

**ADMINISTRATIVE RULES SUBCOMMITTEE
OF THE
ARKANSAS LEGISLATIVE COUNCIL**

**Thursday, July 20, 2023
10:00 a.m.
Room A, MAC
Little Rock, Arkansas**

- A. Call to Order**
- B. Report on the Acts of the 2023 Regular Session Requiring New Rulemaking**
- C. Reports from the Executive Subcommittee Concerning Emergency Rules**
- D. Reports from ALC Subcommittees Concerning the Review of Rules**
- E. Reports on Administrative Directives Pursuant to Act 1258 of 2015, for the Quarter Ending June 30, 2023**
 - 1. Department of Corrections (Lindsay Wallace)**
 - 2. Parole Board (Brooke Cummings)**
- F. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309**
 - 1. DEPARTMENT OF EDUCATION, DIVISION OF ELEMENTARY AND SECONDARY EDUCATION (Shastady Wagner)**
 - a. SUBJECT: Rules Governing School Counseling Programs**

DESCRIPTION: The Arkansas Department of Education’s Division of Elementary and Secondary Education (“DESE”) proposes its Rules Governing School Counseling Programs. These rules were created per Arkansas Code Annotated § 6-18-2005 to list the definitions of terms related to the program, including the definition of “accelerated learning”, set out requirements for program implementation, outline comprehensive school counseling plan components, and list the requirements for monitoring and support.

The majority of public schools in Arkansas follow the American School Counselor Association (ASCA) Model for school counseling programs. For consistency across programs, as long as there was not a conflict with

the law, terms from the ASCA model were added to the rules at Sections 2.04, 3.01.2.4, 4.01.1.1, 4.02.1.1.4, 4.03.3.4.2, 4.04.1.1.1, and 4.04.1.1.2.

The rules clarify that “administrative activities” do not include:

1) professional learning; 2) professional networking; 3) professional conferences that are directly related to or aligned with the comprehensive school counseling program; or 4) facilitation of administrative conferences or advisory council meetings. Additionally, the rules clarify that facilitating administrative conferences and advisory council meetings are not administrative activities.

Following the public comment period, no substantive changes were made. Language was modified for clarity and to mirror existing law. Act 237 of 2023 was incorporated, changing language in Section 3.01.3 from “Youth Mental Health First Aid training” to “youth mental health training, as prescribed by the State Board of Education.”

PUBLIC COMMENT: A public hearing was held on December 19, 2022. The public comment period expired on December 27, 2022. The agency provided a summary of the public comments it received and its responses to those comments:

Commenter Name: Lucas Harder, Arkansas School Boards Association

Comments:

- 3.01.1.2: I would recommend changing “one” to “single.”
- 3.01.2.1: The word “contact” appears to be missing from between “student” and “days.”
- 5.01: There is an extra period after “seq” here.
- 5.02: For consistency, the “DESE” here should be “Division.”

Response: Comment considered. Non-substantive changes made.

Commenter Name: Becky Rosburg, Asst. Superintendent, Hot Springs School District

Comment (1): Section 3.01.2.3 .1 - Administrative activities provided by a school counselor in collaboration with other school personnel include, without limitation. In section 3.01.2.3.1.3 Monitoring students in common areas such as the cafeteria, hallway, playground, and bus lines. This should be listed as a direct student interaction. One of the best ways for a school counselor to provide Direct Services (multi-tiered services through face-to-face contact with students) is by being present and monitoring students in the hallway, cafeteria, playground, and bus lines. Those are the places they can observe student social interactions, behaviors, attitudes when students are not in their classroom. When they are present in those

places, the counselor can provide face-to-face counseling services immediately and/or formulate a support plan to help students become successful in all areas of the school. Response: Section 3.01.2.3.1 mirrors the wording of Ark. Code Ann. § 6-18-2004(c)(2)(D). The suggested modification would require a legislative change. No changes made.

Comment (2): Section 3.01.2.3.2 Administrative activities do not include. In section 3.01.2.3.2.1 Professional learning, professional networking, or professional conferences that are directly related to or aligned with the comprehensive school counseling programs. This does not fit in the definition of Direct Services (2.05 “Direct services” means multi-tiered services provided through face-to-face contact with students.) or Indirect Services (2.07 “Indirect services” means services that are on behalf of a student that include referral, collaboration, and consultation with a parent or legal guardian, school staff, or community agencies concerning a student’s academic, career, and social-emotional needs.) Since it doesn’t fit within those two definitions, it needs to be listed as an administrative task. Response: Commenter correctly recognizes that professional learning, networking, and conferences do not fall squarely within any specific definition under Ark. Code Ann. 6-18-2002. Still, “[a]dministrative activities,” are defined as “activities that are not directly related to the comprehensive school counseling plan and are absent of any direct student services or interaction.” See Ark. Code Ann. § 6-18-2002(1)(emphasis added). Professional learning, networking, and conferences are directly related to quality comprehensive school counseling plans and thus are not “administrative activities.” This conclusion is consistent with the undivided opinion of the counselor stakeholders groups formed in response to Senator Breanne Davis’s request that such stakeholders be involved in considering and developing these rules. No changes made.

Commenter Name: Melissa Wiggins, CHS Counselor, Clarksville School District

Comment: I noticed that the previous counselor: student ratio (1:450) was not included in the new rules. Will that still be in effect? Response: Yes, it will. The requirement that each public school district shall have a student/counselor ratio of no more than one to 450 students is in the DESE Rule Governing the Standards for Accreditation of Arkansas Public Schools and School Districts (see Standard 4-E.2). No changes made.

