

**DIVISION OF ELEMENTARY AND SECONDARY EDUCATION RULES  
GOVERNING CONSOLIDATION AND ANNEXATION OF SCHOOL DISTRICTS  
PUBLIC COMMENTS AND RESPONSES**

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Commenter Name: Tripp Walter, APSRC, Staff Attorney, and 9/12/2024

Comments: Section 3.07, Page 2: a.) Add the word "adjoining" between the words "more" and "school", to comply with Ark. Code Ann. §6-13-1414 (a)(l), and b.) The statute speaks in term of "an" adjoining school district, not multiple adjoining school districts.

Division Response: **Comment considered; a non-substantive change was made regarding the inclusion of the word “adjoining.” Regarding the remainder of the comment, the definition used in the draft amendment to the rule that contemplates multiple adjoining school districts is based on the statutory principle that when words importing a singular number are used regarding any subject matter, several matters shall be deemed to be included. A.C.A. § 1-2-203. As a policy matter, this language ensures that if a district seeks to petition a change to its boundary along two adjacent districts at the same time, the process before the State Board of Education will allow the resolution of the matter in a single process that considers all relevant districts.**

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Commenter Name: Tripp Walter, APSRC, Staff Attorney, and 9/12/2024

Comments: Sections 8.01 and 8.02, Page 9: The language "or boundary change" is not contained in Ark. Code Ann. §6-13-1408, which form the basis for these Sections. The statute concerning boundary lines is Ark. Code Ann. §6-13-1414.

Division Response: **Comment considered; no changes were made. While the language of the rule does reflect statutory language, the intent of this amendment is to provide procedure to govern the statutory required boundary change process and to, wherever possible, have that process align with the annexation or consolidation processes. Consequently, the safeguards regarding desegregation that apply to annexations or consolidations are extended by rule to boundary change petitions.**

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Commenter Name: Tripp Walter, APSRC, Staff Attorney, and 9/12/2024

Comments: Sections 29.02.2; 29.02.3.ld.-g., and 29.04.3-5, Pages 36-37: These sections contain language which is not contained in the statute.

Division Response: **Comment considered; no changes were made. The purpose of this portion of the amendment is to provide a procedural structure to implement the statutory requirements set out in A.C.A. §6-13-1414.**

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Commenter Name: Tripp Walter, APSRC, Staff Attorney, and 9/12/2024

Comments: Section 32.03, Page 40: As the listed criteria are not contained in statute, they should not be the exclusive criteria used by the State Board of Education.

Division Response: **Comment considered; no changes were made. The rule establishes a list of factors that the board is required to consider but does not prohibit the consideration of other factors. See 32.03.**

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Commenter Name: Tripp Walter, APSRC, Staff Attorney, and 9/12/2024

Comments: Page 40: The subsections numbered "33.03.1-33.04" are incorrectly numbered.

Division Response: **Comment considered; non-substantive changes were made.**

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Commenter Name: Lucus Harder, ASBA, Attorney, and 8/21/2024

Comments: 3.07: There is an unnecessary "to" between "under" and "Ark".

Division Response: **Comment considered; a non-substantive change was made.**

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Commenter Name: Lucus Harder, ASBA, Attorney, and 8/21/2024

Comments: 5.01: In order to more closely align with the statutory language, I would recommend changing "accreditation or failure to meet academic, fiscal, or facilities distress requirements" to "accreditation, failure to meet fiscal distress requirements, or failure to meet the requirements to exit Level 5 -- Intensive support".

Division Response: **Comment considered; a non-substantive change was made. The comment accurately reflects a change in the statutory language underlying this section of the rule that was made by Act 936 of 2017.**

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Commenter Name: Lucus Harder, ASBA, Attorney, and 8/21/2024

Comments: 5.02.1: In order to more closely align with the statutory language, I would recommend changing "accreditation or failure to meet academic, fiscal, or facilities distress requirements" to "accreditation, failure to meet fiscal or facilities distress requirements, or failure to meet the requirements to exit Level 5 -- Intensive support".

Division Response: **Comment considered; a non-substantive change was made. The comment accurately reflects a change in the statutory language underlying this section of the rule that was made by Act 936 of 2017.**

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Commenter Name: Lucus Harder, ASBA, Attorney, and 8/21/2024

Comments: 6.01.1: In order to more closely align with the statutory language, I would recommend changing “accreditation or failure to meet academic, fiscal, or facilities distress requirements” to “accreditation, failure to meet fiscal distress requirements, or failure to meet the requirements to exit Level 5 -- Intensive support”.

Division Response: **Comment considered; a non-substantive change was made. The comment accurately reflects a change in the statutory language underlying this section of the rule that was made by Act 936 of 2017.**

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Commenter Name: Lucus Harder, ASBA, Attorney, and 8/21/2024

Comments: 6.02.1: In order to more closely align with the statutory language, I would recommend changing “accreditation or failure to meet academic, fiscal, or facilities distress requirements” to “accreditation, failure to meet fiscal distress requirements, or failure to meet the requirements to exit Level 5 -- Intensive support”.

Division Response: **Comment considered; a non-substantive change was made. The comment accurately reflects a change in the statutory language underlying this section of the rule that was made by Act 936 of 2017.**

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Commenter Name: Lucus Harder, ASBA, Attorney, and 8/21/2024

Comments: 11.02: In order to more closely align with the statutory language, I would recommend changing “accreditation or failure to meet academic, fiscal, or facilities distress requirements” to “accreditation, failure to meet fiscal distress requirements, or failure to meet the requirements to exit Level 5 -- Intensive support”.

