



STATE OF ARKANSAS  
ATTORNEY GENERAL  
LESLIE RUTLEDGE

Opinion No. 2021-074

December 17, 2021

The Honorable Kim D. Hammer  
State Senator  
1201 Military Road PMB 285  
Benton, AR 72015

Dear Senator Hammer:

This is in response to your request for an opinion from this office concerning public health guidelines issued by the Arkansas Department of Education. As background for your particular questions, you state:

The "2021-2022 COVID-19 Guidance for Schools" released by the Arkansas Department of Education on August 10, 2021, recommends that school districts "quarantine and isolate" students as necessary. This guidance is based on Arkansas Department of Health and Centers for Disease Control and Prevention guidance regarding whether or not quarantine and isolation are necessary when exposed to COVID-19.

In light of the foregoing information, you have asked the following questions:

- 1) If a guideline is issued in place of a rule or mandate, does that guideline carry the same force of law that a rule or mandate carries, specifically with respect to punitive actions that may be taken against a public school that fails to follow the guideline?
- 2) In the absence of a rule or mandate, if a public school develops an official school district policy by taking into consideration some, but not all, guidelines, is the public school subject to punitive action for not explicitly following the guidelines?

## RESPONSE

No, guidance documents do not have the same force and effect as a properly promulgated rule. School districts are, however, required to follow rules issued by the Arkansas Department of Health.

## DISCUSSION

***Question 1: If a guideline is issued in place of a rule or mandate, does that guideline carry the same force of law that a rule or mandate carries, specifically with respect to punitive actions that may be taken against a public school that fails to follow the guideline?***

Given the background information provided in your correspondence, I gather this question concerns the “2021-2022 COVID-19 Guidance for Schools” that was issued by the Arkansas Department of Education on August 10, 2021. This guidance was not promulgated under the Arkansas Administrative Procedure Act (“APA,” Ark. Code Ann. 25-15-201 *et seq.* (Repl. 2014 and Supp. 2021)). As such, the guidance document you reference does not have the same force and effect of law as a rule adopted pursuant to the APA.<sup>1</sup>

***Question 2: In the absence of a rule or mandate, if a public school develops an official school district policy by taking into consideration some, but not all, guidelines, is the public school subject to punitive action for not explicitly following the guidelines?***

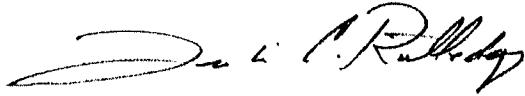
As noted, a guidance document does not normally carry the force of law. But guidance documents, including the one you reference, may refer to rules issued by

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<sup>1</sup> See *Mannis v. State ex rel. DeWitt Sch. Dist. No. 1*, 240 Ark. 42, 44–45, 398 S.W.2d 206, 207 (1966) (noting that a valid health regulation “has the force and effect of law.”); *Manufacturers Cas. Ins. Co. v. Hughes*, 229 Ark. 503, 509, 316 S.W.2d 827, 831 (1958) (quoting American Jurisprudence, Vol. 42, p. 432: “Rules, regulations, and general orders enacted by administrative authorities pursuant to the powers delegated to them have the force and effect of law....”).

the Arkansas Department of Health that do have that effect.<sup>2</sup> School districts must follow such rules and should be aware of the possible consequence of not following them.

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie Rutledge", written in a cursive style.

LESLIE RUTLEDGE  
Attorney General

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<sup>2</sup> 2021-2022 COVID-19 Guidance for Schools August 10, 2021 at 8 (citing “ADH Rules Pertaining to the Control of Reportable Diseases”) (available at [https://dese.ade.arkansas.gov/Files/REVISED\\_Copy\\_of\\_FINAL\\_2021-22\\_Guidance\\_for\\_Schools\\_20210810111300.pdf](https://dese.ade.arkansas.gov/Files/REVISED_Copy_of_FINAL_2021-22_Guidance_for_Schools_20210810111300.pdf)).