

**ARKANSAS DIVISION OF ELEMENTARY AND SECONDARY EDUCATION RULES
GOVERNING ACT 1240 WAIVERS
Effective Date: July 6, 2020**

1.00 REGULATORY AUTHORITY

- 1.01 The State Board of Education enacted these rules pursuant to its authority as set forth in Ark. Code Ann. §§ 6-11-105, 6-15-103, and 25-15-201 et seq.

2.00 DEFINITIONS

- 2.01 "Division" means the Division of Elementary and Secondary Education of the Arkansas Department of Education.
- 2.02 "State Board" means the State Board of Education.
- 2.03 "Waiver" means a waiver granted by the State Board of Education pursuant to its authority under Ark. Code Ann. § 6-15-103.

3.00 REQUESTS FOR WAIVER

- 3.01 A school district may petition the State Board of Education for all or some of the waivers granted to an open-enrollment public charter school.
- 3.01.1 Prior to requesting a waiver, the school district board of directors must adopt a resolution authorizing the request for the waiver.
- 3.02 Districts may only request waivers that enhance student learning opportunities, promote innovation, or increase equitable access to effective teachers.
- 3.02.1 Waivers requested for the sole purpose to avoid violations of the Standards for Accreditation shall not be granted.
- 3.03 The petition shall include, without limitation:
- 3.03.1 The name of the open-enrollment public charter school that holds the waiver(s);
- 3.03.2 A list of the waiver(s) that the district seeks to have granted, including:
- 3.03.2.1 The proposed Standards for Accreditation;
- 3.03.2.2 The proposed Division Rules;
- 3.03.2.3 The proposed statutes of the Arkansas Code.

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- 3.03.3 The proposed duration of the requested waiver(s);
- 3.03.4 A signed copy of the resolution adopted by the school district's board of directors authorizing the district to request the waiver;
- 3.03.5 Evidence of stakeholder involvement, including teachers and student families;
- 3.03.6 The grades, schools, and classes to which the proposed waiver(s) apply; and
- 3.03.7 A detailed rationale for the request, including but not limited to:
 - 3.03.7.1 How the waiver(s) enhance student learning opportunities, promote innovation, or increase equitable access to effective teachers;
 - 3.03.7.2 How students will be served; and
 - 3.03.7.3 How the district will monitor and evaluate the effectiveness of the waiver.
- 3.04 The petition must be submitted to the Division's ~~Charter School Office~~ Office of Legal Services on the approved request form- , which shall be available on the Division's website.
 - 3.04.1 ~~The request form shall be available on the Division's website.~~
- 3.05 A district may not request and the State Board of Education may not grant waivers of any of the following waivers:
 - 3.05.1 Monitoring compliance with Title 6 of the Arkansas Code, as determined by the Commissioner;
 - 3.05.2 Public school accountability under Title 6 of the Arkansas Code;
 - 3.05.3 High school graduation requirements as established by the State Board;
 - 3.05.4 Special education programs as provided by Title 6 of the Arkansas Code;
 - 3.05.5 Conducting criminal background checks for employees as provided by Title 6 of the Arkansas Code;
 - 3.05.6 Health and safety codes as established by the State Board and local governmental entities;

3.05.7 Arkansas Qualified Teacher Requirements;

3.05.8 Ethical guidelines and prohibitions as established by Ark. Code Ann. § 6-24-101 et seq., and any other controlling state or federal law regarding ethics or conflicts of interest; ~~and~~

3.05.9 Reporting through the Arkansas Public School Computer Network applications as provided under Title 6 of the Arkansas Code; and

3.05.10 The school start date set forth in Ark. Code Ann. § 6-10-106.

3.06 A district may request a waiver of the requirements of Ark. Code Ann. § 6-16-102(a)(5), concerning recess, only if the district:

3.06.1 Submits to the Division for approval of an alternative plan for recess that:

3.06.1.1 Exceeds the required minimum amount of minutes combined for physical activity under Ark. Code Ann. § 6-16-132 and recess under Ark. Code Ann. § 6-16-102(a); ~~and~~

3.06.1.2 Provides for both structured and unstructured social time.

3.07 Districts shall have the opportunity to amend their request until fifteen (15) days prior to the State Board's consideration of the waiver request.

