**AGENDA**

**ADMINISTRATIVE RULE AND REGULATION REVIEW SUBCOMMITTEE**

**OF THE JOINT BUDGET COMMITTEE**

**Tuesday, April 26, 2016**

**11:00 a.m.**

**Room B, MAC**

**Little Rock, Arkansas**

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Sen. David Sanders, Chair Rep. Andy Davis, Chair

Sen. Bruce Maloch, Vice-Chair Rep. Lane Jean, Vice-Chair

Sen. David Johnson Rep. John T. Vines

Sen. Larry Teague Rep. Jon S. Eubanks

Sen. Jonathan Dismang Rep. Jeremy Gillam

Sen. Ron Caldwell Rep. Douglas House

Sen. Bobby J. Peirce Rep. Charlotte V. Douglas

Sen. Jim Hendren Rep. Joe Jett

Sen. Bart Hester Rep. John Payton

Sen. Bill Sample, ex-officio Rep. David Branscum, ex-officio

Sen. Terry Rice, ex-officio Rep. Mark Lowery, ex-officio

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**A. Call to Order.**

**B. Rules of the Administrative Rule and Regulation Review Subcommittee.**

**C. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309.**

 **1. DEPARTMENT OF CAREER EDUCATION, ADULT EDUCATION (Dr. Charisse Childers, Bridget Bullard, Janice Hanlon)**

 **a. SUBJECT:** **GED Testing Scores Policy Update**

**DESCRIPTION:** Cut scores of 150 on each of the four sections of the GED test are currently written in Arkansas State Policies for GED Testing. The GED Testing Service is recommending that the cut scores be reduced from 150 to 145. The new rule would allow the Adult Education Division of the Department of Career Education to determine cut scores rather than having the precise numbers written in the policy. The Adult Education Division will follow the recommendations of the GED Testing Service which are based on data and research.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on March 10, 2016. The Department received the following comment:

**Yvonne Dougherty, Director, Saline County Adult Education Center**

I think that the policy should be more generic. Please see attachment that I have altered as my suggestion for the needed changes: “The Adult Education Division of the Arkansas Department of Career Education will set scoring requirements for a high school equivalency test based on data, policy and research analysis and shall report any changes to the board at the next scheduled board meeting.” **RESPONSE:** Your comment on the GED® Testing policy change was received on February 15. We appreciate your interest and your suggestion to change the policy to a more generic policy. Because the policy is specifically taken from the manual, “The Administration of the GED® Test,” we will be unable to implement the suggestion. The policies are only for GED® Testing as opposed to including all high school equivalency tests. Included in the policy manual are many other policies all of which concern GED® Testing. At such time that we change the policies to all high school equivalencies, we will reword the policy to be more generic. Thank you again for your interest.

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following question:

According to the questionnaire submitted with the proposed rule change, the Department is seeking to change the rule because the GED Testing Service has recommended that the cut scores be reduced from 150 to 145 and changing the rule as proposed will allow the Adult Education Division to determine the cut scores rather than have the precise numbers written into the policy. What is the Department’s rationale behind its decision to no longer include the precise number in its policy?

**RESPONSE:** The GED Testing Service notified the state GED Testing Office in mid-January that the recommended scores would be changing from 150 on each of the four parts to 145 on each of the four parts which would become effective with state approval in late January. The change was made as a result of extensive analysis of test-takers’ performance data from the past 18 months by the GED Testing Service.

Because Arkansas GED Testing had a written policy of the 150 score on each part to pass, a policy change was needed in order to implement the new recommendation. As you are aware, a policy change takes approximately three months to implement. Consequently, Arkansas test-takers will be required to wait until the new policy becomes effective before they can officially pass the GED test with a score of 145 on each part. In order to avoid this type of situation in the future, we are recommending through the new policy that the Adult Education Division of the Department of Career Education will have the flexibility to determine what the cut scores will be. The Adult Education Division will follow the recommendations of the GED Testing Service.

The proposed effective date is May 1, 2016.

**CONTROVERSY:** This is not expected to be controversial.

**FINANCIAL IMPACT:** There is no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Ark. Code Ann. § 6-16-118(b), a high school equivalency test for adults shall be administered by the educational agencies and institutions approved by the Department of Career Education. The Career Education and Workforce Development Board shall promulgate rules to implement section 6-16-118. *See* Ark. Code Ann. § 6-16-118(d).

 **2. DEPARTMENT OF CORRECTION (Wendy Kelley)**

 **a. SUBJECT:** **AR 1200 Work/Study Release Program**

**DESCRIPTION:** The proposed amendment to the rule clarifies two of the eligibility requirements for participation in the Work Release Program. First, under the current rule, any inmate with a detainer is deemed ineligible. The proposed amendment clarifies that the disqualification does not apply to “notification-only” detainers. Second, under the current rule, any inmate who has been convicted of a sex offense is deemed ineligible. The amendment clarifies that an inmate convicted of a sex offense is disqualified who has not completed sex offender treatment within the department. The remainder of the proposed changes are corrections in spelling and syntax, and they update the rule to current commercial practices (e.g., to allow payment of wages by direct deposit).

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on March 1, 2016. No public comments were submitted.

Jessica Sutton, an attorney with the Bureau of Legislative Research, asked the following question:

Under the rules, to be eligible for the work/study release program, an inmate must have a parole eligibility release date **within 42 months** of the date the Work/Study Release Program eligibility is determined. Arkansas Code Annotated § 12-30-407 states that “no inmate shall be eligible to be released to the county sheriff, chief of police, or other authorized law enforcement officer of an approved jail facility unless the inmate is **within thirty (30) months** of his or her first parole eligibility date or his first post prison transfer eligibility date.” Can you reconcile these provisions for me?

**RESPONSE:** You ask about what appears to be a disparity between the ADC’s work release rules regarding work release programs and the language of Ark. Code Ann. § 12-30-407. I believe that the misunderstanding arises out of a confusion regarding two different programs. The confusion is abetted to certain degree by the fact that Ark. Code Ann. § 12-30-407 (which is the statutory basis for what is commonly called the ADC’s 309 program) has been codified in a statutory subchapter which deals primarily with the ADC’s work release program. These are two different programs.

Under the 309 program, inmates are housed with county sheriffs, chiefs of police, or other authorized law enforcement entities. It is that program which is subject to the 30-month limitation which you note and which is set out in 407. It should be noted that the 30-month limitation is not absolute, but rather is subject to exceptions which are set forth both in the statute (see § 12-30-407(a)(4)(B)(i) and (ii)) and the applicable ADC Administrative Directive.

However, those exceptions in 407 are not the explanation for the issue you ask us to address. Rather, you ask about the 42-month requirement which applies to the ADC’s work release program authorized by ACA 12-30-401, 402, 403, 404 and 406. Unlike inmates in the 309 program, work release inmates are not released to other law enforcement entities. Work release inmates remain in the custody of the ADC and leave the ADC unit to which they are assigned only for work hours at private employers. These inmates are escorted to and from the employer by ADC staff. They are returned to the ADC unit every night. There is no statutory 30-month limitation on work release inmates. The 42-month limitation is one imposed by the Board of Corrections.

The proposed effective date is June 1, 2016.

**CONTROVERSY:** This is not expected to be controversial.

**FINANCIAL IMPACT:** There is no financial impact.

**LEGAL AUTHORIZATION:** Arkansas Code Annotated § 12-30-401 and § 12-30-403 states that the Department of Correction may institute "work-release" programs with rules promulgated by the Director of the Department of Correction and approved by the Board of Corrections.

