;
  - 3.01.2 Has an expunged or a pardoned conviction for any sexual or physical abuse offense committed against a child or any offense that will or may result in license revocation under Ark. Code Ann. § 6-17-410.
    - 3.01.2.1 An expunged or pardoned conviction shall not disqualify a person if the conviction is ten (10) or more years old and does not involve the physical or sexual injury, mistreatment, or abuse of another;
  - 3.01.3 Has a true report in the Child Maltreatment Central Registry;
  - 3.01.4 Holds a teaching or similar license obtained by fraudulent means;
  - 3.01.5 Has had a teaching or similar license revoked in another state for any reason that Arkansas would disqualify the individual for licensure or employment under these rules;
  - 3.01.6 Intentionally compromises the validity or security of any student test or testing program administered by or required by the State Board or the Department of Education;
  - 3.01.7 Has the completed examination test score of any testing program required by the State Board for teacher licensure declared invalid by the testing program company and so reported to the Department of Education by the testing company;

- 3.01.8 Fails to establish or maintain the necessary requirements and standards set forth in Arkansas law or State Board rules and regulations for teacher licensure;
  - 3.01.9 Knowingly submits or provides false or misleading information or knowingly failing to submit or provide information requested or required by law to the Department of Education, the State Board, or the Division of Legislative Audit; or
  - 3.01.10 Knowingly falsifies or directs another to falsify any grade given to a student, whether the grade was given for an individual assignment or examination or at the conclusion of a regular grading period.
- 3.02 Before denying an application for licensure or renewal, or taking action against an existing license, the Department shall provide to the Applicant or licensee a written notice of the reason for the action and shall afford the Applicant or licensee the opportunity to request a hearing before the State Board.
- 3.02.1 Upon receiving the written notice required by this section a person may:
    - 3.02.1.1 Decline to answer the notice, in which case the State Board shall hold a hearing to establish by a preponderance of the evidence that cause for the proposed action exists;
    - 3.02.1.2 Contest the allegations of fact and request a hearing in writing, in which case the person shall be given an evidentiary hearing before the State Board if one is requested;
    - 3.02.1.3 Admit the allegations of fact and request a hearing before the State Board to request a waiver; or
    - 3.02.1.4 Stipulate or reach a negotiated agreement, which must be approved by the State Board.
  - 3.02.2 A preservice teacher who receives notice under this section and who desires to request a hearing before applying for licensure shall submit to the Department the following items with the written request for a hearing:

- 3.02.2.1 Proof of acceptance or enrollment in a teacher preparation program approved by the Department; and
- 3.02.2.2 A written recommendation from the teacher preparation program.
- 3.02.3 A written request for hearing by the Applicant, licensee, or board of directors of a school district or open-enrollment public charter school must be received by the Department's Office of Legal Services no more than thirty (30) calendar days after the receipt of the notice of denial, nonrenewal, or other action by the Applicant or licensee.
  - 3.02.3.1 If the person requesting a hearing fails to appear at the hearing, the hearing shall proceed in the manner described in Section 3.02.1.1 above.
- 3.03 Any hearing shall comply with the procedures set forth in Section 8.00 herein.
- 3.04 Circumstances for which a waiver may be granted after a hearing pursuant to Sections 3.02 or 3.03 shall include without limitation the following:
  - 3.04.1 The age at which the crime or incident was committed;
  - 3.04.2 The circumstances surrounding the crime or incident;
  - 3.04.3 The length of time since the crime or incident;
  - 3.04.4 Subsequent work history;
  - 3.04.5 Employment references;
  - 3.04.6 Character references; and
  - 3.04.7 Other evidence demonstrating that the applicant does not pose a threat to the health or safety of school children or school personnel.
- 3.05 After a hearing, the State Board may take one (1) or more of the following actions:
  - 3.05.1 Revoke a license permanently;

