

**Public Comment Period #2 – Physical Activity and Nutrition Standards**

**SECOND PUBLIC COMMENT PERIOD – COMMENT MATRIX**

Date	Respondent	Comment	ADE Response
10/15/11	Jada Walker, Chairperson Child Health Advisory Committee	<p>The proposed changes, specifically the deletion of 9.04 and 9.06, are inconsistent with that which has been well established as safe, appropriate promotion of physical activity in children. Accepting these proposed changes potentially jeopardizes the safety and welfare of Arkansas’s public and charter school students. CHAC further recommends that the Board of Education solicit the opinion and judgment of the following organizations to provide clarity to the rules before further action:</p> <ul style="list-style-type: none"> <li>• AR Academy of Family Practice</li> <li>• AR Academy of Pediatrics</li> <li>• AR Advocates for Children and Families</li> <li>• AR Association for Health, Physical Education, Recreation &amp; Dance</li> <li>• AR Association for Supervision and Curriculum Development</li> <li>• AR Association of Educational Administrators</li> <li>• AR Association of School Business Officials</li> <li>• AR Center for Health Improvement</li> <li>• AR Department of Health</li> <li>• AR Dietetic Association</li> <li>• AR Heart Association</li> <li>• AR Parent Teacher Association</li> <li>• AR School Boards Association</li> <li>• AR School Food Service Association</li> <li>• AR School Nurses Association</li> <li>• Classroom Teachers</li> <li>• Department of Education</li> <li>• Fay W. Boozman College of Public Health (UAMS)</li> <li>• Office of Minority Health &amp; Health Disparities</li> <li>• U of A Cooperative Extension</li> </ul>	<ul style="list-style-type: none"> <li>• Comments considered. The proposed changes to the existing rule were necessary to bring the rules into compliance with existing Arkansas statutory law. Neither the State Board of Education nor the Arkansas Department of Education has the authority to promulgate rules that are in conflict with Arkansas law.</li> <li>• Physical education requirements are set forth by the General Assembly in Ark. Code Ann. § 6-16-132. Those physical education requirements are set forth verbatim in Section 7.0 of the proposed rules. Ark. Code Ann. § 6-16-132(e) states, “[n]othing in this section shall be construed to require any school or school district to hire personnel certified in physical education.” The language from that subsection is now found at Section 7.07 of the proposed rules.</li> <li>• Despite the language of Ark. Code Ann. § 6-16-132(e), former Sections 9.04 and 9.06 required, or would have required, schools or school districts to hire personnel certified in physical education.</li> <li>• Given this apparent conflict, the Arkansas Department of Education proposes that the rules be modified to meet the requirements of the law while respecting the excellent work performed to date by the Child Health Advisory Committee. That is why proposed Sections 7.10 and 7.11 have been added to the rule.</li> <li>• Section 7.10 pertains to K-6 settings and requires that physical education classes be taught either by a licensed physical education teacher or by a licensed elementary teacher. In either case, a licensed teacher will be responsible for the delivery of physical education instruction to K-6 students.</li> <li>• Section 7.11 pertains to 7-12 settings and is consistent with the requirements that have been listed in the Standards for Accreditation for several years. Because school districts have previously met those requirements, the rule will not require the hiring of any new staff certified in physical education at the secondary level.</li> <li>• We respectfully but strongly disagree with the assertion that the proposed rules will potentially jeopardize the safety and welfare of Arkansas’s public and charter school students. The only substantive change in the rule is that it no longer requires elementary schools to hire additional physical education teachers who are licensed in the elementary grade levels being taught. A licensed physical education teacher at any grade level may still provide physical education instruction to elementary school students. Absent</li> </ul>

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			<p>a licensed physical education teacher for elementary grades, the physical education instruction will be provided by licensed elementary teachers who are able to provide adequate instruction in any elementary subject. Apart from this change concerning licensure, the following substantive portions of the rule remain unchanged:</p> <ul style="list-style-type: none"> <li>o Physical Education Requirements;</li> <li>o Physical Activity Requirements;</li> <li>o General Requirements for Food and Beverages in Public Schools;</li> <li>o Nutrition Standards for Foods and Beverages;</li> <li>o Nutrition Education;</li> <li>o Healthy School Environments; and</li> <li>o Screening Processes for BMI Assessments.</li> </ul> <ul style="list-style-type: none"> <li>• We appreciate your suggestion that the ADE seek the advice of each of the individual organizations listed in your letter. We note that each of the individual organizations listed in your letter is represented by the Child Health Advisory Committee. The State Board of Education first put these proposed rules out for public comment in June 2011. Over the past six months, Arkansas Department of Education staff received and reviewed several written public comments, conducted two separate public comment periods, conducted two separate public hearings, and met with several individuals from the entities listed in your letter. The Arkansas Department of Education has also consulted the Child Health Advisory Committee and the State Board of Health. We are confident that we have received the full benefit of the comments offered by these entities.</li> </ul>
10/25/11	JF Walker, UAMS	Would like the rule to maintain the requirement for certified physical education teachers	<ul style="list-style-type: none"> <li>• Comment considered. Please see the response listed above concerning the use of certified physical education teachers.</li> </ul>
11/ 7/2011	Marc Sloan, Art Teacher/PBIS Coordinator, Westside Consolidated School District	<p>As you consider changes to the Physical Education standards please take into account some ambiguous language regarding physical activity and recess. In section 9.03.1 it states that, in addition to the sixty (60) minutes of physical education, students are required to receive ninety (90) minutes of physical activity. This part is clear enough but the means by which a school is to administer this ninety (90) minutes of physical activity leaves the door open to many questions that I think are not intended by the committee.</p> <p>Please help clarify the intent of the following in section 9.03.1:</p> <p style="text-align: center;">The physical activity may include additional physical education classes, physical activity during the regular</p>	<ul style="list-style-type: none"> <li>• Comment considered. The language referenced by your comment now appears in Section 7.01.1.2 of the proposed rules. The referenced language is taken verbatim from Ark. Code Ann. § 6-16-132(b)(1)(A)(i)(b). The General Assembly expressly stated that daily recess periods may be counted toward the ninety (90) minute weekly physical activity requirement. The law does not appear to require that physical activity be integrated into the academic curriculum. It appears that the General Assembly intended to allow schools and school districts flexibility in determining how to comply with the ninety (90) minute requirement. The question of whether physical activity is integrated into the curriculum or whether the time is academic or non-academic, appears to be left to the discretion of local school districts.</li> </ul>