 **3. STATE BOARD OF EXAMINERS IN COUNSELING (Michael Loos)**

 **a. SUBJECT:** **Amendments to Rules**

The following changes are proposed:

1. Language is simplified, less ‘legal’, more communicative.

2. Paragraphs renumbered, Table of contents updated to indicate beginning of each subsection.

3. Duplications in Section 8 removed; duplication of Administrative Procedures act removed. Section renumbered.

4. The requirement for applicants to pass an oral examination is changed to read:

“ . .the Board may require . .” instead of ‘. . the applicant must pass . .’. The ‘Arkansas Jurisprudence Exam’ is added and may be required by the Board. The option may reduce the number of oral examinations.

5. Changes in the CEU requirements have been modified.

6. A true ‘dual license’, a single certificate for the LPC/LMFT (or LAC/LAMFT) is proposed. This can reduce the licensure fee from a total of $600 to $450 and from 48 CEUs to 24 CEUs. The fiscal impact of this is undetermined.

7. Requirements for Supervision are clarified, relative to 50% individual face to face, 50% group / Technology Assisted.

8. The requirement to complete Supervision requirements within 6 years has been eliminated.

9. The ‘two times you’re out’ rule for passing the NCE / AAMFT exam(s) is eliminated. An individual may take the test until they pass within the valid period for licensing (one year application period with an additional year on request).

10. The Codes of Ethics now reflect the most current Codes.

11. There is a ‘conscience clause’ amending the Arkansas adoption of the 2014 ACA Code of Ethics, Section A.11.b., permitting a counselor, who holds strong values or beliefs that may adversely affect the therapeutic relationship, to refer a client.

12. The AAMFT Code of Ethics now reflects the most current edition. CACREP standards now refer to the most current edition.

13. Language that prohibited the Board from considering extenuating circumstances has been changed to allow the Board to consider and make allowances if the Board decides it is needed. For example, the existing rules prohibit the Board from accepting supervision reports submitted over 60 days past due, even if the Board office was a contributing factor. The revisions allow the Board to consider each situation individually and determine the best way to deal with the issue.

14. Reference letters must be from Professionals.

15. Changes in Licensure Renewal are designed to improve office efficiency.

**PUBLIC COMMENT:** A public hearing was held on February 11, 2016, and the public comment period expired on that date. Public comments were as follows:

**Victor Werner**

**COMMENT:** Was concerned about lowering the number of hours to 500 from 1000. **RESPONSE:** After discussion, it is understood that there is no loss of supervision time (remains 175 total hours of supervision), just a different model that makes supervision a bit more affordable over time and the intensity is maintained over time (500 hours with no indirect hours at a 1:10 ratio followed by 2500 hours at a 1:20 ratio with a total of 800 hours of indirect).

Due to internal comments of the Board, an amendment was made to make the first 500 hours direct client contact with no indirect hours during that first 500 hours. A change was made to eliminate the “100 hours of indirect.” This was supported by Jay Gentry, speaking on behalf of the Arkansas Mental Health Counselors Association (ArMHCA) and supported by the Board.

**Pam Smith, LAC**

**COMMENT:** Questioned about how eliminating the Phase system would affect others currently under supervision. **RESPONSE:** Ms. Smith was informed that the Board would “make it right,” meaning to compress current status to conform to the “new” Rules and Regulations without adversely affecting any current supervisee. The “static” number of supervised hours is 175 and that would remain the same, all hours would be compressed to meet the new standard. No changes were made.

**COMMENT:** Ms. Smith’s second query was about taking the National Clinical Mental Health Counselors Exam and coursework credited to reduce supervision hours. **RESPONSE:** The current standard of reducing “Phase III hours” will still be honored except that instead of “after Phase II Completion” as it currently reads, it reads after the first 2000 hours you would be eligible to request to take that exam. Additional graduate coursework still reduces the final 1000 hours at the rate of 100 hours reduced per successful completion of a 3 credit hour counseling related class with a grade of B or better. No changes were made.

**Barry Wingfield, Ph.D, LPC/LMFT/S**

**COMMENT:** Extensive discussion on how the coursework hours reduce supervision hours. **RESPONSE:** Clarified and iterated in a multiple number of ways, bottom line is it reduces both and the NCMHCE reduces all direct hours. No changes were made.

**COMMENT:** Second comment was about number of supervisees (originally a maximum of 10, suggested to move to 12). **RESPONSE:** Extensive discussion on the number of supervisees in the first 500 hours. Number of supervisees should be capped at no more than 12 supervisees at any given time. It is up to the supervisor to make that determination of what is too much. No changes were made.

**Jay Gentry, LPC**

**COMMENT:** Commenter brought up definition of “supervision group” being a maximum of 5 supervisees and the supervisor. Suggested we consider 6 supervisees since we’re going to 12 total supervisees. **RESPONSE:** Board supported unanimously raising the number in Group work to 6 supervisees.

**COMMENT:** Commenter recommended increasing the number of Letters of Recommendation from 3 to 4, adding a second recommendation from a faculty member. **RESPONSE:** After discussion, there was consensus to add another recommendation letter. Applicants must have two (2) letters from faculty and two (2) from practitioners in the field (site supervisors, professional colleague, etc.).

**Dr. John Carmack, Ph.D., LPC/LMFT/S**

**COMMENT:** Suggested we add a “dyadic/triadic” (one supervisor with 2 supervisees) addition to supervision models and practice. Extensive discussion about the benefits of this form of supervision. **RESPONSE:** Support to add “dyad or triadic” supervision to the supervision models. Change was made to add the supervision dyad/triadic (1 to 2 supervision), to the individual (1 to 1 supervision) and group (1 to 6 supervision).

Jessica Sutton, an attorney with the Bureau of Legislative Research, asked the following questions:

(1) Page 10. Why did you add “counseling practitioners” and “therapists” to the definition of “referral activities”? The definition of referral activities is set forth in Ark. Code Ann. § 17-27-102(8)(D) and does not include counseling practitioners and therapists, but merely refers to specialists. Can you reconcile this? **RESPONSE:** It is the Board’s understanding that the generic “specialist” would not include other counselors or therapists whose expertise might be beyond the scope of practice of the individual making the referral. **FOLLOW-UP:** I think the definition of “referral activities” should mirror the statute until those changes are made legislatively. **RESPONSE TO FOLLOW-UP:** Change was made.

(2) Page 28. Your rules state that LAMFT’s must have a minimum of 30% direct client contact hours in family/relational/group/systemic sessions. Why does the parenthetical state 50% or 1500 hours? **RESPONSE:** My miss. We want the “thirty percent” scratched in favor of “minimum of fifty percent or 1500 hours” in relational counseling. Sorry I missed that one.

(3) Page 35. Under Ark. Code Ann. § 17-27-306, an applicant can reapply and take a subsequent exam, but after failing 2 successive exams, he/she may not reapply for 2 years from the date of the last exam. However, the rules state that the “applicant may attempt as many times as permitted and defined by NBCC (after 3 attempts, NBCC requires a 6 month waiting period) until successfully passing the exam.” Can you reconcile this for me? **RESPONSE:** The Board wants to amend 6.1(g) thinking that the “two failing attempts . . . must wait 2 years to reapply . . .” is too egregious. The Board favors what is defined by the testing agents to be in the best interest of the applicant, that is, “6 months after 3 successive failures.” **FOLLOW-UP:** I think the practice concerning the examinations should mirror the statute until those changes are made legislatively. **RESPONSE TO FOLLOW-UP:** Change was made.