- 3.05.2 Suspend a license for a terminable period of time or indefinitely;
  - 3.05.3 Place or grant a license on probationary status for a terminable period of time with the license to be revoked or suspended if the probationary period is not successfully completed;
  - 3.05.4 Impose a monetary penalty not to exceed five hundred dollars (\$500.00) for each violation;
  - 3.05.5 Require a licensee to complete appropriate professional development programs, education courses, or both;
  - 3.05.6 Require a licensee to successfully complete a licensing examination, credentialing examination, or any other examination required by law or rule to obtain a permit, license, endorsement, or licensure area;
  - 3.05.7 Impose conditions or restrictions on the teaching or educational activities of the licensee;
  - 3.05.8 Impose any other requirement or penalty as may be appropriate under the circumstances of the case and which would achieve the Board's desired disciplinary purposes, but which would not impair the public health or welfare; or
  - 3.05.9 Take no action against a license.
- 3.06 If after a hearing the State Board approves a waiver for a licensee, the waiver shall also operate as a waiver under Ark. Code Ann. § 6-17-411 for the licensee to work for a school district.
- 3.07 If, after a hearing, the State Board approves a waiver for a preservice teacher:
- 3.07.1 The individual may obtain a license only upon:
    - 3.07.1.1 Successful completion of the teacher preparation program for which the preservice teacher has provided proof of acceptance or enrollment under Section 3.02.2.1; and
    - 3.07.1.2 Fulfillment of all other requirements for licensure.



- 3.07.2 A waiver granted under this Section 3.06 shall also operate as a waiver under Ark. Code Ann. § 6-17-414 for the preservice teacher to work for a school district as a student teacher.

Source: Ark. Code Ann. §§ 6-17-410, as amended by Act 1089 of 2015; § 25-15-217.

#### **4.00 BACKGROUND CHECKS REQUIRED FOR LICENSURE AND SCHOOL EMPLOYMENT**

- 4.01 Except as otherwise provided herein, an Applicant may not be issued a first-time license or license renewal, nor may an Applicant be employed by or serve in a supervised clinical practice at an educational entity a public school district or open enrollment public charter school, without the successful completion of a criminal records check and the successful completion of a Child Maltreatment Central Registry check as required by these Rules.

#### **4.02 Applicants for a first-time license issued by the State Board:**

- 4.02.1 Each first-time Applicant for a license issued by the State Board shall be required to apply to:
- 4.02.1.1 The Identification Bureau of the Department of Arkansas State Police for a state and federal criminal records check including the taking of fingerprints; and
- 4.02.1.2 The Department of Human Services for a Child Maltreatment Central Registry check.
- 4.02.2 A background check for a first-time Applicant for a license obtained during the twelve (12) months before the license is issued meets the requirement under 4.02.1 for the first-time Applicant.
- 4.02.3 The State Board may issue a six-month, non-renewable letter of provisional eligibility for licensure to a first-time Applicant if the Applicant meets all other qualifications, pending the results of the nationwide criminal records and Child Maltreatment Central Registry checks.
- 4.02.4 The Commissioner of Education may extend the period of provisional eligibility to the end of the contract year if:

4.02.4.1 The Applicant is employed by ~~a public school district or open enrollment public charter school~~ an educational entity; and

4.02.4.2 Results of the nationwide criminal records check or Child Maltreatment Central Registry check are delayed.

4.02.5 The letter of provisional eligibility will immediately become invalid upon receipt of information that the Applicant has a true report on the Child Maltreatment Central Registry or information obtained from the criminal records check from the Arkansas State Police or the FBI, or other eligibility information, indicating that the applicant has pled guilty or nolo contendere to, or has been found guilty of, any offense that will or may result in license revocation under Ark. Code Ann. § 6-17-410.

4.02.6 The Applicant shall be responsible for the payment of any fees associated with the criminal records check and Child Maltreatment Central Registry check.

#### **4.03 Applicants for a license renewal:**

4.03.1 Each Applicant for license renewal shall be required to apply to:

4.03.1.1 The Identification Bureau of the Department of Arkansas State Police for a state and federal criminal records check including the taking of fingerprints; and

4.03.1.2 The Department of Human Services for a Child Maltreatment Central Registry check.

4.03.2 The Applicant should begin the process of obtaining the criminal records check and Child Maltreatment Central Registry check by **July 1** of the year in which the Applicant's license expires.

4.03.3 The State Board may issue a six-month, non-renewable letter of provisional eligibility for licensure to a first-time Applicant if the Applicant meets all other qualifications, pending the results of the nationwide criminal records and Child Maltreatment Central Registry checks.

