

Title 6. Education

Chapter I. Division of Elementary and Secondary Education

Subchapter A. Generally

Part 8. Process for Submitting a Petition for a Declaratory Order Issued by the State Board of Education

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "Arkansas Department of Education Rules Governing the Process for Submitting a Petition for a Declaratory Order Issued by the State Board of Education[,], August 2002".

"Regulatory authority[.] These rules and regulations shall be known as the Arkansas Department of Education (ADE) Rules and Regulations Governing the Process for Submitting a Petition and Obtaining a Declaratory Order issued by the Arkansas State Board of Education. These rules and regulations are enacted pursuant to the authority of the Arkansas State Board of Education under Ark. Code Ann. §6-11-105, Ark. Code Ann. §25-15-204 and Ark. Code Ann. §25-15-206."

Subpart 1. Generally

6 CAR § 8-101. Purpose.

(a) The purpose of this part is to provide for the filing and prompt disposition of petitions for declaratory orders as to the applicability of any rule, statute, or order enforced by the Department of Education.

(b) These declaratory orders shall have the same status as agency orders in cases of adjudication.

(c)(1) A declaratory order is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from the department.

(2) The petition for declaratory order must describe the potential impact of statutes, rules, or orders upon the petitioner's interests in the matter of controversy or question.

Authority. Arkansas Code § 25-15-206.

6 CAR § 8-102. Petition for declaratory order.

The process to obtain a declaratory order is begun by filing with the Department of Education's Commissioner's Office a petition that provides the following information:

(1) The caption of the petition shall read: Petition for Declaratory Order Before the Arkansas State Board of Education (Board).

(2) The petition shall set forth:

(A) The name, address, telephone number, and facsimile number of the petitioner;

(B) The name, address, telephone number, and facsimile number for the attorney of the petitioner;

(C) The statutory provision or provisions, department rule or rules, or department order or orders on which the declaratory order is sought;

(D) A description of:

(i) How the statutes, rules, or orders may substantially affect the petitioner and the petitioner's particular set of circumstances; and

(ii) The question or issue on which the petitioner seeks a declaratory order from the State Board of Education;

(E) The signature of the petitioner or the petitioner's attorney;

(F) The date of the petition to the State Board; and

(G) Any request for a hearing before the board.

Authority. Arkansas Code § 25-15-206.

6 CAR § 8-103. Department of Education's response to petition.

(a)(1) The Department of Education may advise the State Board of Education in writing of the department's response to the petition for declaratory order and the department's involvement in the subject matter of the petition.

(2) The department may file with the Commissioner said statement of response in writing as a responsive pleading within thirty (30) days after receipt of the petition by the Commissioner's Office.

(b) The board shall take no action on a petition prior to the end of the thirty-day time period allowed for receipt of the department's written response.

Authority. Arkansas Code § 25-15-206.

6 CAR § 8-104. State Board of Education disposition process.

(a) Upon written request by the petitioner or the Department of Education, the State Board of Education shall hold a brief hearing to consider:

- (1) The petition for declaratory order;
- (2) The response filed by the department; and
- (3) Any other papers filed by the parties.

(b)(1) The board shall issue a final order within ninety (90) days of the filing of the petition for declaratory order.

(2) The order shall grant or deny the prayer of the petition.

Authority. Arkansas Code § 25-15-206.