

**ARKANSAS DIVISION OF ELEMENTARY AND SECONDARY EDUCATION
RULES GOVERNING STUDENT DISCIPLINE AND SCHOOL SAFETY**

PUBLIC COMMENTS AND AGENCY RESPONSES

Name: Lucas Harder, ASBA

Comment:

4.10: There appears to be an unnecessary “h” in the longhand of “ten”.

5.04.2: The “not less than” language was removed from the statute by Act 640 of 2019 when the language was moved from 6-18-503 to 6-18-502; this is an important distinction as “not less than one year” would allow the superintendent and board to perform a permanent expulsion of a student for a firearm offense while removing the “not less than” language sets the maximum penalty a district may set as a one year expulsion.

5.04.7: The official update to the Arkansas Code has placed this as 6-18-111.

5.06.1.2: The language here has the potential to conflict with 6-18-513(d)(1) and (2) as it does not provide an exception for the reporting of law enforcement contact with a student due to a child maltreatment investigation of the student’s parents when the law enforcement officer has an order prohibiting the contact.

Agency Response: Corrections made to 4.10, 5.04.2, 5.04.7, and 5.06.1.2.

Name: Debbie Jones, Ed.D., Superintendent, Bentonville School District

Comment:

4.02 The definition of bullying is incomplete-missing the word repeated.

This is the definition from stopbullying.gov - notice in includes the word "repeated"

Bullying is unwanted, aggressive behavior among school aged children that involves a real or perceived power imbalance. The behavior is repeated, or has the potential to be repeated, over time. Both kids who are bullied and who bully others may have serious, lasting problems.

In order to be considered bullying, the behavior must be aggressive and include:

An Imbalance of Power: Kids who bully use their power—such as physical strength, access to embarrassing information, or popularity—to control or harm others. Power imbalances can change over time and in different situations, even if they involve the same people.

Repetition: Bullying behaviors happen more than once or have the potential to happen more than once.

5.04.9 It expands requirements for schools that are not currently in law by saying we have to continue engagement and access during SUSPENSION.

There is not anything in the law that says we have to continue to provide access to education during periods of suspension.

5.11 The language in this rule can mislead teachers into thinking they don't have responsibility for classroom discipline.

Where is the student going to go?

The student can return to class, but the teacher should hold the conference, not the principal or principal designee.

5.11.4.6 This language should require teacher showing documentation of attempts to contact parent.

Agency Response: Although the definition offered on stopbullying.gov does state that bullying is “unwanted, aggressive behavior that is repeated, or has the potential to be repeated, over time,” adding this requirement would be inconsistent with Arkansas law, 6-18-514. No changes made.

5.04.9 is in law at 6-18-502(c)(6).

5.11 is in law at 6-18-511.

Revision made to 5.11.4.6.

Name: Rebecca Miller-Rice, BLR

Comment:

(1) 4.10 – I believe “then” may have been intended to be “ten.”

(2) 5.01 – Am I reading this section correctly that a school district does not have to file an actual hard copy of its written student discipline policies with the Division, but that the posting online of the policies constitutes filing with the Division? If yes, is the Division comfortable that posting alone is in accord with Ark. Code Ann. § 6-18-503(a)(1)(A), requiring that each school district “shall filed the policies with the Division”?

(3) 5.04.2 – Is there a reason the Division chose to add the terms “not less than” where Ark. Code Ann. § 6-18-502(c)(2) simply provides for “expulsion from school for a period of one (1) year”? Is it the Division’s position that more than a year could be imposed?

(4) 5.04.7 – I believe that as just recently codified, the statutory reference is to § 6-18-111.

(5) 5.06.1 – Is there a reason that the remaining provisions of the statute, Ark. Code Ann. § 6-18-513(b)(2-3), (c), (d), and (e), were not also included?

(6) 5.08 – Along the lines of question (2), do hard copies of any amendments to the policies have to be filed with the Division?

(7) 5.11.3 – Should the citation to Section 5.12 of the rules be to Section 5.11?

(8) 6.09.3 – Is there a reason that the language contained in Ark. Code Ann. § 6-18-514(k)

(3) applying the date restriction to the agreements or contracts of “in effect on July 24, 2019” was not included in the rule?

Agency Response:

Correction made to 4.10.

Yes; districts are required to post all student handbooks and discipline policies on the district website no later than August 1, which constitutes filing with the Division for purposes of compliance with 6-18-503.

Corrections made to 5.04.2 and 5.04.7.

Revisions made to 5.06.

Districts must notify the Division of any amendments made to policies and post the revisions on the district’s website.

Corrections made to 5.11.3 and 6.09.3.

Name: Tammy Tucker, Ed.D., Associate Superintendent for Administrative Services, Fayetteville School District

Comment:

5.11.4 If a teacher removes a student from class two (2) times during any nine week grading period or its equivalent, the principal or the principal's designee may not return the student to the teacher's class unless a conference is held for the purpose of determining the causes of the problem and possible solutions, with the following individuals present:

5.11.4.1 The principal or the principal's designee;

5.11.4.2 The teacher;

5.11.4.3 The school counselor;

5.11.4.4 The parents, guardians, or persons in loco parent's; and

5.11.4.5 The student, if appropriate.

5.11.4.6 The failure of the parents, guardians, or persons in loco parentis to attend the conference provided for in this subsection shall not prevent the conference from being held nor prevent any action from being taken as a result of that conference.