3.07.1 If a District wishes to amend its request after the timeline in Section 3.07, it may only do so at the waiver hearing.

4.00 HEARING

4.01 All waiver requests shall be presented to the State Board of Education.

4.02 All persons, with exception of the attorneys representing the parties, who plan to provide testimony during the hearing must be sworn by the State Board Chair.

4.03 The District shall have twenty (20) minutes to present its case to the State Board for approval of the proposed waivers. The Chair may grant additional time if necessary.

4.03.1 If the district intends to use a presentation, handouts, or any other document, it must provide copies to the ~~Charter School~~ Office of Legal Services no later than ten (10) business days prior to the hearing.

- 4.03.2 If the district does not provide materials as required by Section 4.03.1, it may only use a presentation or present additional documents with the permission of the State Board.
- 4.04 Parties opposed to the proposed waivers, if any, shall have twenty (20) minutes to present their case to the State Board. The Chair may grant additional time if necessary.
- 4.04.1 Any party in opposition that wishes to present or participate at the hearing must notify the Division's ~~Charter School Office~~ Office of Legal Services and the district requesting the waiver in writing no later than ten (10) business days prior to the hearing.
- 4.04.2 If a party in opposition intends to use a presentation, handouts, or any other document, it must provide copies to the ~~Charter School Office~~ Office of Legal Services and to the district requesting the waiver no later than ten (10) business days prior to the hearing.
- 4.04.3 A party in opposition that fails to provide notice as required by Sections 4.04.1 and 4.04.2 may only present or participate at the hearing with the permission of the State Board.
- 4.04.4 If there are multiple individuals or groups who wish to speak in opposition, it is the responsibility of those individuals or groups to divide the twenty (20) minutes between themselves.
- 4.05 The District shall have five (5) minutes to respond to any arguments in opposition to the proposed waivers. The Chair may grant additional time if necessary.
- 4.06 The State Board will follow the presentations with discussion of the proposed waivers and may ask questions to any of the parties or to the Division, or both.
- 4.07 The State Board may ask questions at any time during the presentation by the District or the opposing parties.
- 4.08 The State Board may grant, in whole or in part, or deny, in whole or in part, the proposed waivers.
- 4.08.1 The State Board may also take the matter under advisement until a future scheduled Board meeting.
- 4.08.2 The State Board must make a decision within **90 ninety (90)** days of receiving the waiver request.
- 4.09 Any waiver(s) granted to a district, in whole or in part, is valid for the duration requested by the district, unless the State Board votes otherwise.

- 4.09.1 The waiver(s) shall not exceed the duration that the waiver is valid for the open-enrollment public charter school on which the request was based.
- 4.09.2 The waiver(s) shall not be granted for a period of time exceeding five (5) years.
- 4.09.3 If a district wishes to renew a waiver that is expiring, it must follow the procedure set out in Section 6.00 of these Rules.
- 4.10 The State Board may request annual reporting as a condition of approval of the proposed waiver(s).
- 4.11 The Division shall notify the Superintendent of the district in writing of the decision of the State Board.
- 4.12 All waivers granted under these Rules shall be posted to the Division's website.
- 4.13 The district must post all waivers granted under these Rules to the district's website under "State--Required Information" within thirty (30) days of the State Board's approval.

5.00 REVIEW AND REVOCATION OF WAIVERS

- 5.01 The State Board may exercise its right to review waivers granted under Ark. Code Ann. § 6-15-103 and these Rules at any time.
- 5.02 If the State Board chooses to conduct a review, it must give the school district superintendent and board of directors president ~~district~~ at least fifteen (15) business days' notice in writing via both regular U.S. Mail and electronic mail of the State Board's intent to conduct a review. This notification shall:
 - ~~5.01.1~~ 5.02.1 Include the time, date, and location at which the review will be conducted;
 - 5.02.2 ~~The State Board must state~~ Provide the specific reasons for the State Board's intent to conduct a review; and
 - 5.02.3 ~~conducting the review and state~~ State any additional information the State Board that is required from by the Division or the school district.
- 5.03 A failure to notify a school superintendent and local district board of directors president as required under Section 5.02 of these Rules shall result in a waiver of the right of the State Board to conduct a review until the notification requirement is met.

