

**DIVISION OF ELEMENTARY AND SECONDARY EDUCATION RULES
GOVERNING SCHOOL TRANSFORMATION CONTRACTS
PUBLIC COMMENTS AND RESPONSES**

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director, 4/22/24

Comments: 1.01 - The citation to 6-16-156 should be a citation to 6-15-3204.

Division Response: **Comment considered. A nonsubstantive change was made.**

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director, 4/22/24

Comments: 3.01 - While I recognize that this language matches with the statute, it does not appear to align with current practice as the school rating system provides a letter grade for an individual school but that districts instead receive a given level of support instead of a letter grade.

Division Response: **Comment considered. No changes made.**

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director, 4/22/24

Comments: As 6.04 is the only section that mentions financial incentives, I would recommend changing the citation from “6.00” to “6.04”.

Division Response: **Comment considered. A nonsubstantive change was made.**

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director, 4/22/24

Comments: 4.01 - There is an “of” missing from between “board” and “directors”.

Division Response: **Comment considered. A nonsubstantive change was made.**

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director, 4/22/24

Comments: 5.01.3.17 - There should be a “the” between “with” and “Standards”.

Division Response: **Comment considered. A nonsubstantive change was made.**

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director, 4/22/24

Comments: 5.05 - There is a missing parenthetical Arabic numeral one after “one” for consistency with other Rules.

Division Response: **Comment considered. A nonsubstantive change was made.**

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director, 4/22/24

Comments: 6.01.1 - This should be 6.02.1 instead.

Division Response: **Comment considered. A nonsubstantive change was made.**

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director, 4/22/24

Comments: 6.01.1 - This should be 6.02.1.1 instead. The citation to 6.01.1 here should be to 6.02.1 instead.

Division Response: **Comment considered. A nonsubstantive change was made.**

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director, 4/22/24

Comments: 6.01.2 - This should be 6.02.2 instead.

Division Response: **Comment considered. A nonsubstantive change was made.**

Commenter Name: Arkansas Public School Resource Center, 5/14/24

Comments: Section 1.01, Page 1: Shouldn't the Rules should be entitled Arkansas State Board of Education (SBE) Rules rather than Division of Elementary and Secondary Education (DESE) Rules (see Ark. Code Ann. §6- 15-3204)

Division Response: **Comment considered. No changes made.**

Commenter Name: Arkansas Public School Resource Center, 5/14/24

Comments: Section 2.05, Page 1, Definition of "Transformation Campus Operator": The definition is too vague, arbitrary and capricious. The SBE should create a definition of the term "another entity" that defines the clear parameters of such an entity and what criteria is necessary for the SBE to approve such an entity, similar to the requirements for approval of charter schools as parties to a school transformation contract. Otherwise, this vague, undefined term may be abused in an arbitrary and capricious manner that creates potential enforcement, accountability, and legal issues for the SBE and/or DESE.

Division Response: **Comment considered. No changes made. The language in the rule mirrors Arkansas Code § 6-15-3201.**

Commenter Name: Arkansas Public School Resource Center, 5/14/24

Comments: Sections 3.02.1 and 5.05.1, Pages 2 and 6, respectively, School Eligibility and Terms of School Transformation Contract Sections: There is no authority in law allowing the State to subsequently invalidate or void an otherwise valid contract; these provisions of the Rules are thus ultra vires and illegal.

Division Response: **Comment considered. A nonsubstantive change was made.**

Commenter Name: Arkansas Public School Resource Center, 5/14/24

Comments: Section 5.01.1.1, Page 3, Terms of School Transformation Contract Section: The SBE should move Section 5.01.1.1 to the Definitions section of these Rules, and clarify that the term "any student" includes any student eligible to attend a transformation campus or school district and not only"... public school students with protections under Arkansas and federal law."