(4) Pages 59-60. You refer to “current” policies and codes. You need to state whatever the current version is or state as it existed as of the date of these regulations. Otherwise, this language suggests that it could refer to future versions that do not exist at this time, but could be “current” at a later time. **RESPONSE:** The Board does not want to have to amend Rules & Regulations every time the ACA, AAMFT, revise the Code of Ethics. We’ve been operating under the 2005 ACA/AAMFT Codes after the new Code was released in 2014. We chose the word “current” in this case, meaning the most recent edition of the Code of Ethics. If “most recent” is better than “current,” I believe the Board would concede to the change. **FOLLOW-UP:** “Most recent” has the same connotation as “current.” The problem is whether referring to a future edition can be seen as an unlawful delegation. **RESPONSE TO FOLLOW-UP:** Language will be revised to reflect the date “. . . as it existed at the time of these regulations.”

The proposed effective date is pending legislative review and approval.

**CONTROVERSY:** This is not expected to be controversial.

**FINANCIAL IMPACT:** The board is not expecting a financial impact, although there may be an increase in cash funds.

**LEGAL AUTHORIZATION:** The Arkansas Board of Examiners in Counseling shall adopt rules, regulations and procedures as it deems necessary for the performance of its duties. Ark. Code Ann. § 17-27-203(b).

 **4. ARKANSAS ECONOMIC DEVELOPMENT COMMISSION (Kurt Naumann)**

 **a. SUBJECT:** **Consolidated Incentive Act of 2003**

**DESCRIPTION:** These amendments administer the Consolidated Incentive Act Program of AEDC. This rule implements newly-enacted requirements of Acts 7 and 8 of the First Extraordinary Session of 2015. The changes include:

1. Incorporating administrative changes resulting from the Type 2 transfer of the Arkansas Science and Technology Authority to the Arkansas Economic Development Commission (AEDC) as the Division of Science and Technology Authority of the AEDC.

2. Making definitional changes by: adding “Board,” “Council,” and “Division;” deleting “The Authority;” revising “Director” to “Executive Director” and changing “city” to “county” in the definition of facility.

3. Incorporating the following changes to the North American Industrial Classification System (NAICS) codes: Changing the effective dates of Corporate Headquarters 551114 and Manufacturers 31-33 from January 1, 2007 to 2012 NAICS; and changing the NAICS codes of commercial, physical, or biological research from 541710 (which is no longer valid) to 541711 and 541712 (which are newly revised NAICS codes).

4. Making technical corrections, grammatical revisions and changes for structural consistency.

**PUBLIC COMMENT:** A public hearing was held on March 10, 2016. The public comment period expired on February 29, 2016. The Commission received no comments from the public.

The proposed effective date is pending Legislative approval.

**CONTROVERSY:** This is not expected to be controversial.

**FINANCIAL IMPACT:** There is no financial impact.

**LEGAL AUTHORIZATION:** The authority previously held by the Arkansas Science and Technology Authority was transferred to the Arkansas Economic Development Commission by Acts 7 and 8 of 2015.

Arkansas Code Annotated § 15-5-2710 gives the Commission the authority to promulgate rules and regulations necessary to carry out the Consolidated Incentive Act of 2003.

 **5. DEPARTMENT OF EDUCATION (Cory Biggs; items a, b, and d; Cheryl Reinhart; item c)**

 **a. SUBJECT:** **ACSIP Public Access**

**DESCRIPTION:** The changes follow:

**3.01.4.1** This section was amended to remove reference to the No Child Left Behind Act of 2001, which is no longer in effect, and to reflect the reauthorization of the federal Elementary and Secondary Education Act (ESEA). This change enables ADE to avoid having to revise these rules upon future reauthorizations of the ESEA.

**3.01.5** This section was amended to remove reference to the No Child Left Behind Act of 2001, which is no longer in effect, and to reflect the reauthorization of the federal Elementary and Secondary Education Act (ESEA). This change enables ADE to avoid having to revise these rules upon future reauthorizations of the ESEA.

**3.02** This section was updated, and its former subsections (i) and (ii)— covering monitoring and assistance for ACSIP—were moved within the body of Section 3.02 in order to be read easily.

**Nonsubstantive Changes to the Rules After Release for Public Comment**

**3.01.1.1** This section, covering descriptions of uses of National School Lunch Act state categorical funds in ACSIP, was amended to incorporate changes to the ACSIP Monitoring process in accordance with Act 841 of 2015.

**3.02** This section was amended to clarify the role of ADE in assisting schools with ACSIP, in order to more closely align with Ark. Code Ann. 6-15-2202(c).

**PUBLIC COMMENT:** A public hearing was held on February 2, 2016. The public comment period expired on February 16, 2016. The Department received public comments, and changes were made, which are set forth below. The public comments included the following:

**Jennifer Dedman, Arkansas Public School Resource Center**

Comment on Sections 3.01.4.1 and 3.01.5: Could these sections be clarified by reference to ESSA instead of the ESEA?

Agency Response: Comment considered. As most recently authorized by Congress, the Every Student Succeeds Act (ESSA) is the law referred to in both Section 3.01.4.1 and 3.01.5. This language creates flexibility moving forward. No changes made.

Comment on Sections 3.01.1.1 and 3.01.1.1.2: These sections appear to contain language that was repealed in Section 4 of Act 841 of 2015.

Agency Response: Comment considered. Section 3.01.1.1 has been amended to reflect streamlining of the ACSIP Monitoring process in accordance with Act 841 of 2015.

**John W. Walker, Amy Lafont**

Comment on Section 1.0, Authority: Why remove reference to Act 1373 of 2009? Act 841 of 2015 was a minor modification to the full original law, which is stated in Act 1373 of 2009.

Agency Response: Comment considered. Act 1373 of 2009 was codified at Ark. Code Ann. § 6-15-2202. No changes made.

Comment on Section 3.02, Authority: We object to the proposed modifications to Sections 3.02, 3.02(i), and 3.02(ii), and we object to the addition of the proposed new subsection 3.02.1. These modifications change the meaning of ADE’s responsibility away from the original law.

3.02(i) language is in true law – proposed change deletes the word “Directly.”

3.02(ii) This duty is still required by law.

3.02.1 The law does not anticipate ADE to perform its duties remotely.

Agency Response: Comment considered. Arkansas Code Annotated § 6-15-2202 provides the option to annually monitor compliance when ADE’s Standards Unit directly monitors or when ADE’s School Improvement Unit assists with a school improvement plan. Section 3.02 has been revised to align with Ark. Code Ann. § 6-15-2202(c). Section 3.02.1 is not a change to current rules.

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following questions:

1. Rule 3.01.1 – According to Act 841 of 2015, the requirements for reporting relative to the National School Lunch Act were repealed, yet the requirements remain in the Department’s rule. Is this because the information is still required in some other way or under some other authority? **RESPONSE:** Good catch on 3.01.1. We’ll get that changed in both these rules and the Monitoring rules prior to sending them to the SBE requesting final approval.
2. Rules 3.01.4.1 and 3.01.5 – What was the reasoning behind the change in the naming of the act with which the respective rules require compliance? Was the Elementary and Secondary Education Act recently reauthorized and took the place of the No Child Left Behind Act? **RESPONSE:** You’re spot-on on these changes; we’re trying to avoid having to update these rules every time there is an ESEA re-authorization.
3. Rule 3.02 – Pursuant to Ark. Code Ann. § 6-15-2202(c), not less than annually, the Department shall monitor compliance with the requirements of the section when the Department (a) directly monitors a school for compliance with standards and accreditation; or (b) assists a school with its comprehensive school improvement plan. I can see in the revision to the rule where the first of the two occasions has been moved into the text of the rule, rather than in a subsection to the rule where it had been; however, is there a reason that the second occasion—when the Department assists a school with its comprehensive school improvement plan—is not included in the rule?