~~5.01.2~~ 5.04 Following a review of a waiver or waivers granted under Ark. Code Ann. § 6-15-103, ~~the district's waiver(s)~~, the State Board may modify, in whole or in part, or revoke, in whole or in part, ~~the waiver(s) waiver or waivers. in whole or in part.~~

6.00 EXPIRATION OF WAIVERS

- 6.01 If a Standard for Accreditation, Arkansas law, or Division rule is repealed, any waiver(s) of that standard, law, or rule expires on the date the repeal becomes effective.
- 6.02 If a Standard for Accreditation, Arkansas law, or Division rule is changed, it is the responsibility of the District to determine if the change necessitates a change in its waiver.
- 6.03 The Division shall advise district's by Commissioner's memo when laws, rules, or the Standards for Accreditation that impact waivers are changed.
- 6.04 If the open-enrollment public charter school on which the district based its request closes or gives up its waiver, the district may maintain the waiver until the end of the school year.
 - 6.04.1 The district may bring a new waiver request based on another open-enrollment public charter school if another open-enrollment public charter school holds the waiver.
 - 6.04.2 If no other open-enrollment public charter school holds the waiver, the waiver will expire at the end of the school year.
- 6.05 If a district wishes to renew a waiver that is expiring, it must submit an Extension Request Form.
 - 6.05.1 The request form shall be available on the Division's website.
 - 6.05.2 The district must submit the following in its extension request:
 - 6.05.2.1 The name of the open-enrollment public charter school that holds the waiver(s);
 - 6.05.2.2 A list of the waiver(s) that the district seeks to have extended;
 - 6.05.2.3 The proposed duration of the extension;
 - 6.05.2.4 The grades, schools, and classes to which the proposed extension applies, if different than the original request;

- 6.05.2.5 An explanation of the benefit of the waiver for students, staff, the district, the community, or the State:
- 6.05.2.6 A signed copy of the resolution adopted by the school district's board of directors authorizing the district to request to waive extension;
- 6.05.2.7 Evidence of support from district staff for the continuation of the waivers; and
- 6.05.2.8 A detailed rationale for the request, including but not limited to:
 - 6.05.2.8.1 How the waiver(s) enhance student learning opportunities, promote innovation, or increase equitable access to effective teachers;
 - 6.05.2.8.2 How students will be served; and
 - 6.05.2.8.3 How the district will monitor and evaluate the effectiveness of the waiver.
- 6.05.3 If the district is requesting an extension of teacher licensure waivers, the district must also provide the following information:
 - 6.05.3.1 The number of positions filled by a teacher employed under the waiver;
 - 6.05.3.2 The number of teachers employed under the waiver that have obtained licensure; and
 - 6.04.3.3 The number of teachers employed under the waiver that are actively engaged in a licensure pathway program.
- 6.05.4 The Extension Request Form must be received by the Charter School Office no later than forty-five (45) days prior to the expiration of the waiver.
 - 6.05.4.1 A district may submit an extension request after the timeline set in Section 6.05.4.5, but the delay may result in a lapse in the waiver prior to extension.
- 6.06 All waiver expiration dates shall be posted to the Division's website.

Mark-Up

State of Arkansas
93rd General Assembly
Regular Session, 2021

As Engrossed: H2/2/21

A Bill

HOUSE BILL 1172

By: Representative Tollett

For An Act To Be Entitled

AN ACT CONCERNING PUBLIC SCHOOL DISTRICT WAIVERS; TO
REQUIRE CERTAIN NOTIFICATION PROCEDURES BY THE STATE
BOARD OF EDUCATION UPON THE STATE BOARD OF
EDUCATION'S REVIEW OF WAIVERS GRANTED TO PUBLIC
SCHOOL DISTRICTS; AND FOR OTHER PURPOSES.