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		<p>school day through activities such as daily recess periods, walking programs, intramurals and the integration of physical activity into the academic curriculum.</p> <p>For instance, is it the intent of the standard to take the term recess, which was not defined in section 3.0 and has traditionally meant free play and not academic, and make it synonymous with a form of physical activity that is integrated into the curriculum?</p> <p>If this is the case, the term physical activity can then be inserted into the schedule rather than recess and schools do not have to count the time teachers oversee <i>this physical activity</i> as duty because it is considered academic, when in fact, it is still just recess or non-structured, non-academic time.</p> <p>It appears that many districts across the state are taking this approach and if this is not the intent of the physical activity standard, I think this section needs some more scrutiny.</p>	
<p>First Comment Period</p>	<p>Various</p>	<p>The State Board should be aware that during the first comment period, which lasted from June 13 until July 16, 2011, the Arkansas Department of Education received several public comments concerning the first version of the rules.</p> <p>The Arkansas Department of Education received comments in opposition to the rule from the following individuals:</p> <ul style="list-style-type: none"> <li>• Blake Talbot (opposed removal of existing requirement for certified physical education teachers);</li> <li>• Juanita Casey (contended that performing BMI on 10<sup>th</sup> graders is unrealistic and that the state should spend money on giving students memberships to their local YMCAs and activity centers);</li> <li>• Cherish Holt (P.E. should be taught by a licensed P.E. teacher);</li> <li>• Connie Gaines (P.E. should be taught by licensed P.E. teachers);</li> <li>• Johnathan Sutherland (P.E. should be taught by licensed P.E. teachers);</li> <li>• Ken Endris (Maintain the requirement for having qualified or licensed P.E. teachers work directly in the delivery of</li> </ul>	<ul style="list-style-type: none"> <li>• The ADE considered each of the public comments it received during the initial public comment period. Most of the comments in opposition to the rule contended that the requirement that school districts should hire licensed P.E. teachers who are licensed at the particular grade levels being taught should be maintained. As noted above, that requirement would place the rule in apparent conflict with Arkansas statutory law.</li> <li>• The ADE did revise the rules, however, to make it clear that only licensed teachers would be responsible for P.E. instruction. At the secondary level, only licensed P.E. instructors would be responsible for instruction. In the elementary grades licensed elementary instructors or licensed P.E. instructors would be responsible for instruction.</li> </ul>

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		<p>instruction);</p> <ul style="list-style-type: none"><li>• Carl Gaines (certified teachers should provide physical education instruction);</li><li>• Carole Garner, Child Health Advisory Committee (same concerns as noted by Ms. Jada Walker (above).</li><li>• Diane Walters (certified teachers should provide physical education instruction);</li><li>• Cathryn Gaines (certified P.E. teachers should teach P.E.);</li><li>• Shellie Hanna (certified P.E. teachers should teach P.E.);</li><li>• Dr. Joe Thompson (the initial recommendations of the Child Health Advisory Committee with regard to licensed physical education teachers should be maintained and that the State Board has such authority);</li><li>• Dan Burroughs (P.E. should only be taught by certified P.E. teachers);</li><li>• Vickie McKinney (P.E. should be taught by licensed physical education teachers);</li><li>• Judy Cox (P.E. should be taught by licensed P.E. teachers);</li><li>• Keta Turner (P.E. should be taught by licensed P.E. teachers);</li><li>• Teresa Johnson (P.E. should be taught by licensed P.E. teachers);</li><li>• Lindsay Robinson (P.E. should be taught by licensed P.E. teachers);</li><li>• Nita Copeland (there should be an additional public comment period and P.E. should be taught by licensed P.E. teachers).</li><li>• Dr. Judy Harrison (P.E. should be taught by licensed P.E. teachers);</li><li>• Dr. Stephen Burks (P.E. should be taught by licensed P.E. teachers);</li></ul>	
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		<ul style="list-style-type: none"><li>• Dr. Donnie Lee (P.E. should be taught by licensed P.E. teachers);</li></ul> <p>The Arkansas Department of Education received comments in support of the rule from the following individuals:</p> <ul style="list-style-type: none"><li>• Mike Mertens (Arkansas Association of Educational Administrators (generally supports the proposed removal of Section 9.06 and recommended other minor wording changes)</li><li>• Dr. Kim Wilbanks (existing requirements would have presented a financial hardship by requiring the hiring of additional certified teachers who would not have assigned duties or very limited duties).</li><li>• Belinda Shook (the current rule conflicts with state law; elementary teachers should be allowed to teach all elementary subjects. P.E. should be no different).</li></ul> <p>The Arkansas Department of Education received general comments from the following individual:</p> <ul style="list-style-type: none"><li>• Tammy Tucker (typographical error in Section 7.10.2)</li></ul>	
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