**RESPONSE:** These two tasks are, in practice, handled by our SIS staff as part of the monitoring for compliance with standards. We will clarify the language in this section.

The following changes, as described by the agency, were made to the Rules after release for public comment:

Section 3.01.1.1: This section was amended to reflect streamlining of the ACSIP monitoring process in accordance with Act 841 of 2015.

Section 3.02: This section was amended to align with Ark. Code Ann. § 6-15-2202(c).

The proposed effective date is June 1, 2016.

**CONTROVERSY:** This is not expected to be controversial.

**FINANCIAL IMPACT:** There is no financial impact.

**LEGAL AUTHORIZATION:** A public school district shall post on its website for each public school in the district the most recent version of the comprehensive school improvement plan developed under the Arkansas Comprehensive Testing, Assessment, and Accountability Program Act and required to be filed with the Department in accord with Ark. Code Ann. § 6-15-426(e). *See* Ark. Code Ann. § 6-15-2202(b)(1)(A). Pursuant to Ark. Code Ann. § 6-15-2202(d)(2), the State Board of Education shall establish by rule that compliance with the statute is a requirement for accreditation of a public school or public school district. The changes to these rules also include revisions brought about by Act 841 of 2015, which amended provisions of the Arkansas Code concerning school improvement plans.

 **b. SUBJECT:** **ACSIP Monitoring**

**DESCRIPTION:** A summary follows:

**7.00** This section, covering procedures for comprehensive monitoring, was struck to reflect a streamlining of the ACSIP Monitoring process in accordance with Act 841 of 2015. All schools will be monitored by ADE for compliance with ACSIP rules, in accordance with Ark. Code Ann. § 6-15-426. For those schools classified as being in school improvement, ADE’s School Improvement Unit will conduct on-site monitoring.

**Nonsubstantive Changes to the Rules After Release for Public Comment**

**3.05** The definition of “Benchmarks/Grade-Level Benchmarks” was struck as this term is no longer to be found within the rules. This change is a result of changes to assessment, generally, undertaken by ADE.

**3.11** The definition of “Grade Level” was struck as this term is no longer to be found within the rules. This change is a result of changes to assessment, generally, undertaken by ADE.

**4.00** This section, covering implementation and, specifically, on-site monitoring, was struck, and the following two Sections (the former Section 5.00 and the former Section 6.00) were renumbered accordingly, as on-site monitoring is now addressed in Section 5.01. This change was made to avoid repetition within the rules.

**4.02.3** This section was renumbered and amended to incorporate language directly from Act 841 of 2015.

**5.02.4** The former Section 5.02.4 was struck in accordance with Act 841 of 2015.

**5.01** This section was amended to address on-site monitoring requirements and to reflect streamlining of the ACSIP Monitoring process in accordance with Act 841 of 2015.

**5.01.1** The reference to the former Section 5.07 was renumbered.

**6.01.4** The former Section 6.01.4 was struck in accordance with Act 841 of 2015.

**5.02** The reference to the former Section 6.00 was renumbered.

**PUBLIC COMMENT:** A public hearing was held on February 2, 2016. The public comment period ended on February 16, 2016. The Department received public comments, and changes were made, which are set forth below. The public comments included the following:

**Jennifer Dedman, Arkansas Public School Resource Center**

Comment on Section 3.04: This section could be improved by stating whether this monitoring will be a desk audit or an on-site visit.

Agency Response: Comment considered. All schools will be monitored by ADE for compliance in accordance with Ark. Code Ann. § 6-15-426. For those schools classified as being in school improvement, ADE’s School Improvement Unit will conduct on-site monitoring.

Comment on Section 6.01: This section appears inconsistent with the definition in Section 3.04.

Agency Response: Comment considered. Section 6.01.4 has been struck to reflect streamlining of the ACSIP Monitoring process in accordance with Act 841 of 2015.

Comment on Section 7.00: We respectfully request clarification on the removal of Section 7.00. Will the procedures in this section continue to be used or will new procedures be released?

Agency Response: Comment considered. New procedures will be developed based upon a risk assessment process to be carried out by ADE’s School Improvement Unit. These procedures, once developed, will be published, along with monitoring tools, and maintained on ADE’s website. Section 7.00 being struck from these rules creates flexibility moving forward.

**John W. Walker, Amy Lafont**

Comment on Section 7.00, Procedures for Comprehensive Monitoring: We object to the deletion of this section. ADE is required to directly monitor ACSIP compliance. The procedures should be articulated in the Rules.

Agency Response: Comment considered. Arkansas Code Annotated § 6-15-2202 provides the option to annually monitor compliance when ADE’s Standards Unit directly monitors or when ADE’s School Improvement Unit assists with a school improvement plan. No changes made.

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following questions:

1. The Summary of Changes states that Section 7 of the Rules was stricken in accordance with Act 841 of 2015. Can you direct me to that section of the Act providing for streamlining and serving as the basis for the change? After reading the Act, I am unclear as to which section is prompting the change in the Rules. **RESPONSE:** For the Monitoring rules, ADE relies on Section 3 of the Act, which simply states that “the department . . . shall monitor the development and implementation of the revised school improvement plan.” Our ACSIP monitoring procedures are being streamlined to focus only on those schools/districts classified as in school improvement under Ark. Code Ann. § 6-15-425 (those who will have filed a revised ACSIP). Our school improvement unit is no longer regularly conducting site visits of schools/districts other than those classified as in school improvement.

**FOLLOW-UP QUESTION:** As I am reading the statutes and rules, every school or district has to file a school improvement plan; but, if a school or district is classified as being in school improvement, it must file a revised SIP. Is this accurate? If it is, and if I understand correctly, the Department is relying on section 6-15-2201(c)(2) that it shall monitor only “revised” SIPs. Yet, Ark. Code Ann. § 6-15-426(i)(1) provides that the Department “shall monitor each public school’s and school district’s compliance regarding its comprehensive school improvement plan.” Additionally, I’m not seeing where the Rules have limited Section 6, Comprehensive Monitoring, which requires a comprehensive site visit, to only those schools or districts with revised SIPs. **RESPONSE:** First, we are drawing a distinction between monitoring, in general, and *on-site monitoring*. Yes, every school and district has to file ACSIPs with ADE. And all schools and districts will continue to be monitored by ADE for compliance regarding ACSIPs, in accordance with section 6-15-426. This monitoring takes place (almost exclusively now) electronically. For those schools/districts classified as being in school improvement (and filing revised ACSIPs), however, our School Improvement Unit will conduct on-site monitoring.

We have drafted revised language for Section 6.00 here:

“The Department shall periodically monitor ~~each~~ public schools’ and school districts’ compliance regarding ~~its~~ comprehensive school improvement plans. A team of reviewers shall conduct a comprehensive site visit to those schools classified as in school improvement under Ark. Code Ann. § 6-15-425…”

**FOLLOW-UP QUESTION:** So, with that change to Section 6.00 (Rule 6.01), it would seem to limit the provisions of Rules 6.01.1 through 6.01.4.3 to only those schools classified as in school improvement that receive a comprehensive site visit? **RESPONSE:** Yes, tentatively. Current Section 6.01.4 is also to be struck.