Subtitle

TO REQUIRE CERTAIN NOTIFICATION
PROCEDURES BY THE STATE BOARD OF
EDUCATION UPON THE STATE BOARD OF
EDUCATION'S REVIEW OF WAIVERS GRANTED TO
PUBLIC SCHOOL DISTRICTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 6-15-103, concerning school district
waivers, is amended to add an additional subsection to read as follows:

(e)(1) To conduct a review of a waiver granted under this section, the
state board shall:

(A)(i)(a) Give a public school district superintendent and
a local public school district board of directors president at least fifteen
(15) business days' notice in writing and by electronic mail of the state
board's intent to conduct a review.

(b) Notification required under subdivision
(e)(1)(A)(i)(a) of this section shall include the time, date, and location at
which the review under this section will be conducted.

(ii) A failure to notify a public school



1 superintendent and a local public school district board of directors
2 president as required under subdivision (e)(1)(A)(i) of this section shall
3 result in a waiver of the right of the state board to conduct a review under
4 this section until the notification requirement under subdivision
5 (e)(1)(A)(i) of this section is met;

6 (B) Provide the specific reason for the state board's
7 intent to conduct a review; and

8 (C) State additional information that is required by the
9 division or the public school district.

10 (2) Following a review of a waiver granted under this section,
11 the state board may modify, in whole or in part, or revoke, in whole or in
12 part, a waiver granted under this section.

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14 /s/Tollett

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17 **APPROVED: 4/12/21**
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State of Arkansas As Engrossed: H2/23/21 H3/15/21 S4/7/21

93rd General Assembly

Regular Session, 2021

A Bill

HOUSE BILL 1237

By: Representative Lowery

By: Senator Irvin

For An Act To Be Entitled

AN ACT CONCERNING THE SCHOOL START DATE AND THE
DEFINITION AND LENGTH OF A SCHOOL DAY; TO ALLOW
PUBLIC SCHOOL DISTRICT BOARDS OF DIRECTORS TO ELECT
TO IMPLEMENT AN ALTERNATE SCHOOL CALENDAR; TO AMEND
THE DEFINITION OF A SCHOOL DAY; AND FOR OTHER
PURPOSES.

Subtitle

TO AMEND THE SCHOOL START DATE; TO ALLOW
PUBLIC SCHOOL DISTRICT BOARDS OF
DIRECTORS TO ELECT TO IMPLEMENT AN
ALTERNATE SCHOOL CALENDAR; AND TO AMEND
THE DEFINITION OF A SCHOOL DAY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 6-10-106(a), concerning the dates for the
beginning and end of the school year, is amended to read as follows:

(a)(1)(A) ~~In each school year~~ Beginning with the 2022-2023 school
year, the first day of the school year for student attendance in the public
elementary and secondary schools ~~of the State of Arkansas~~ shall not be:

~~(i) On or after the Monday of the week in which~~
~~August 19 falls;~~

~~(ii) Not earlier than August 14; and~~ the Monday two
(2) weeks before Labor Day

~~(iii) Not later than August 26.~~



1 (B) The date for beginning the school year shall be
2 determined by the board of directors of ~~the~~ each school district in
3 accordance with subdivision (a)(1)(A) of this section.

4 (C) Labor Day shall be celebrated as a school holiday in
5 all the school districts of the state, and school shall not be held on that
6 date.

7 (D) As used in this section, "week" means a seven-day
8 period that begins on a Sunday and ends on a Saturday.

9 (2)(A) The Division of Elementary and Secondary Education may
10 grant a school district a waiver to begin school on ~~an earlier or~~ a later
11 date if the division determines that there exists a material and substantial
12 reason for the school district to begin school on ~~an earlier or~~ a later date
13 due to very exceptional or emergency circumstances such as a contagious
14 disease outbreak, inclement weather, or other acts of God.

15 (B) The division shall not grant a public school district
16 a waiver under § 6-15-103 to begin school on an earlier date.
17

18 SECTION 2. Arkansas Code § 6-10-106(f), concerning make-up days built
19 into a school calendar, is amended to read as follows:

20 (f) A Except as provided under subsection (g), a school district shall
21 adopt an academic calendar that includes five (5) make-up days, in addition
22 to the number of student-teacher interaction days required by the Standards
23 for Accreditation of Arkansas Public Schools and School Districts established
24 by the State Board of Education, for days unavoidably lost due to exceptional
25 or emergency circumstances resulting from a contagious disease outbreak,
26 inclement weather, or other acts of God.
27

28 SECTION 3. Arkansas Code § 6-10-106, concerning a school start date,
29 is amended to add an additional subsection to read as follows:

30 (g)(1) Beginning with the 2022-2023 school year, a public school
31 district board of directors may elect to implement an alternate school
32 calendar.