Commenter Name: Jeremy Lasiter, Director of HR and Legal Affairs, Bryant School District

Comment: Section 3.01.2.3 of the rules tracks the statutory language in stating that counselors may not spend more than ten percent (10%) of their

time working on administrative activities, including state testing. This limitation could impose a burden on school districts when it comes to the administration of state tests to students. We respectfully request that the rules include a clarification of the time period upon which the 10% requirement is calculated (for instance, daily, weekly, monthly, yearly, etc.).

Response: Ark. Code Ann. § 6-18-2004(c)(1) states: “(1) Administrative activities performed by a school counselor shall not exceed more than ten percent (10%) of the school counselor’s time spent working during student contact days,” and the proposed rules mirror that language. The law is silent as to the time period for which the percentages are calculated and the proposed rules intentionally do not specify a time period to afford maximum flexibility in the comprehensive school counseling plans. No changes made.

Commenter Name: Sarah Gheen, Elementary School Counselor, Fayetteville School District

Comment (1): Mental Health First Aid was meant for paraprofessional level personnel, for example, those without direct mental health training. While not all school counselors have a master in counseling, I do. To be required to sit through an eight-hour training on something I could teach is the worst use of my time, not what is best for kids, and insulting to me. Please include an option to opt out if you are a school counselor with a master’s degree in counseling. Response: This language mirrors the requirement set forth in Ark. Code Ann. § 6-18-2004(d). Such an exemption would require a legislative change. No changes made.

Comment (2): It is absurd to think that a school counselor can spend 90% of their time in direct and indirect services to students and be the testing coordinator, coordinate 504’s, PBIS and RTI, ELL programs, and parent engagement. While you can make the case that those are services on behalf of students, they are dominated by administrative work and not direct work with students. I am fortunate to work for a district who values my expertise and protects my time to work directly with students but if you get an administrator who does not, they have a mandate from DESE to put the school counselor in charge of all these things, rendering the counselor unable to do their job which is to work with students.

Response: The administrative activities listed are not mandated for counselors but rather are a list of activities that are administrative, and those activities shall not exceed more than 10% of the school counselor’s time spent working during student contact days. See Ark. Code Ann. § 6-18-2004(c)(1). No changes made.

Comment (3): Something that has yet to be put in writing (that I am aware of) is the expectation of duty for school counselors. It is quite clear for

teachers but not school counselors. Again, if you get an administrator who does not value the job of the school counselor, they can put the counselor on duty before, during, and after school every day. DESE does not give school counselors support or clear guidance in this area. Response: Arkansas Code Annotated § 6-18-2004(c)(2)(D) lists “Monitoring students in common areas such as the cafeteria, hallway, playground, and bus lines” as administrative activities. Again, Ark. Code Ann. § 6-18-2004(c)(1) provides that administrative activities of a school counselor are not to exceed 10% of the school counselors time spent working during student contact days. No changes made.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following questions:

(1) Section 2.07 – Is there a reason why the definition of “Indirect Services” set forth in the rules differs from the definition of “Indirect Services” as it appears in Ark. Code Ann. § 6-18-2002(3)? **RESPONSE:** The definition of “indirect services” in the proposed rules has been changed to mirror the definition in the Code.

(2) Section 3.01.2.1 – As opposed to “student days”, should this subsection instead refer to “student contact days”, as it appears in Ark. Code Ann. § 6-18-2004(b)(1)? **RESPONSE:** Yes it should. The change has been made to “student contact days.”

(3) Section 5.02 – This subsection appears to track Ark. Code Ann. § 6-18-2005(b)(2), which references the “Standards for Accreditation of Arkansas Public Schools and School Districts.” Is there a reason why the rule references instead the “DESE Rules Governing the Standards for Accreditation” and is there a meaningful difference between these two references? **RESPONSE:** The two are the same. The proposed rules will be changed to read “the division’s Rules Governing the Standards for Accreditation of Arkansas Public Schools and School Districts.”

(4) Section 5.03 – This subsection appears to track Ark. Code Ann. § 6-18-2005(c), which states that DESE “shall [p]rovide guidance and technical assistance to public school districts in order to support equitable access to public school counseling services.” Is there a reason why this language is not repeated in the rule? Is this statutory mandate reflected elsewhere in the rule? **RESPONSE:** The proposed rules now include as Section 5.03.3 “Provide guidance and technical assistance to public school districts in order to support equitable access to counseling services.”

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the proposed rule has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 6-18-2005(d), the State Board of Education may promulgate rules to implement the School Counseling Improvement Act of 2019, codified at Ark. Code Ann. §§ 6-18-2001 – 2005. The proposed changes also include those made in light of Act 237 of 2023, sponsored by Senator Breanne Davis, which created the LEARNS Act and amended various provisions of the Arkansas Code as they relate to early childhood through grade twelve (12) education in the state of Arkansas.

G. Agency Updates on the Status of Outstanding Rulemaking Pursuant to Act 595 of 2021

- 1. Department of Agriculture (Wade Hodge)**
- 2. Department of Corrections (Lindsay Wallace)**
- 3. Department of Education (Andrés Rhodes)**
- 4. Office of Arkansas Lottery (Brent Standridge)**

H. Adjournment