The following changes, as described by the agency, were made to the Rules after release for public comment:

Sections 3.05 and 3.11: These definitions were struck as these terms are no longer to be found within the rules.

Section 4.00: This section was struck, and the following two sections (the former section 5.00 and the former section 6.00) were renumbered accordingly, as on-site monitoring is now addressed in section 5.01.

Section 4.02.3: This section was renumbered and amended to reflect streamlining of the ACSIP monitoring process in accordance with Act 841 of 2015.

Section 5.02.4: The former section 5.02.4 was struck to reflect streamlining of the ACSIP monitoring process in accordance with Act 841 of 2015.

Section 5.01: This section was amended to reflect streamlining of the ACSIP monitoring process in accordance with Act 841 of 2015.

Section 5.01.1: The reference to the former section 5.07 was renumbered.

Section 6.01.4: The former 6.01.4 was struck to reflect streamlining of the ACSIP monitoring process in accordance with Act 841 of 2015.

Section 5.02: The reference to the former section 6.00 was renumbered.

The proposed effective date is June 1, 2016.

**CONTROVERSY:** This is not expected to be controversial.

**FINANCIAL IMPACT:** There is no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Ark. Code Ann. § 6-15-426(e), a part of the Arkansas Comprehensive Testing, Assessment, and Accountability Program Act, each public school or school district shall develop and file with the Department of Education a comprehensive school improvement plan that shall be reviewed by the Department. Any public school or school district classified as in school improvement under Ark. Code Ann. § 6-15-425 shall, with the assistance of the Department, develop and file with the Department a revised comprehensive school improvement plan. *See* Ark. Code Ann. § 6-15-426(g). *See also* Ark. Code Ann. § 6-15-2201(c)(1) (requiring a local school district that is not making progress toward implementing and maintaining a system of school improvement to prepare and implement a revised school improvement plan). The Department is charged with monitoring each public school’s and school district’s compliance with its comprehensive school improvement plan, *see* Ark. Code Ann. § 6-15-426(i)(1), and with monitoring the development and implementation of a local school district’s revised school improvement plan, *see* Ark. Code Ann. § 6-15-2201(c)(2). In accord with section 6-15-426, the State Board of Education shall incorporate the relevant provisions of the statute relating to comprehensive school improvement plans into its rules for comprehensive school improvement plans and may amend those rules in the same manner as provided by law for other rules established by the State Board. *See* Ark. Code Ann. § 6-15-426(j). The State Board is further authorized under the Act to “establish rules as may be necessary to require the Department of Education to implement a program for identifying, evaluating, assisting, and addressing public schools or public school districts failing to meet established levels of academic achievement on the state-mandated assessments as required in the Arkansas Comprehensive Testing, Assessment, and Accountability Program.” Ark. Code Ann. § 6-15-424.

 **c. SUBJECT:** **Educator Preparation Program Approval**

**DESCRIPTION:** The proposed changes to the Arkansas Department of Education Policies for Educator Preparation Program Approval are made:

* To reflect recent amendments to the Rules Governing Educator Licensure and remove provisions duplicated in those rules;
* To comply with legislative intent;
* To reflect the transition of accreditation from National Council for Accreditation of Teacher Education (NCATE) to the Council for the Accreditation of Educator Preparation (CAEP);
* To provide a clear basis for the statutorily required audits of educator preparation programs under Ark. Code Ann. § 6-17-422;
* To remove unnecessary barriers and allow institutions of higher education to innovate and update programs to meet current needs for teachers and students in Arkansas public schools; and
* To make technical corrections to the rule.

**Highlights of the revisions include:**

* The name of the rule is changed to a shorter name that reflects the statutory basis for the policies.
* Language has been revised throughout the rule to transition from NCATE accreditation terminology to CAEP accreditation terminology.
* **Section 4.02** adds “national” accrediting agency, which will allow the institution of higher education to be regionally OR nationally accredited.

*Rationale: Acts 292, 865, and 1090 indicated that it is the intent of the legislature that institutions be allowed to be nationally or regionally accredited.*

* **Sections 5.01.2 and 5.01.3** were deleted and incorporated in a new **Section 9.0**.
* **Section 6.03** and its subdivisions are deleted to remove Specialized Professional Association accreditation as a substitute for state approval. This deletion also removes a provision for placing a program on inactive status, as CAEP accreditation will control this.
* **Section 6.04** is added due to the deletion of old Sections 8.0 and 10.0.
* **Sections 7.02, 7.03, 7.04, and 7.06** remove the number of semester hours and instead program approval will be determined by an analysis of how the program prepares candidates for the competencies expected. Section 7.04

*Rationale: Having a designated number of semester hours or “seat time” does not necessarily ensure quality. This will give programs flexibility for course and program design, but programs will be held accountable for meeting state-approved standards.*

* **Section 7.05** is added to cover the licensure areas of library media specialist, reading specialist, and guidance and school counselors, as these areas were previously inadvertently omitted from these policies. The Specialized Professional Association that provides national recognition for these programs allows each state to determine whether a master’s degree is required. Therefore, Arkansas has included that requirement.

***Change following public comment:*** *The ADE has changed 7.05 to clarify that programs need only require graduate level coursework and not a second master’s degree when a candidate already has a master’s degree in another licensure content area. The number of hours necessary would be determined by the institution in accordance with their accreditation requirements and alignment with state competencies.*

* **Section 7.06** (see above)
* **Section 7.07** is amended because these standards have recently undergone revision and new leadership standards will be submitted for State Board approval soon, but not before these rules are submitted for public comment.
* **Section 7.08.1.4** is added to cover the 4-12 licensure area, previously inadvertently omitted.
* **Section 7.08.3** is added to place the provisions of old Section 7.08.8 in a more appropriate place in the policies; therefore, old Section 7.08.8 is deleted.
* **Section 7.09** clarifies that this provision relates to recommending candidates for licensure, not identifying them as “completers”, as that is a term of art for Title II and other purposes.
* **Section 8.05** removes the number of semester hours and instead program approval will be determined by an analysis of how the program prepares candidates for the competencies expected. Having a designated number of clock hours does not always ensure quality. This will give programs flexibility for course design, but will ensure that candidates will have quality preparation.
* **Old Sections 8.0 and 10.0** have been removed.  They were specifically for candidates and are included in the *ADE Rules Governing Educator Licensure*.  These policies should focus on the education preparation programs and be usable as the basis for audit criteria.
* **Old Section 11.0** regarding program accountability is also removed as it is not needed during the transition to CAEP.  In addition, new audit procedures are being developed for compliance with statutory audit requirements.
* **New Section 9.0** is added to accurately reflect the current accountability provisions for educator preparation program approval by the ADE and PLSB. The provisions reflect what will happen when approval or accreditation is discontinued. It also reflects the changes in audit provisions in Ark. Code Ann. § 6-17-422 (Act 1090). New provisions were included for a State Board hearing process when an institution of higher education challenges a PLSB recommendation to the State Board for removal of authority to offer a program.