- 4.03.4 The Commissioner of Education may extend the period of provisional eligibility to the end of the contract year if:
  - 4.03.4.1 The Applicant is employed by a public school district or open-enrollment public charter school; and
  - 4.03.4.2 Results of the nationwide criminal records check or Child Maltreatment Central Registry check are delayed.
- 4.03.5 The letter of provisional eligibility will immediately become invalid upon receipt of information that the Applicant has a true report on the Child Maltreatment Central Registry or information obtained from the criminal records check from the Arkansas State Police or the FBI, or other eligibility information, indicating that the applicant has pled guilty or nolo contendere to, or has been found guilty of, any offense that will or may result in license revocation under Ark. Code Ann. § 6-17-410.
- 4.03.3 This Applicant shall be responsible for the payment of any fees associated with the criminal records check and Child Maltreatment Central Registry check.

**4.04 Preservice teachers:**

- 4.04.1 Each Applicant who is a preservice teacher shall apply to:
  - 4.04.1.1 The Identification Bureau of the Department of Arkansas State Police for a state and federal criminal records check including the taking of fingerprints; and
  - 4.04.1.2 The Department of Human Services for a Child Maltreatment Central Registry check.
- 4.04.2 The Applicant shall be responsible for the payment of any fees associated with the criminal records check and Child Maltreatment Central Registry check.
- 4.04.3 These rules do not require an institution of higher education to bar a student from enrollment due to a disqualifying criminal conviction or a true report in the Child Maltreatment Central Registry.

4.04.4 The preservice teacher shall successfully complete the required the criminal records check and Child Maltreatment Central Registry check before beginning a supervised clinical practice for a school district or public charter school.

**4.05 Applicants for employment in a licensed staff position:**

4.05.1 Each Applicant for initial employment or non-continuous reemployment in a licensed staff position for an educational entity shall be required as a condition of employment to apply to:

4.05.1.1 The Identification Bureau of the Department of Arkansas State Police for a state and federal criminal records check including the taking of fingerprints; and

4.05.1.2 The Department of Human Services for a Child Maltreatment Central Registry check.

4.05.2 The board of directors of a receiving or resulting public school district in a consolidation, annexation, or detachment may waive the requirements of this Section 4.05 for personnel who were employed by an affected district immediately prior to the annexation, consolidation, or detachment and who had a complete criminal records check conducted as a condition of the person's most recent employment with the affected district as required under this section.

4.05.3 An educational entity shall not employ in a licensed staff position any individual who has a true report in the Child Maltreatment Central Registry, unless the State Board granted a waiver by awarding a license or renewal under Section 3.00 herein.

4.05.4 An educational entity shall not employ in a licensed staff position any individual who has pled guilty, pled nolo contendere to, or been found guilty of any offense that will or may result in license revocation under Ark. Code Ann. § 6-17-410, unless the State Board granted a waiver by awarding a license or renewal under Section 3.00 herein.

4.05.5 An educational entity may offer provisional employment to an affected Applicant pending receipt of the results of the nationwide criminal records or Child Maltreatment Central Registry checks. Notification from the Department that the:

4.05.5.1 Applicant is eligible for employment based on the background checks; or

4.05.5.2 State Board has waived the disqualifying offense or placement on the Child Maltreatment Central Registry.

4.05.6 The Applicant shall be responsible for the payment of any fees associated with the criminal records check and Child Maltreatment Central Registry check, unless the board of directors of the employing educational entity chooses to pay the fees.

**4.06 Applicants for employment in a non-licensed staff position:**

4.06.1 Each Applicant for initial employment or non-continuous reemployment in a non-licensed staff position for an educational entity, shall be required as a condition of employment to apply to:

4.06.1.1 The Identification Bureau of the Department of Arkansas State Police for a state and federal criminal records check including the taking of fingerprints; and

4.06.1.2 The Department of Human Services for a Child Maltreatment Central Registry check.

4.06.2 The board of directors of a receiving or resulting public school district in a consolidation, annexation, or detachment may waive the requirements of this Section 4.06 for personnel who were employed by an affected district immediately prior to the annexation, consolidation, or detachment and who had a complete criminal records check conducted as a condition of the person's most recent employment with the affected district as required under this section.

4.06.3 An educational entity shall not employ in a non-licensed staff position any individual who has a true report in the Child Maltreatment Central Registry or who has pled guilty or nolo contendere to, or has been found guilty of, any offense identified in Ark. Code Ann. § 6-17-414(b).