It is not unusual for young students to display a series of inappropriate behavioral choices when issues in their personal lives arise (e.g., death of a pet, fight or arrest of a parent, homelessness, etc.). Typically, a brief "time out" is all that is needed to redirect them and get them ready to learn again. A formal conference is not always necessary in such events. Couple this with a teachers' right to submit a grievance if these rules are not specifically followed, could create much time wasted by administrators. Also, if a teacher does not particularly get along well with a student, the decision to remove from class may not always be the most appropriate choice!

Agency Response: 5.11.4 has been in law at 6-18-511(d) since 1999.

Name: Jacob Smith, Director of Federal Programs and Student Services, Jacksonville North Pulaski School District

Comment:

Section 6 outlines excellent due process standards that are consistent with recent bullying legislation. Few districts have standardized investigation techniques or knowledge of disciplinary due processes. In the attached document, I include Section 7-Due Process. This section mirrors the procedures in section 6.

The special needs funding rules make it clear that only the placement committee may place a student in the alternative learning environment. I recommended the removal of language that contradicts that rule.

Commissioner's Memo RT-19-039 issues each of the infraction codes and the definitions to be used when reporting discipline. These rules should also be reflected in the rules. I added these rules to my attached proposal.

We often have students enroll from other districts who were up for expulsion but the expulsion was nefariously withdrawn. We have found out that the neighbor district had rescinded an expulsion recommendation with the agreement that the student would enroll somewhere else. This is unsafe and jeopardizes the welfare of students in neighboring districts. I added language to eliminate this unfortunate practice.

4.09 This is a good definition. This definition should also be applied to 5.13.2 which has no definition.

5.03.22 - 5.03.30 These definitions come from Com Memo RT-19-039. It would benefit all districts and DESE to use common language.

5.04.1 Ritter and Anderson conducted research using seven years of Arkansas discipline data. They found a great deal of inequity. A first step to addressing this inequity is for each district to clearly define consequences. Most Arkansas schools indicate “Minimum-Warning, Maximum- Expulsion.” This practice does not meet the intent of the rule or law. It will take time and effort to break down variations and nuances of each rule and punishment but it is worth it.

5.04.1 Discretion is important but it is grossly overused. Under our current rules, schools administrators excessively use discretion which leads to inequity.

5.04.1.1 - 5.04.1.5 Before you can have clear progressive discipline you must have clear rules. The current rules that from Com Memo RT-19-039 are a pretty good start. The challenge comes with rules such as insubordination and disorderly conduct. Both of these rules are somewhat nebulous. They are also inequitably administered to students of color. There are levels of insubordination and disorderly conduct. Sound rules should reflect the different levels. Sound progressive discipline policies should also reflect the student’s age and prior offenses.

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5.04.2.3 The practice of handshake agreements to avoid expulsion needs to end. Expulsion is serious and should be reserved for the preservation of student safety and order. However, allowing students to withdraw to avoid pending expulsion proceedings endangers the students in the receiving district.

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5.04.12 This is an important rule. Com Memo LS-20-026 seems to condemn the use of ALE for students with a disability. That commissioner’s memo contradicts the 504 teams duty to educate the student in the least restrictive environment. Committees are required by section 504 to consider proximity to the student’s domicile when making a placement decision. I think it would serve everyone well to flesh this rule out even more.

5.04.12 Campus administrators are often former teachers with limited knowledge of due process law. These proposed rules are founded in the Goss v. Lopez supreme court case. It is common for students in Arkansas to be punished without a statement from the alleged offender or an investigation. These rules will help communicate the importance of due process to school officials and protect all parties.

5.05.4.7 This is a common practice in school districts. The practice needs to be explicitly affirmed or rejected.

5.11.3.3 Campus administrators are often former teachers with limited knowledge of due process law. These proposed rules are founded in the Goss v. Lopez supreme court case. It is common for students in Arkansas to be punished without a statement from the alleged offender or an investigation. These rules will help communicate the importance of due process to school officials and protect all parties.

5.11.3.5 These rules provide needed guidance to affirm the principal's duty to support teachers. Principals also have a duty to protect students from provocation or isolation. This rule balances these responsibilities.

5.13 The discipline reporting system in eSchool is finicky. Many districts do not report discipline accurately. Ritter and Anderson commented on the perceived manipulation of discipline data reporting.

5.13.2.2 This change would allow the application of the previous definition of "substantial disruption." Currently there is no applicable definition of serious disruption. Consequently 5.13.2.2 is unenforceable.

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5.21 The practice of handshake agreements to avoid expulsion needs to end. Expulsion is serious and should be reserved for the preservation of student safety and order. However, allowing students to withdraw to avoid pending expulsion proceedings endangers the students in the receiving district.

7.10 Section 6 outlines due process steps that should be observed for all infractions. These rules mirror the rules for investigating and reporting bullying.

Agency Response: Comments considered and will be included in further discussion and research. Due process procedures, prescribed penalties, and other discretionary issues should be included in local district policies. Discipline infraction codes are included in the SIS Manual. No changes made to these rules.