

## **Title 6. Education**

### **Chapter I. Division of Elementary and Secondary Education**

#### **Subchapter C. Educational Quality, Standards, and Assessment**

#### **Part 65. Rules Governing Test Security, Testing Violations, and Testing Improprieties**

**Codification Notes.** This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"1.00 REGULATORY AUTHORITY

1.01 These rules shall be known as the Arkansas Division of Elementary and Secondary Education ("Division") Rules Governing Test Security, Testing Violations, and Testing Improprieties.

1.02 These rules are enacted pursuant to the Arkansas State Board of Education's authority under Ark. Code Ann. §§ 6-11-105, 6-15-2901 et seq., 6-17-410, 25-15-201 et seq., and Act 930 of 2017."

"Effective Date January 1, 2020"

#### **Subpart 1. Generally**

##### **6 CAR § 65-101. Purpose.**

The purpose of this part is to:

(1) Define the requirements for maintaining test security and confidentiality on state-required assessments;

(2) Identify procedures for reporting testing violations;

(3) Identify a procedure for investigating and addressing complaints regarding testing improprieties; and

(4) Identify categories of violations and actions for individuals, public schools, or public school districts found in violation of the test security requirements included in:

(A) This part; and

(B) Rules Governing the Arkansas Educational Support and Accountability Act, 6 CAR pt. 60.

**Authority.** Arkansas Code §§ 6-11-105, 6-15-2905.

**6 CAR § 65-102. Definitions.**

As used in this part:

(1) "District test coordinator" means the same as defined in the Division of Elementary and Secondary Education's Rules Governing the Arkansas Educational Support and Accountability Act, 6 CAR pt. 60;

(2) "Ethics violation" means an act or omission on the part of an educator when the educator knew, or reasonably should have known, that such acts or omissions were in violation of the Rules Governing the Code of Ethics for Arkansas Educators, 6 CAR pt. 192;

(3) "Public school" means:

(A) A school operated by a public school district; or

(B) An open-enrollment public charter school, as defined in Arkansas Code § 6-23-103;

(4) "Public school district" means:

(A) A geographic area that qualifies as a taxing unit for purposes of ad valorem property taxes under Arkansas Code § 26-1-101 et seq. and Arkansas Constitution, Article 14, § 3, and is either:

(i) Governed by an elected board of directors; or

(ii) Under the administrative control of the State Board of Education or the Commissioner of Elementary and Secondary Education in place of an elected board of directors; or

(B) An open-enrollment public charter school, as defined in Arkansas Code § 6-23-103;

(5) "Sanction" means a penalty for failing to maintain the security or confidentiality of a state-required assessment;

(6) "Test Security Agreement" means the agreement provided to each test administrator or other educator involved in testing that outlines the:

- (A) Security requirements for testing; and
- (B) Agreement that these are understood and will be followed by the

signatory;

(7) "Testing impropriety" means any departure from either the requirements established by law or rule or from the procedures specified in the applicable test administration materials or Division of Elementary and Secondary Education assessment training that violates or compromises the security or confidential integrity of an assessment or inappropriately influences student performance or the reporting of student performance, and may include without limitation the following acts or omissions:

- (A) Viewing secure assessment materials;
- (B) Duplicating secure assessment materials;
- (C) Disclosing the contents of any portion of secure assessment materials;
- (D) Aiding or assisting an examinee with a response or answer to any

secure assessment item;

(E) Changing or altering any response or answer of an examinee to a secure assessment item;

(F) Failing to return the secured test booklets to the testing company in a timely manner;

(G) Encouraging or assisting an individual to engage in conduct described in:

(i) Subdivision (8) of this section;

(ii) The Division of Elementary and Secondary Education's Rules Governing the Arkansas Educational Support and Accountability Act, 6 CAR pt. 60; or

(iii) Arkansas Code § 6-15-2907;

(H) Failing to report to the appropriate authority that an individual has engaged in conduct set forth in:

(i) Subdivision (8) of this section;

(ii) The Division of Elementary and Secondary Education’s Rules Governing the Arkansas Educational Support and Accountability Act, 6 CAR pt. 60; or

(iii) Arkansas Code § 6-15-2907; or

(I) Having a founded history of repeated unresolved testing violations;

(8) “Testing irregularity” means a departure from the established administration procedures that does not represent a severe breach in test security or confidentiality; and

(9) “Testing violation” means any departure from established procedures and administration requirements of the state-required assessment as indicated in law, this part, test manuals, or Division of Elementary and Secondary Education training, and may include without limitation the following acts or omissions:

(A) Failing to:

(i) Follow the specified testing procedures; or

(ii) Actively monitor students while testing;

(B) Allowing personnel who are not trained in test security to access:

(i) Secure tests or testing materials; or

(ii) An online test delivery system;

(C) Failing to administer the assessment on the designated testing dates, unless otherwise approved by the Division of Elementary and Secondary Education;

(D) Failing to provide an approved accommodation to a student that may influence the student’s performance or providing accommodations to students for which they do not qualify or which are not included in their Individualized Education Program (IEP) or 504 Plan; or

(E) Failing to follow the specified procedures and required criteria for alternate assessments.