33 (2)(A) An alternate school calendar implemented under
34 subdivision (g)(1) of this section shall consist of:

35 (i) At least one thousand sixty-eight (1,068) hours
36 of instructional time; and

1 (ii)(a) At least thirty (30) make-up hours, in
2 addition to the number of hours required of instructional time, for days
3 unavoidably lost due to exceptional or emergency circumstances resulting from
4 inclement weather.

5 (b) If additional make-up hours are needed,
6 the public school district board of directors shall modify its alternate
7 school calendar to include make-up hours for the additional hours needed.

8 (B) However, there shall not be a minimum number of school
9 days required to meet the required one thousand sixty-eight (1,068) hours of
10 instructional time.

11 (3) A public school district board of directors that elects to
12 implement an alternate school calendar under subdivision (b)(1) of this
13 section shall:

14 (A) Notify the division by July 1 of each year that the
15 public school district intends to implement the alternate school calendar;

16 (B) Post the alternate school calendar on the public
17 school district's website by August 1 of each year that the public school
18 district intends to implement the alternate school calendar;

19 (C) Input into eSchool, eFinance, or the Arkansas Public
20 School Computer Network all data that:

21 (i) Affects the average daily membership of the
22 public school district; and

23 (ii) Ensures compliance with the required minimum
24 number of school instructional hours under subdivision (g)(2)(A)(i) of this
25 section; and

26 (D)(i) Not be eligible for the use of alternative methods
27 of instruction granted under § 6-10-127.

28 (ii) However, a public school district that
29 implements an alternate school calendar under subdivision (b)(1) of this
30 section may submit an application to operate a virtual learning option.

31 (4) The total number of instructional hours under an alternate
32 school calendar shall be converted to school days for purposes of the:

33 (A) Number of days required in a teacher employment basic
34 contract under § 6-17-2402(1);

35 (B) Number of days counted during the official reporting
36 period for attendance under § 6-18-213(b)(1); and

1 (C) Average daily membership calculated under § 6-20-
2 2303(3).

3 (5) The division may promulgate rules as necessary to administer
4 this section.

5
6 SECTION 4. Arkansas Code § 6-16-102(a)(1)-(3), concerning the
7 definition of "school day", are amended to read as follows:

8 (a)(1)(A) As Except as provided under subdivision (a)(1)(B) of this
9 section, as used in this section, "school day" shall mean a day in which
10 classes are in session and students receive at least six (6) hours of
11 instructional time.

12 (B) However, "school day" for purposes of a public school
13 district that implements an alternate school calendar under § 6-10-106(g)
14 means a day in which classes are in session and students are under the
15 guidance and direction of a teacher or public school employee.

16 (2)(A) Any day in which less than six (6) hours of instructional
17 time are provided to students shall be counted as one-half ($\frac{1}{2}$) of a school
18 day if at least three (3) hours of instructional time are provided to
19 students.

20 (B) However, subdivision (a)(2)(A) of this section shall
21 not apply to a public school district that implements an alternate school
22 calendar under § 6-10-106(g).

23 (3)(A) Any day in which less than three (3) hours of
24 instructional time are provided to students shall not be counted as any part
25 of a school day.

26 (B) However, subdivision (a)(3)(A) of this section shall
27 not apply to a public school district that implements an alternate school
28 calendar under § 6-10-106(g).

29
30 SECTION 5. Arkansas Code § 6-16-102(c), concerning planned
31 instructional time during a school day, is amended to read as follows:

32 (c)(1) A school district is deemed to have fulfilled the requirements
33 of subsection (a) of this section if the planned instructional time in each
34 school day does not average less than six (6) hours each day or thirty (30)
35 hours each week.

36 (2) However, subdivision (c)(1) of this section shall not apply

to a public school district that implements an alternate school calendar
under § 6-10-106(g).

/s/Lowery

APPROVED: 4/13/21