4.06.4 An educational entity may offer provisional employment to an affected Applicant pending receipt of the results of the

nationwide criminal records or Child Maltreatment Central Registry checks.

- 4.06.5 The Applicant shall be responsible for the payment of any fees associated with the criminal records check and Child Maltreatment Central Registry check, unless the board of directors of the employing educational entity chooses to pay the fees.
- 4.06.6 Notwithstanding the provisions of Section 4.05.5, an educational entity may at its discretion require criminal records checks and Child Maltreatment Central Registry checks of existing non-licensed employees in the same manner as set forth herein, so long as the educational entity pays the full cost of the criminal records checks and Child Maltreatment Central Registry checks.
- 4.06.7 If an applicant for employment has been determined ineligible for employment because the applicant has a true report in the Child Maltreatment Central Registry, or has pled guilty or nolo contendere to, or has been found guilty of, any offense identified in Ark. Code Ann. § 6-17-414(b), the board of directors of the educational entity shall provide a written notice to the applicant and shall afford the applicant the opportunity to request a waiver.
  - 4.06.7.1 The waiver shall be requested no more than thirty (30) days after receipt of the notice of the denial of employment.
  - 4.06.7.2 The waiver may be requested by:
    - 4.06.7.2.1 The hiring official;
    - 4.06.7.2.2 The affected applicant; or
    - 4.06.7.2.3 The person subject to dismissal.
  - 4.06.7.3 Circumstances for which a waiver may be granted shall include without limitation the following:
    - 4.06.7.3.1 The age at which the incident was committed;
    - 4.06.7.3.2 The circumstances surrounding the incident;

4.06.7.3.3 The length of time since the incident;

4.06.7.3.4 Subsequent work history;

4.06.7.3.5 Employment references;

4.06.7.3.6 Character references; and

4.06.7.3.7 Other evidence demonstrating that the applicant does not pose a threat to the health or safety of school children or school personnel.

4.06.7.4 The board of directors of the educational entity may grant the waiver by adopting a written resolution identifying the applicant by name and listing the specific facts and circumstances for which the waiver is being granted.

4.06.7.4.1 A waiver request may be discussed and acted upon by the board of directors only in an open public meeting and not in an executive session.

4.06.7.4.2 After adopting the resolution, the board of directors shall immediately provide a copy of the resolution and waiver request to the Department.

4.07 If an Applicant is employed by an outside vendor under contract with the educational entity, the educational entity may – but is not required to – afford the Applicant the opportunity to request a waiver from the school district board of directors.

Source: Ark. Code Ann. § 6-17-410, as amended by Act 1089 of 2015.

## **5.00 BACKGROUND CHECK PROCEDURES**

5.01 The criminal records check and Child Maltreatment Central Registry check required by these Rules shall be initiated by the submission to the Department of a form developed by the Department containing a release of information and notice of the purpose for fingerprinting signed by the Applicant.

- 5.01.1 For the purposes of these Rules, a criminal records check shall consist of a statewide criminal records check to be conducted by the Department of Arkansas State Police and a nationwide criminal records check to be conducted by the Federal Bureau of Investigation.
- 5.01.2 Criminal records checks shall conform to the applicable federal or state standards and shall include the taking of fingerprints. The Identification Bureau of the Department of Arkansas State Police and the FBI may maintain these fingerprints in the automated fingerprint identification system.
- 5.01.3 An educational entity that is initiating a criminal records check shall:
- 5.01.3.1 Subscribe to the Arkansas State Police online background check system and
- 5.01.3.2 Simultaneously initiate both the state and federal criminal records check on that system.
- 5.01.4 An individual who initiates the criminal records check shall use the online system approved by the Department and identified on the Department's website.
- 5.01.5 Each applicant shall provide fingerprints by:
- 5.01.5.1 Completing the State Police fingerprint card in the presence of a law enforcement officer, and shall have the law enforcement officer sign the fingerprint card and give his/her jurisdiction, the date and his/her badge number, or
- 5.01.5.2 By any other method approved by the Department of Education.
- 5.01.5.3 Beginning July 1, 2016, all fingerprints shall be taken by an electronic fingerprinting method approved by the Arkansas State Police. Fingerprint cards shall not be accepted unless:
- 5.01.5.3.1 The individual is applying from out-of-state or out-of-country, or
- 5.01.5.3.2 The operator of an approved electronic fingerprinting system who



is trained by law enforcement or the department determines that fingerprints cannot be obtained from the individual electronically.