**Authority.** Arkansas Code §§ 6-11-105, 6-15-2905.

### **6 CAR § 65-103. General requirements.**

(a) A violation of the security or confidential integrity of any test or assessment is prohibited.

(b) Procedures for maintaining the security and confidential integrity of all testing and assessment instruments and procedures shall be specified in the:

(1) Appropriate test or assessment administration instructions;

(2) Division of Elementary and Secondary Education training provided for each assessment; or

(3) Other policy documents issued by the division.

(c) The superintendent or equivalent in each public school district is responsible for the proper implementation of:

(1) This part;

(2) 6 CAR § 60-104 of the Rules Governing the Arkansas Educational Support and Accountability Act, 6 CAR pt. 60, concerning the statewide student assessment system; and

(3) The assessment requirements set forth in the Arkansas Educational Support and Accountability Act, Arkansas Code § 6-15-2901 et seq.

**Authority.** Arkansas Code §§ 6-11-105, 6-15-2905.

#### **6 CAR § 65-104. Reporting of testing improprieties.**

(a) Public school district-level personnel with knowledge of a testing impropriety, irregularity, violation, or breach of security must notify the Division of Elementary and Secondary Education as soon as practicable.

(b)(1) Public school personnel with knowledge of an alleged testing impropriety, irregularity, violation, or breach of security must contact the school administration, the district test coordinator, or the superintendent to report the alleged act.

(2) Personnel may also contact the division's Office of Student Assessment if the alleged act concerns district-level personnel.

(c) The district test coordinator or other administrator with knowledge of the alleged testing impropriety, irregularity, violation, or breach of security:

- (1) Must document the incident;
  - (2) May gather evidence or statements from those involved;
  - (3) Must contact the office via telephone to:
    - (A) Report the incident; or
    - (B) Attempt to immediately correct a testing impropriety, irregularity, violation, or breach of security in a manner that would safeguard the validity and security of the ongoing test; and
  - (4) May be required to file a written, signed report with the division.
- (d) Any public school personnel or individual with knowledge of an alleged testing impropriety, irregularity, violation, or breach of security may file a report with the office.
- (e) Public school district personnel may complete the district/school Testing Violation Report form available on the division's website.
- (f) Any other organization or individual may complete the individual Testing Violation Report form available on the division's website.
- (g) All violation reports should be filed immediately, but no later than fourteen (14) days, after the reporting party became aware of the alleged testing:
- (1) Impropriety;
  - (2) Irregularity;
  - (3) Violation; or
  - (4) Breach of security.
- (h) Violation reports must be submitted in writing to the office to the attention of the Director of Assessment of the Office of Student Assessment.
- (i) Written violation reports, if not submitted using the division's Testing Violation Report form, must include:
- (1) A statement that conduct violating the security or confidential integrity of a test or assessment has occurred;
  - (2) Specific facts upon which the statement is based, including without limitation:
    - (A) When the alleged violation occurred;
    - (B) Where the alleged violation occurred;

(C) How the alleged violation occurred, including specific statements of fact describing the acts or omissions alleged to constitute a violation;

(D) Names of individuals who allegedly committed the violation, if known;

(E) Names of individuals who possess information concerning the alleged violation; and

(F)(i) The signature of the individual filing the complaint.

(ii) The office shall not process anonymous reports.

(j)(i) While testing is ongoing, nothing in this part prohibits public school district personnel from contacting the office via telephone in an effort to immediately correct a testing impropriety, irregularity, violation, or breach of security in a manner that would safeguard the validity and security of the ongoing test.

(ii) The office is authorized to assist public school districts in this manner.

**Authority.** Arkansas Code §§ 6-11-105, 6-15-2905.

**6 CAR § 65-105. Processing a report of testing violations or testing improprieties.**

(a) The Office of Student Assessment of the Division of Elementary and Secondary Education shall receive and review reports of alleged testing violations or testing improprieties filed pursuant to this part.

(b)(1) The Director of Assessment of the Office of Student Assessment or his or her designee shall conduct an initial review of each report.

(2) The director may, as part of the initial review:

(A) Request additional information or documentation from the district superintendent or district test coordinator; and

(B) Determine what actions have been taken by the district with respect to the alleged testing violations or testing improprieties.

(3)(A) After the director's initial review, he or she will appoint a committee of Division of Elementary and Secondary Education staff to conduct a review of:

(i) All reports of alleged testing violations or testing improprieties;

and

(ii) Any additional documentation submitted.

(B) The committee will categorize each reported alleged testing violation and testing impropriety into one (1) of the following stages:

(i)(a) **Stage 1.** Testing violations and testing improprieties that do not:

(1) Breach the security or confidentiality of the assessment;

or

(2) Influence the validity of student performance on the assessment.

(b) These testing violations are:

(1) Typically procedural in nature; and

(2) Able to be corrected at the time of testing with no likelihood that the incident would reoccur during the remaining test administration window;

(ii) **Stage 2.**

(a) Testing violations and testing improprieties that depart from the administration requirements of the assessment may impact the security of the assessment, the confidentiality of student data, or the reports of student performance, but are not found to be egregious or intentional.