Division Response: **Comment considered; a non-substantive change was made. The comment accurately reflects a change in the statutory language underlying this section of the rule that was made by Act 936 of 2017.**

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Commenter Name: Lucus Harder, ASBA, Attorney, and 8/21/2024

Comments: 13.12.1: The language of “no more than twenty (20) years ago” has become confusing with the passage of time. As written, this could now indicate either twenty years from when the rules were amended, twenty years from when the Act was passed, or twenty years from when the district is looking to close the isolated campus. While I recognize that this aligns with the statutory language, I would recommend amending to read either “no earlier than 2001” or “nor more than twenty (20) years from the date the district intends to close the campus”.

Division Response: **Comment considered; no changes made. The language addressed by this comment is likely ambiguous as it appears in A.C.A § 6-13-1416; however, the division**

**is not prepared to resolve the ambiguity by rule at this time. The resolution proposed in the comment is a reasonable reading of the statute but not necessarily the only reading. The division will consider this question for a future change to the rule.**

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Commenter Name: Lucus Harder, ASBA, Attorney, and 8/21/2024

Comments: 16.043: To more closely align with the statutory language, everything after July 1 should be stricken.

Division Response: **Comment considered; a non-substantive change was made.**

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Commenter Name: Lucus Harder, ASBA, Attorney, and 8/21/2024

Comments: 16.1109: I know that this matches the statutory language, but I would recommend changing “not designated as being in academic or fiscal distress: where it occurs here to “not designated as being in Level 5 -- Intensive support or fiscal distress” in recognition that academic distress is no longer a classification.

I know that this matches the statutory language, but I would recommend changing “subject to academic or fiscal distress” to “subject to Level 5 -- Intensive support or fiscal distress”.

Division Response: **Comment considered; no changes made. The language addressed by this comment is likely antiquated as it appears in A.C.A § 6-13-1603; however, the division is not prepared to resolve this ambiguity by rule at this time. The resolution proposed in the comment is a reasonable reading of the statute but not necessarily the only reading. The division will consider this question for a future change to the rule.**

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Commenter Name: Lucus Harder, ASBA, Attorney, and 8/21/2024

Comments: 16.1412: The “this” is unnecessary at “created under this Title 6”.

Division Response: **Comment considered; a non-substantive change was made.**

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Commenter Name: Lucus Harder, ASBA, Attorney, and 8/21/2024

Comments: 18.03.1: “Commissioner of Education” should be changed to “Commissioner of Elementary and Secondary Education”.

Division Response: **Comment considered; a non-substantive change was made.**

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Commenter Name: Lucas Harder, ASBA, Attorney, and 8/21/2024

Comments: 20.01.43: As the definition for an Act 60 School District is being stricken, reference to it should be removed here so that it just reads “of a school district”.

Division Response: **Comment considered; no changes made. The language addressed by this comment is likely ambiguous given that the definition of “Act 60 school district” was removed from statute but some reference to the term in A.C.A § 6-13-1610 was retained. The changes to this section of the rule mirrored the statutory changes. The division is not prepared to resolve any ambiguity created at this time. The division will consider this question for a future change to the rule.**

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Commenter Name: Lucas Harder, ASBA, Attorney, and 8/21/2024

Comments: 20.032.2: As the definition for an Act 60 School District is being stricken, reference to it should be removed here so that it just reads “of a school district”.

Division Response: **Comment considered; no changes made. The language addressed by this comment is likely ambiguous given that the definition of “Act 60 school district” was removed from statute but some reference to the term in A.C.A § 6-13-1610 was retained. The changes to this section of the rule mirrored the statutory changes. The division is not prepared to resolve any ambiguity created at this time. The division will consider this question for a future change to the rule.**

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Commenter Name: Lucas Harder, ASBA, Attorney, and 8/21/2024

Comments: 20.043.1: “Commissioner of Education” should be “Commissioner of Elementary and Secondary Education”.

Division Response: **Comment considered; a non-substantive change was made.**

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Commenter Name: Lucas Harder, ASBA, Attorney, and 8/21/2024

Comments: 29.03.3: There is a “of” missing from between “Division” and “Elementary”.

Division Response: **Comment considered; a non-substantive change was made.**

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Commenter Name: Lucas Harder, ASBA, Attorney, and 8/21/2024

Comments: 31.04: There is an unnecessary “of” between “boundary” and “change”.

Division Response: **Comment considered; a non-substantive change was made.**

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Commenter Name: Lucas Harder, ASBA, Attorney, and 8/21/2024

Comments: 32.02.3: “Financial distress” should be “Fiscal distress”.

Division Response: **Comment considered; a non-substantive change was made.**

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Commenter Name: Lucas Harder, ASBA, Attorney, and 8/21/2024

Comments: 32.03:

The section numbers for the following are incorrect:

33.03.1 should be 32.03.1.

33.03.2.1 should be 32.03.2.

33.02.1.1 should be 33.03.2.1.

33.02.3 should be 32.03.3.

33.02.4 should be 32.03.4.

33.02.5 should be 32.03.5.

33.02.6 should be 32.03.6.

33.04 should be 32.04.

Division Response: **Comment considered; non-substantive changes were made.**

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Commenter Name: Lucas Harder, ASBA, Attorney, and 8/21/2024

Comments: 33.01: There is a missing parenthetical Arabic numeral two after.

Division Response: **Comment considered; a non-substantive change was made.**

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Commenter Name: Lucas Harder, ASBA, Attorney, and 8/21/2024

Comments: 33.02.2: This should end with a colon instead of a semicolon.

Division Response: **Comment considered; a non-substantive change was made.**