- 5.01.6 If a legible set of fingerprints, as determined by the Identification Bureau of the Department of Arkansas State Police, cannot be obtained after a minimum of ~~three (3)~~ two (2) attempts, the Department of ~~Education~~ shall determine eligibility for licensure or employment based upon a name check by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.
- 5.01.7 To be valid for consideration, a criminal records check or Child Maltreatment Central Registry check must have been completed no earlier than twelve (12) months prior to the application for licensure, renewal, or employment.
- 5.01.8 A criminal records check shall be conducted only under the specific Arkansas law governing the request.
- 5.02 Any information received by the Department from the Department of Arkansas State Police, the Department of Human Services, or the Federal Bureau of Investigation pursuant to these Rules shall not be available for examination except by the affected applicant or his or her duly authorized representative, and no record, file, or document shall be removed from the custody of the Department of Education.
- 5.02.1 Any information made available to the affected applicant for licensure or the person whose license is subject to revocation shall be information pertaining to that applicant only.
- 5.02.2 Rights of privilege and confidentiality established under this section shall not extend to any document created for purposes other than this background check.
- 5.02.3 For Applicants seeking employment, the Department may disclose to the employing ~~public school district, open-enrollment public charter school, or education service cooperative~~ educational entity only whether the Applicant is eligible for employment.
- 5.03 New or existing employees of an educational entity who have a contract with or work for more than one (1) school district in one (1) school year shall be required to have only one (1) criminal records check and one (1)

Child Maltreatment Central Registry check to satisfy the requirements of all employing school districts for that year.

Source: Ark. Code Ann. §§ 6-17-410, 6-17-411, and 6-17-414, as amended by Act 1089 of 2015.

## **6.00 REPORTING REQUIREMENTS FOR SUPERINTENDENTS AND ~~CHARTER SCHOOL DIRECTORS~~ OF EDUCATIONAL ENTITIES**

- 6.01 The superintendent or director of each ~~public school district and the director of each open enrollment public charter school~~ educational entity shall report in writing by certified mail to the Department's Office of Legal Services the name of any employee of the ~~district or school~~ educational entity, whether currently employed or previously employed at any time during the two (2) preceding school years, who:
- 6.01.1 Has pled guilty or nolo contendere, or has been found guilty, of any offense listed in Ark. Code Ann. §§ 6-17-410(c) or 6-17-414(b);
  - 6.01.2 Holds a teaching or similar license obtained by fraudulent means;
  - 6.01.3 Has had a teaching or similar license revoked in another state;
  - 6.01.4 Has intentionally compromised the validity or security of any student test or testing program administered or required by the Department;
  - 6.01.5 Has knowingly submitted falsified information or failed to submit information requested or required by law to the Department, the State Board, or the Division of Legislative Audit; or
  - 6.01.6 Has a true report in the Child Maltreatment Central Registry.
- 6.02 The superintendent or director of each ~~public school district and the director of each open enrollment public charter school~~ educational entity shall report in writing by certified mail to the Department's Office of Legal Services the name of any Fiscal Officer of the ~~district or school~~ educational entity, whether currently employed or previously employed at any time during the two (2) preceding school years, who has pled guilty or nolo contendere to, or has been found guilty of, a fraudulent act.
- 6.03 Failure of a superintendent or director to report a violation by certified mail within five (5) ~~calendar~~ business days of knowledge as listed in Section 6.01 may result in sanctions imposed by the State Board, including but not limited to loss of accreditation.

Source: Ark. Code Ann. §§ 6-17-410 and 6-17-414.