(b) These testing violations are generally the result of unintentional human error, inattention during test preparation or administration, insufficient test monitoring, lack of training, and include other violations that may not:

(1) Impact the security of the assessment; or

(2) Adversely affect the performance of students.

(c) These violations are able to be corrected at the local level;

(iii) **Stage 3.** Testing violations and testing improprieties that result from:

(a) Failure to follow the required procedures for testing;

(b) Failure to follow the requirements of the Security Agreement;

(c) Other actions that may:

(1) Violate the security of the assessment; or

(2) Inappropriately influence student performance or the reporting of student performance; or

(d) A pattern of stage 1 or stage 2 testing violations:

(1) Within a public school; or

(2) Across schools in a district; or

(iv) **Stage 4.** Testing violations and testing improprieties that violate the security of the assessment or influence student performance or the validity of the reports, show intentional or egregious disregard for the established test administration procedures, three (3) or more years of stage 3 violations without correction or corrections, and action or actions associated with testing that are a direct violation of the Rules Governing the Code of Ethics for Arkansas Educators, 6 CAR pt. 192.

(c) Reported alleged testing violations and testing improprieties shall be recommended for disposition as follows:

(1) **Stage 1.** These reports are informally and administratively processed by the office and no further action will be required;

(2) **Stage 2.**

(A) The superintendent will receive a letter from the office requiring the district to develop and implement procedures to ensure the violation does not reoccur.

(B) The superintendent may be required to complete an affidavit to ensure the local plan will be developed and implemented the next school year.

(C) Additional sanctions may be imposed;

(3) **Stage 3.**

(A) The superintendent will receive a letter from the office requiring the district to develop a plan that includes procedures and training to ensure that violations do not occur in the future.

(B) The plan must be developed and sent to the office for approval within forty-five (45) days of the receipt of the letter.

(C) The approved plan must be implemented and evidence of its implementation provided to the Division of Elementary and Secondary Education.

(D) Additional sanctions, including without limitation a letter of reprimand to be placed in an individual's employee record, may be imposed; and

(4) **Stage 4.** These reports shall be referred by the director or his or her designee to the appropriate authorized entity for processing under the procedures of that entity:

(A) Professional Licensure Standards Board;

(B) Charter authorizing panel;

(C) State Board of Education; or

(D) Division of Public School Accountability.

(d)(1) Within twenty (20) days of receiving the recommended disposition of the office, the superintendent of the public school district or accused licensee shall notify in writing the office whether the public school district, or accused licensee:

(A) Agrees with the recommended disposition; or

(B) Wishes to appeal the recommended disposition to the state board.

(2) Failure of a public school district or accused licensee to respond to the office's recommended disposition within twenty (20) days shall constitute a waiver of the right to appeal such recommended disposition.

(3) Requests for appeal of the recommended disposition to the state board shall include a brief statement of the reasons why the recommended disposition should not be adopted.

(4) If a public school district or accused licensee does not appeal the recommended disposition of the office or does not file such an appeal within twenty (20) days, the recommendation of the office shall become final.

(5)(A) If a public school district, open-enrollment public charter school, or accused licensee appeals the recommended disposition of the office, the state board shall hear the appeal within sixty (60) days of receipt of the notice of appeal.

(B) Through mutual agreement, the public school district, open-enrollment public charter school, or accused licensee, and the office may extend the date of the hearing for an additional thirty (30) days.

(6) Upon written request by an accused licensee, the public school district or open-enrollment public charter school may:

(A) Respond to all inquiries and allegations on behalf of the accused licensee; and

(B) Represent the accused licensee at all hearings before the state board.

**Authority.** Arkansas Code §§ 6-11-105, 6-15-2905.

**6 CAR § 65-106. State Board of Education hearing procedures.**

The following procedures shall apply to State Board of Education hearings of an appeal:

(1) Documentation for consideration by the state board during the appeal hearing shall be submitted to the Division of Elementary and Secondary Education no later than fifteen (15) days prior to the date of the hearing;

(2)(A) Each party will be given twenty (20) minutes to present their cases, beginning with the representative of the division.

(B)The Chair of the State Board of Education may, only for good cause shown and upon the request of either party, allow either party additional time to present their cases;

(3) All persons wishing to testify before the state board shall first be placed under oath by the chair;

(4) The state board shall then discuss, deliberate, and vote upon the matter of the classification;

(5) The state board may:

(A) Adopt the recommended disposition of the division's Office of Student Assessment;

(B) Modify the recommended disposition of the office; or

- (C) Grant the appeal of the public school district or accused licensee;
- (6) If it deems necessary, the state board may take the matter under advisement and announce its decision at a later date provided that all discussions, deliberations, and votes upon the matter take place at a public hearing; and
- (7) The state board shall issue a written order concerning the matter.

**Authority.** Arkansas Code §§ 6-11-105, 6-15-2905.