Division Response: **Comment considered. No changes made. The rule language contemplates this comment, as the rule is currently written.**

Commenter Name: Arkansas Public School Resource Center, 5/14/24

Comments: Section 5.02.1, Page 5, Terms of School Transformation Contract Section: The phrase"... shall be for the benefit of the public school district..." as a required legal term or purpose of a transformation contract is not contained within the language of the school transformation contract law, and therefore, should be considered ultra vires. The primary purpose of these contracts is for the educational benefit of public school students attending an academically failing state take-over or D-F designation public school or district through the transformation of the school or district. The purpose of this law is to allow for the transformation of the school or district's management, culture, design, operations, etc. by a qualified independent third-party in any innovative manner allowed by law, and approved by the SBE and DESE, for the primary benefit of the students. The misrepresentation of a required term or purpose of a transformation contract that is counter or perverse to the full authority of Arkansas

law governing transformational contracts, and is therefore, ultra vires. For example, to mandate such a restricted required phrase or purpose in a transformation contract as described in Section 5.01.1 acts to limit the greater flexibility and autonomy of school transformational contract terminology and focus to the more restricted or limited contractual legal authority of school improvement work.

Division Response: Comment considered. No changes made.

Commenter Name: Arkansas Public School Resource Center, 5/14/24

Comments: Sections 5.02.1.1 and 5.06.1, Pages 5 and 6, respectively, Terms of School Transformation Contract Section: These provisions are ultra vires because they are too broad. The State cannot conduct an illegal taking of private property without lawful authority (Fifth Amendment to the Constitution). For example, these provisions would claim to allow the State to take a private grant, or resources obtained by an operator to assist in serving a transformation school, even if those resources never were intended to, nor became, public resources of the transformation school or district.

Division Response: Comment considered. No changes made. The rule language only concerns the contracting parties.

Commenter Name: Arkansas Public School Resource Center, 5/14/24

Comments: Section 5.03.2, Page 6, Terms of School Transformation Contract Section: This section is vague and ultra vires as it purports to grant the State legal authority to compel or require" ... any additional information the division deems is necessary..." from any party. The SBE should limit this authority to only the parties associated with the transformation public school or district and/or those parties contracting with the State or the transformation school or district.

Division Response: Comment considered. A nonsubstantive change was made.

Commenter Name: Arkansas Public School Resource Center, 5/14/24

Comments: Section 5.04, Page 6, Terms of School Transformation Contract Section: Since the State does not specifically limit the length of the contract, there may be a question as to the State's ability to set a time limit on a contract due to ultra vires. As a matter of best practice, Section 5.04 is not necessary, as the State has authority to approve or not any agreement it enters. The State should leave itself its lawful flexibility to contact with third party providers as necessary to serve the students under the relevant circumstances of each case. Obviously, to the extent the State is the governing authority over school districts under State takeover, the State would be a necessary party to approve the transfer of property of an affected district.

Division Response: Comment considered. No changes made. The law requires that the State Board of Education return public school districts to local control no more than five years after the assumption of authority.

Commenter Name: Arkansas Public School Resource Center, 5/14/24

Comments: Sections 5.04.1 and 5.04.2, Page 6, Terms of School Transformation Contract Section: It appears that the authority to approve or deny approval to a transformation contract lies with the SBE, and not the DESE (see Ark. Code Ann. § 6-15-3202 (a):"... with approval from the State Board of Education..."). As a result, the term "division" in each section should likely be replaced with "SBE".

Division Response: Comment considered. A nonsubstantive change was made.

Commenter Name: Arkansas Public School Resource Center, 5/14/24

Comments: Section 5.07, Page 6, Terms of School Transformation Contract Section: This provision is ultra vires, arbitrary and capricious. The SBE does not have the legal authority to prevent or deny a subsequent, lawfully constituted SBE; school board, or other lawful governing party lawful authority to transfer property or resources of a transformation school or district as otherwise allowed by state law.

Division Response: Comment considered. No changes made.