## 7.00 FISCAL OFFICERS

- 7.01 In addition to the requirements of Section 4.00, an educational entity shall not employ as a Fiscal Officer any individual who has pled guilty or nolo contendere to, or has been found guilty of, a fraudulent act.
- 7.02 A currently-employed Fiscal Officer of an educational entity who has pled guilty or nolo contendere to, or has been found guilty of, a fraudulent act shall be dismissed from employment with the educational entity.
- 7.02.1 Within five (5) **business** days of knowledge of the plea or conviction, the educational entity shall serve written notice of termination on the Fiscal Officer in person or by certified mail. The notice shall advise the Fiscal Officer of his or her right to a hearing before the State Board.
- 7.02.2 The Fiscal Officer may, within thirty (30) **calendar** days of service of the written notice of termination, request a hearing before the State Board by sending a written request via certified mail to the Department's Office of Legal Services.
- 7.02.3 If the Fiscal Officer does not timely request a hearing before the State Board, termination shall become effective thirty (30) **calendar** days after the date of service of the written notice of termination.
- 7.02.4 Termination of employment pursuant to this subsection shall not be subject to the requirements of the Teacher Fair Dismissal Act, Ark. Code Ann. § 6-17-1501 *et seq.* or the Public School Employee Fair Hearing Act, Ark. Code Ann. § 6-17-1701 *et seq.*
- ~~7.03 Any individual found ineligible for employment or dismissed from employment under Section 7.00 may, within thirty (30) days of service of the written notice of denial of employment or written notice of termination, request a hearing before the State Board by sending a written request via certified mail to the Department's Office of Legal Services.~~
- 7.03 Circumstances for which a waiver may be granted shall include without limitation the following:
- 7.03.1 The age of the Fiscal Officer at the time the criminal act occurred;

- 7.03.2 The length of time since the conviction;
- 7.03.3 Whether the Fiscal Officer has pled guilty or nolo contendere to, or has been found guilty of, any other criminal violations since the original conviction;
- 7.03.4 Whether the original conviction was expunged or pardoned; and
- 7.03.5 Any other relevant facts.
- 7.04 The hearing shall follow the procedures set forth in Section 8.00 of these Rules.
- 7.05 After making its decision, the State Board shall reduce its decision to writing and shall mail copies of the decision to the Fiscal Officer or Applicant and the superintendent or director of the affected school district educational entity that issued the notice of termination.

Source: Ark. Code Ann. § 6-17-421.

## **8.00 STATE BOARD HEARING PROCEDURES**

- 8.01 Each party shall exchange exhibits and witness lists thirty (30) not less than ten (10) calendar days before the scheduled hearing date, unless both parties agree to a shorter period of time.
- 8.02 Requests for subpoenas must be received in the Office of Legal Counsel not less than ten (10) calendar days before the hearing date.
- 8.03 Each party will have the opportunity to present an opening statement of no longer than five (5) minutes, beginning with the representative of the Department of Education. The Chairperson of the State Board may, only for good cause shown and upon the request of either party, allow either party additional time to present their opening statements.
- 8.04 Each party will be given twenty (20) minutes to present their cases, beginning with the representative of the Department of Education. The Chairperson of the State Board may, only for good cause shown and upon the request of either party, allow either party additional time to present their cases.
- 8.05 Every witness giving oral testimony must be sworn under oath by the court reporter and shall be subject to direct examination, cross examination, and questioning by the State Board.

- 8.06 For the purposes of the record, documents offered during the hearing by the Department of Education shall be clearly marked “ADE” and numbered in sequential, numeric order (1, 2, 3).
- 8.07 For the purposes of the record, documents offered during the hearing by the appealing public school district, open-enrollment public charter school, Applicant, or licensee shall be clearly marked ~~in sequential, alphabetic letters (A, B, C)~~ “Educator” and numbered in sequential, numeric order (1, 2, 3).
- 8.08 The Department of Education shall have the burden of proving, by a preponderance of the evidence, that cause for the proposed licensure action exists, and that the recommended disposition from the Department be adopted.
- 8.09 While the scope of each party’s presentation ultimately lies within the State Board Chairperson’s discretion, case presentation should be arranged in such a way as to avoid redundant testimony.
- 8.10 After both parties have presented their cases, the State Board may allow each party to present limited rebuttal testimony.
- 8.11 After making its decision, the State Board shall reduce its decision to writing and shall mail copies of the decision to each party, each party’s attorney, and the superintendent or director of any interested public school district or open-enrollment public charter school.
- 8.12 The State Board’s written decision shall constitute the final agency action for purposes of judicial review pursuant to the Arkansas Administrative Procedure Act, Ark. Code Ann. § 25-15-201 *et seq.*