**PUBLIC COMMENT:** A public hearing was held on February 2, 2016. The public comment period expired on February 16, 2016. The Department received public comments, and revisions were made to Section 7.05 based on those comments. The public comments included the following:

**Peggy M. Doss, EdD, Dean, School of Education, University of Arkansas at Monticello**

Comment: The proposed revised policies for Educator Preparation Program Approvals are greatly needed to allow the flexibility necessary for educator preparation programs to plan innovative programs and systems that better meet the needs of teachers and students while also addressing the Arkansas teacher shortage crisis. New opportunities to increase the teacher pipeline for high need districts are a greater possibility as a result of the recommended changes. Additionally, long-standing and unnecessary barriers to creative program and course design will be removed while still maintaining a focus on meeting state-approved standards. I strongly support the proposed revisions of the Educator Preparation Program Approvals.

Agency Response: The ADE appreciates the comment in support of the policies.

**Tracie Jones, M.S. Ed., Director of Education Renewal Zone, UAM School of Education**

Comment: Please find my comments in support of the proposed revisions for the Arkansas Educator Preparation Program Approval. These proposed revisions provide needed flexibility to the preparation programs to help impact the Teacher Pipeline shortage in Arkansas. Being able to address the needs of the southeast region is vital for the student achievement of our public school students. Having the ability to remove the barriers that have hindered creative program designs to meet the needs of both the traditional and non-traditional college student are vital to education in Arkansas while maintaining state approved standards at the post-secondary level. I am in strong support of the proposed revisions of the Educator Preparation Program Approvals.

Agency Response: The ADE appreciates the comment in support of the policies.

**Dr. Kathleen Shahan, UAM School of Education**

Comment: I strongly support state policies that allow for greater flexibility for universities who provide teacher preparation programs. Rules that in any way restrict and/or encumber university programs are not inherently equal or equitable.

Agency Response: The ADE appreciates the comment in support of the policies.

**Janet Penner-Williams, Assistant Dean, University of Arkansas**

Comment: I am in favor of the changes in rules proposed on educator preparation program approval. The section copied below is especially important as it focuses on well prepared quality candidates and not just time in a class.

This allows IHEs flexibility while still holding to a high standard.

*Sections 7.02, 7.03, 7.04, and 7.06 remove the number of semester hours and instead program approval will be determined by an analysis of how the program prepares candidates for the competencies expected. Section 7.04 Rationale: Having a designated number of semester hours or “seat time” does not necessarily ensure quality. This will give programs flexibility for course and program design, but programs will be held accountable for meeting state-approved standards. Section 7.05 is added to cover the licensure areas of library media specialist, reading. . . .*

Agency Response: The ADE appreciates the comment in support of the policies.

**Thomas E.C. Smith, Dean, College of Education and Health Professions, University of Arkansas**

Comment: Please see my comments related to the proposed policies governing educator preparation program approval below. Please let me know if you have any questions or if I need to clarify any of my comments.

7.0. Deleting the 21 hour requirement in special education content and pedagogy and requiring that candidates for licensure comply with standards of CEC. This is a tremendously positive change. Requiring a specific number of hours is relatively meaningless. An institution can offer 21 hours that are very comprehensive and rigorous that adequately prepares individuals or 21 hours that have very limited impact on the person’s abilities related to teaching students with disabilities. There is a national trend toward competency-based education. The proposed rules provide educator preparation programs the opportunity to focus on outcomes, on what candidates really need to know to be qualified special education teachers. Focusing on standards allows universities to develop and implement preparation programs around these standards rather than traditional coursework that may or may not be relevant. For example, we are of the opinion that field work is more relevant to educator preparation than in-classroom instruction. The removal of the 21-hour minimum allows great flexibility in how we develop and offer such work to students.

Removing the 21-hour minimum number of hours in no way means lowering standards. It simply means that preparation programs have the flexibility to design and implement programs that will result in candidates demonstrating their competence in the standards differently than merely completing college courses, which may or may not result in such competence.

I believe that by removing the 21-hour minimum and focusing on outcomes, ADE is moving the needle forward in revamping how educators are prepared. This is a great proposal, and I unequivocally support its implementation.

Agency Response: The ADE appreciates the comment in support of the policies.

**Thomas E.C. Smith, Dean, College of Education and Health Professions, University of Arkansas**

Comment: I wish to comment on the proposed policies governing educator preparation program approval.

9.0. Educator Preparation Provider Accountability Requirements

I fully support the newly added section 9.0 related to accountability. I believe that educator preparation programs must be held accountable and that their approval should be suspended if they do not meet the requirements. Educator preparation programs are being criticized by many different groups. By holding programs accountable, with consequences, demonstrates the desire of ADE to ensure quality personnel preparation. I believe that the requirements in 9.0 are fair and will help ensure high standards; I unequivocally support these requirements.

Agency Response: The ADE appreciates the comment in support of the policies.

**Raymond W. “Donny” Lee, Dean, College of Education, Harding University**

Comment: Re: 6.03.1 [deleted]

The deletion of this policy requiring a minimum of 18 hours before an endorsement program is required to provide candidate performance data from state required licensure assessments for CAEP accreditation would increase a burden on institutions and their candidates for endorsement programs that require fewer hours. It would essentially be a disincentive to both EPPs and candidates to offer and participate in these programs.

Overall, I would recommend these policies be approved.

Agency Response: Comment considered, with no change. Individual program reports are no longer required, regardless of number of hours. An educator preparation program seeking CAEP accreditation with the CAEP option with Feedback will aggregate data for all completers and submit unit reports. An educator preparation program seeking CAEP accreditation with SPA recognition will need to comply with SPA requirements regardless of hours.

**Clara Carroll, Associate Dean, Cannon-Clary College of Education, Professor of Education, Harding**

Comment: Re: 6.03.1 *A program for licensure endorsement requiring less than 18 credit hours shall not be required to prepare individual program reports, but the programs must provide candidate performance data from state-required licensure assessments in the unit’s documentation for CAEP accreditation.*

In striking out this rule, the IHEs and the candidates will be burdened with additional assessments and professional organization requirements. The endorsement programs of less than 18 hours already meet the ADE licensure requirements and are accountable to CAEP requirements. Striking this rule makes it less flexible for candidates to add endorsements to their standard license.

All other proposed rule changes seem to meet the needs of both candidates and the IHEs in regard to governing EPPs.

Agency Response: Please see the response to the comment by Raymond W. Lee.

**J.C. Moore**

Comment: As written, there is the possibility of misinterpretation (which is probably already occurring in the state department of education with misinformation).

[Quoting from the Summary]

*Section 7.05 is added to cover the licensure areas of library media specialist, reading specialist, and guidance and school counselors, as these areas were previously inadvertently omitted from these policies. The Specialized Professional Association that provides national recognition for these programs allows each state to determine whether a master’s degree is required. Therefore, Arkansas has included that requirement.*

I’ll have to speak to reading because that is my current degree plan in graduate school. Currently universities in Arkansas offer master level programs in reading that a student may complete, take the PRAXIS and request the add-on the license as a reading specialist. Students graduate with a master’s degree (UCA-M.S.E.; UALR-M.Ed.; Harding-M.Ed., etc). The new interpretation by ADE licensure is that students must already possess a master’s degree, then take courses to get a reading specialist post-master’s in some accelerated degree plan. A Master’s 30-hour program leading to completion and licensure for reading specialist for those with a baccalaureate is now being denied by ADE in education preparation. However, a 36-hour program is okay? A 38 program is okay? Then UCA’s program is not valid under the new proposed policy? If there is a 30-hour program, it now must be only for people already possessing a master’s degree? Is the state mandating how many hours a master’s needs to have now and force state universities to add hours rather than making it simpler for students to obtain a first master’s?

