

**ARKANSAS DEPARTMENT OF EDUCATION DIVISION OF ELEMENTARY AND  
SECONDARY EDUCATION  
RULES GOVERNING BACKGROUND CHECKS**

**PUBLIC COMMENTS AND RESPONSES OF THE DIVISION OF ELEMENTARY AND  
SECONDARY EDUCATION**

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Commenter Name: Rebecca Miller-Rice, Bureau of Legislative Research (02/12/2020)

**Comment:**

- (1) 1.04 – Should there be an “or” after “suspending,”? **Comment considered, non-substantive change made.**
- (2) 2.18 – Should “licensed” be “license”? **Comment considered, non-substantive change made.**
- (3) 3.01.2 – It appears that this section is premised upon Ark. Code Ann. § 6-17-410(d)(1)(A)(v), as amended by Act 536, § 3. If that is the case, should “in Ark. Code Ann. § 6-17-410(c)” follow “for any offense” as set forth in the statute? **Comment considered, non-substantive change made.**
- (4) 3.05.1 – What is the reasoning for the deletion of “permanently” if this section is premised on Ark. Code Ann. § 6-17-410(d)(2)(A), which still retains the term? Added “or allow an educator the ability to apply for reinstatement pursuant to Act 628 of 2019.

**Division Response:**

Act 628 allows an educator to petition the State Board for reinstatement after 10 years has based since the revocation as long as the educator meets certain criteria. **Comment considered, non-substantive change made.**

- (5) 4.06.6 – Why is the stricken language being removed, where that language is still retained in Ark. Code Ann. § 6-17-415(b)(1)? It seems the language remains necessary because the amendment by Act 1040, § 2, on which the amended language to the rule appears to be based, appears to limit the requirement of once (1) every five (5) years to only those districts under (b)(1). *See* Ark. Code Ann. § 6-17-415(b)(3) (providing that “[a] public school district under subdivision (b)(1) of this section shall require that an existing nonlicensed employee complete a criminal records background check and Child Maltreatment Central Registry check at least one (1) time every five (5) years”).

### **Division Response**

Act 1040 requires that classified employees complete a background check once every five years and if the school district's Board of Director's votes to pay for the cost of the background check then that is up to their discretion. Ark. Code Ann. 6-17-414(a)(1)(B)(ii) states that "Unless the employing educational entity's board of directors has taken action to pay for the cost of criminal background checks required by this section, the employment applicant shall be responsible for the payment of any fee associated with the criminal records checks." Although this is for initial employment it draws a distinction between districts's voting to pay for the background checks or the cost being paid by the employee. The Division has given districts guidance under Commissioner's Memo COM-20-017 and clarified that classified employees shall complete a background check once every five years. . **Comment considered, non-substantive change made.**

- (6) 4.06.6.1 – Should "employee's" be "employees"? **Comment considered, non-substantive change made.**
  
- (7) 5.02.3 – Is the Division comfortable that the rule's provisions providing only notice when an employee is *not* eligible for employment comport with Ark. Code Ann. § 6-17-415(b)(2)(B), as amended by Act 1040, § 2, which provides that the Division "shall inform the board of directors of the educational entity *whether or not* the affected applicant is eligible"? (Emphasis added.)

### **Division Response:**

The Arkansas Educator Licensure (AELS) is updated daily on the employability of an applicant's background checks. If an applicant is approved for employment then districts and applicants can check the website. The main concern is if an applicant is denied. If the applicant is denied and ineligible for employment then AELS will be updated and the District will receive written notice. The Division has given districts guidance under Commissioner's Memo COM-20-017 on checking AELS. Ark. Code Ann. 6-17-414(3)(A)(c) that the Division may provide information on an applicant's eligibility in an electronic format.

**Comment considered, no change made.**

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Commenter Name: Lucas Harder Arkansas School Board Association (10/28/2019)

**Comment:**

**Background Checks:**

- 2.02: I would recommend adding 6-17-415 to the list of statutes that require the background check as part of employment to bring the definition into alignment with the changes to Section 4.06.6 of the Rules. **Comment considered, non-substantive change made.**
- 2.04: “Arkansas Division of Education” should be “Division of Elementary and Secondary Education”. **Comment considered, non-substantive change made.**
- 2.18: There is an extra “d” at the end of “license” at “educator whose license has”. **Comment considered, non-substantive change made.**
- 3.01.9: “Department of Legislative Audit” should be “Arkansas Legislative Audit”. **Comment considered, non-substantive change made.**
- 4.02.4: This should be changed to “Commissioner of Elementary and Secondary Education”. **Comment considered, non-substantive change made.**
- 4.03.4: This should be changed to “Commissioner of Elementary and Secondary Education”. **Comment considered, non-substantive change made.**
- 4.06.6: I would recommend adding a 4.06.6.2 here that sets forth the requirement for the educational entity to pay for the follow-up background checks from A.C.A. § 6-17-415 so that there is not any possible confusion with Section 4.06.5.

**Division Response**

Act 1040 requires that classified employees complete a background check once every five years and if the school district’s Board of Director’s votes to pay for the cost of the background checks then that is up to their discretion. Ark. Code Ann. 6-17-414(a)(1)(B)(ii) states that “Unless the employing educational entity's board of directors has taken action to pay for the cost of criminal background checks required by this section, the employment applicant shall be responsible for the payment of any fee associated with the criminal records checks.” Although this is for initial employment it draws a distinction between districts’s voting to pay for the background checks or the costs being paid by the employee. The Division has given districts guidance under Commissioner’s Memo COM-20-017. **Comment considered, non-substantive change made.**

- 8.04: I would recommend changing “will be fifteen” to “will have fifteen” or “will be provided fifteen”. **Comment considered, non-substantive change made.**