Interestingly, the reading SPA only requires 21-27 hours in reading. Now, AR is requiring having an already previously earned master’s to even take a 30-hour master’s degree leading to the reading specialist. ADE is now currently denying students the opportunity to come into a university, earn a master’s leading to licensure who have a teaching license and only have a previously earned baccalaureate degree—unless they take a master level program that is above 30 hours. In addition, where is the requirement for how many hours a university master’s level program must have to prepare a teacher as a reading specialist? Every program is different.

The misinterpretation of the proposed rules/policy or possible misinterpretation affects current students like me seeking a reading specialist with a first master’s degree. It also invalidates:

[Quoting from the Summary]

*Sections 7.02, 7.03, 7.04, and 7.06 remove the number of semester hours and instead program approval will be determined by an analysis of how the program prepares candidates for the competencies expected. Section 7.04 Rationale: Having a designated number of semester hours or “seat time” does not necessarily ensure quality. This will give programs flexibility for course and program design, but programs will be held accountable for meeting state-approved standards.*

FYI: http://www.literacyworldwide.org/get-resources/standards/standards-for-readingprofessionals/standards-2010-role-5

Reading Specialist Standards:

For certification, a Reading Specialist/Literacy Coach Candidate must have the following:

• A valid teaching certificate

• Previous teaching experience

• A master’s degree with a concentration in reading and writing education

• Program experiences that build knowledge, skills, and dispositions related to working with students, supporting or coaching teachers, and leading the school reading program

• Typically, the equivalent of 21–27 graduate semester hours in reading, language arts, and related courses: The program must include a supervised practicum experience, typically the equivalent of 6 semester hours.

Please clarify the proposed policy in 7.05. A teacher with a valid teaching license must earn a master’s degree or complete post-master’s graduate level coursework and take the required test to. . . .

It is very possible that people unfamiliar with the terminology specialist will CONFUSE the term with Specialist Degree such as Ed.S., requiring post-master’s. It is highly unlikely this is the intent of ADE or ADHE. The section is not clear as stated. The mark-up version states “shall lead to a master’s degree or higher.” (see below)

[Quoting from the Proposed Rule]

*7.05. Programs that prepare candidates as library media specialists, reading specialists, and guidance and school counselors shall lead to a master’s degree or higher. For programs that prepare guidance and school counselors, if the candidate’s master’s degree is in another field of counseling the program shall require the candidate to complete a graduate level program of study in guidance and school counseling.*

The mark-up version has clearer language than the proposed summary. ADHE states a “minimum of 30 hours” for a master’s degree (there is an exception for less hours) and then has language for a Specialist degree (pertaining to studies between the master’s and doctoral levels); it needs to be clear what is meant by reading specialist and media specialist as an add-on license or endorsement through successful completion of study that leads to a master’s degree and passing of the required tests.

The lack of specification could be misinterpreted to mean the above license/endorsement can only be given to those with a previously earned master’s degree—which is the specialist degree (usually 70 hours) of study. Surely, there is not the legislative intent requiring teachers to go into 70 hours of graduate course financial debt if they want either a media or reading specialist endorsement.

7.05 – add-on license a first master’s degree in the area of study for accreditation plus the test is good enough for section 7.05 Educator Preparation. Keep ADE from making it a Master’s plus more graduate work! Help keep the cost of a graduate master’s degree down!

Agency Response: The commenter is incorrect in much of the comment. The educator preparation program’s student advisor should be able to assist this commenter with a better understanding of program requirements.

However, the ADE has changed 7.05 to clarify that programs need only require graduate level coursework and not a second master’s degree when a candidate already has a master’s degree in another licensure content area. The number of hours necessary would be determined by the institution in accordance with their accreditation requirements and alignment with state competencies.

**Susan Grogan, PhD, Director of Adult and Extended Education, Associate Professor of Reading, Harding University**

Comment: I am thrilled with the new proposed modifications and additions to the rules for Educator Preparation with only one concern.

*6.03.1 A program for licensure endorsement requiring less than 18 credit hours shall not be required to prepare individual program reports, but the programs must provide candidate performance data from state-required licensure assessments in the unit’s documentation for CAEP accreditation.*

I am concerned with Section 6.03.1 being struck out. We need to keep this rule and the flexibility it allows. As a professor of an endorsement program of 15 hours in Dyslexia Therapist, having to do an annual report to the state is an extra burden that is not necessary. That data is included in the Graduate Studies report from our college of education.

I am particularly pleased with 7.06 below. Our college of education is supportive of alternative routes to teacher licensure that include Degree Completion and Master of Arts in Teaching because of the high need for qualified teachers, especially in Kindergarten. Adding an MAT Special Education K-12 degree and an MAT Birth-Kindergarten Integrated with Special Education Birth-Kindergarten is going to go a long way toward preparing more teachers for a field that is straining for more teachers! When teachers are put in Special Education classrooms on an ALP, they usually have not been trained in Special Education and are not qualified, except in emergency situations, to each those children. When those MAT programs are aligned with the Arkansas Teaching Standards, TESS, and Council for Exceptional Children standards, it just makes sense to provide those options for non-traditional students.

*7.06 Programs that prepare candidates for standard or add-on licensure to teach special education in grades K-12, shall include a curriculum of at least twenty-one (21) semester hours in special education content and pedagogy and shall comply that complies with standards of the Council for Exceptional Children (CEC).*

Agency Response: Please see the response to the comment by Raymond W. Lee.

**Merribeth Bruning**

Comment: Responding as a private citizen and as someone who cares deeply about teacher preparation, I offer the comments below on the Proposed Educator Preparation Program Approval policies.

In viewing the Proposed Arkansas Department of Education Policies Governing Educator Preparation Program Approval and the summary of changes, please note the following:

Section 4.02 – I applaud the move that institutions of higher education can be regionally OR nationally accredited.

Section 6.03 – I applaud the removal of the Specialized Professional Association accreditation as a substitute for state approval. While SPA approval can be desirable, it is important for Arkansas to have the authority over all of its programs.

Sections 7.02, 7.03, 7.04, and 7.06 – Removal of the number of semester hours and instead provide an analysis of how the program prepares candidates for the competencies expected is positive. I agree that requirements for hours or “seat time” do not necessarily ensure quality. Each institution needs the flexibility to provide courses and programs that meet state-approved standards but with creativity and aligned with the unique mission of each institution.

Section 7.05 seems appropriate. I would hope that we would recognize that a master’s degree can be an enhancement for these areas as well as other education licenses.

Section 8.05 – I again agree and applaud this change, which also removes the number of semester hours and allows for the approval of programs through the analysis of how the program meets the competencies with their candidates.

Section 9.0 is added for clarification and aligns with the Ark. Code as needed.

Agency Response: The ADE appreciates the comment in support of the policies.

**Mike Mertens, Assistant Executive Director, Arkansas Association of Educational Administrators**

Comment: Sections 7.02, 7.03, 7.04, 7.06, and 8.05

AAEA supports flexibility for course and program design if the end result is to remove unnecessary barriers and allows institutions of higher education to innovate and update programs to meet current needs for teachers and students in AR public schools. However, care must be taken to insure that all programs are of high quality and meet state-approved standards. The state does not want to end up with widely varying course and/or program designs that are confusing and do not adequately prepare educators.

Agency Response: The ADE appreciates the comment in support of the policies. To ensure high quality programs, state policies continue to require CAEP accreditation for programs and state audits, which will begin in Fall 2016.

**Jennifer Dedman, Arkansas Public School Resource Center**

Comment: Generally: Do these standards reflect the new ESSA requirements?

9.04.2 – This section may be improved by changing the requirement from 7 to twice each CAEP accreditation cycle to occur during the accreditation cycle and once in the middle of the cycle.

9.05 – This section could be improved by adding that the institution of higher education shall send a copy of the ADE’s audit findings to every student enrolled in the program and keep the students informed of progress made to address compliance annually.

9.07 – This section could be improved by adding that all students enrolled in the program shall be notified in writing of the PLSB findings and the process for the hearing.

9.08 – This section could be improved by adding that each student currently enrolled in the program shall be notified in writing of the decision of the State Board.

Agency Response: *Response to general comment*: The Every Student Succeeds Act (ESSA) was signed into law in December 2015, after these proposed rules were drafted and submitted for the State Board of Education agenda. As government guidance and rules for implementing ESSA are published, there may need to be revisions to the policies at that time.

*Response to comment on 9.04.2*: Comment considered, but no change is made. This amendment to the policies was made to be consistent with Arkansas Code Annotated § 6-17- 422(h)(2)(B)(ii), which was amended in 2015 to read “*The audits shall be conducted on a seven-year cycle beginning on July 1, 2016. . . .*”

*Response to comments on 9.05, 9.07, and 9.08*: Comment considered, but no change is made. As the ADE conducts audits of educator preparation programs under A.C.A. § 6-17-422, the improvement plans will contain specific information as to how a program will notify students. Those improvement plans must be approved by the ADE and successfully completed within the time period provided by law.

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following question:

Section 4.02 was amended to require either regional or national accreditation of a program. Section 9.01.2, however, permits immediate suspension of state approval, as it relates to the issue of accreditation, only if an institution has failed to obtain regional accreditation or if regional accreditation is discontinued. Was it the Department’s intent to limit 9.01.2 to just regional and not include national as well? **RESPONSE:** Thank you that is a good catch. I believe we meant any required accreditation at that point. We will need to look at revising that language.

Section 9.01.2 was subsequently revised by the Department.

The proposed effective date is pending legislative review and approval.

**CONTROVERSY:** These rules have been controversial. They were submitted for a second public comment due to earlier public comment received in opposition to certain provisions regarding special education. Several groups of stakeholders have worked through the language of this provision, but there may still be those who oppose the rule change.

**FINANCIAL IMPACT:** There is no financial impact.

**LEGAL AUTHORIZATION:** Arkansas Code Annotated § 6-17-402(b)(1) authorizes the State Board of Education to promulgate rules and regulations for the issuance, licensure, relicensure, and continuance of licensure of teachers in the public schools of this state. The Board is further authorized to appoint members to the Professional Licensure Standards Board, which has among one of its responsibilities to “[d]evelop and recommend for adoption to the State Board of Education minimum college level preparatory and grade point average requirements for all teachers applying for licensure, that shall include minimum requirements for . . . program approval.” Ark. Code Ann. § 6-17-422(h)(1)(B). The instant changes further implement Act 1090 of 2015, § 9, codified at Ark. Code Ann. § 6-17-422(h)(2)(B)(ii), which amended the cycle for audits of teacher education programs offered by Arkansas institutions of higher education from five years to seven years.

 **d. SUBJECT:** **Public Charter Schools**

**DESCRIPTION:** These rules implement changes in recent legislation including the implementation of the adult education charter school program. A summary of the proposed rules prior to the public comment period follows:

Section 1.02 Amended to include authority to promulgate rules pursuant to Acts 846 and 1200 of 2015.

Section 3.02 Definition of “Adult education charter school” added based on Act 1200 of 2015. Following Sections renumbered accordingly.

Section 3.03 Amended to include adult education public charter school.

Section 3.05 Amended to include adult education charter school and to remove limited public charter school.

Section 3.13 Removed definition of Limited Public Charter School as legislation was repealed.

Section 3.14 Amended to include adult education charter school.

Section 3.20 Amended to include adult education charter school and to remove limited public charter school.

Section 4.02.4 Amended to include adult education charter school.

Section 4.02.6 Amended to include adult education charter school.

Section 4.03.3.1 Updated to reference both sets of hearing procedures applicable to conversion public charter schools.

Section 4.0.3.2 Updated to reference both sets of hearing procedures applicable to open-enrollment public charter schools.

Section 4.03.3.3 Inserted reference to both sets of hearing procedures applicable to adult education public charter schools.

Section 4.03.3.3 Deleted reference to Limited Public Charter Schools.

Section 4.03.4 Updated to renumbered internal Section references.

Section 4.04.6.5 Corrected mis-numbering.

Section 4.04.6.6 Corrected mis-numbering.

Section 4.06 Source Updated to reflect Act has been codified.

Section 4.08.6 Removed certified mail and hand delivery as acceptable methods of delivery for a public charter school’s letter of intent.

Section 4.08.7 Removed certified mail and hand delivery as acceptable methods of delivery for a public charter school’s application.

Section 5.03.1 Removed the ability for a conversion public school applicant to resubmit their application, but instead, requires the authorizer, on disapproval of an application, to notify the applicant in writing of the reasons for the disapproval.

Section 5.03.2 Clarifies when the Department of Education may provide technical assistance to a conversion public charter school applicant.

Section 5.06.1 Makes the Chair of the body holding the hearing the person responsible for swearing in parties providing testimony during a hearing.

Section 5.06 Note Updated to renumbered internal Section reference.

Section 5.07.2 Makes the Chair of the body holding the hearing the person responsible for swearing in parties providing testimony during a hearing.

Section 5.07.3 Removed the 20-minutes ADE has to present its case to the authorizer regarding the charters proposed modification, probation, or revocation. Following Sections renumbered accordingly.

Section 5.07 Note Updated to renumbered internal Section references.

Section 6.00 Note added to clarify the rules applicable to Adult Education Charter Schools are in Section 10.00 of the rules.

Section 6.02 Source Removed reference to 2011 Act, which has been codified.

Section 6.04 Source Removed reference to 2011 Act, which has been codified.

Section 6.05 Source Removed reference to 2011 Act, which has been codified.

Section 6.06.2 Removed the ability for an open-enrollment charter school applicant to resubmit a deficient application.

Section 6.06.3 Section renumbered. Clarifies when the Department of Education may provide technical assistance to a conversion public charter school applicant.

Section 6.07 Source Removed reference to 2011 Act, which has been codified.

Section 6.08 Source Removed reference to 2011 Act, which has been codified.

Section 6.12 Source Removed reference to 2011 Act, which has been codified.

Section 6.13 Source Removed reference to 2011 Act, which has been codified.

Section 6.14 Source Removed reference to 2011 Act, which has been codified.

Section 6.16 Source Removed reference to 2011 Act, which has been codified.

Section 6.17 Source Removed reference to 2011 Act, which has been codified.

Section 6.23.1 Makes the Chair of the body holding the hearing the person responsible for swearing in parties providing testimony during a hearing.

Section 6.23 Note Updated to renumbered internal Section references.

Section 6.24.2 Makes the Chair of the body holding the hearing the person responsible for swearing in parties providing testimony during a hearing.

Section 6.23 Note Updated to renumbered internal Section references.

Section 6.24.3 Removes the 20-minutes ADE has to present its case to the authorizer regarding the charters proposed modification, probation, or revocation. Following Sections renumbered accordingly.

Section 6.24 Note Updated to renumbered internal Section references.

Section 7.00 Entire Section deleted as legislation has been repealed.

Sections 8.00-9.00 Sections renumbered due to the deletion of Section 7.00

Section 8.04.2.8 Clarifies that upon dissolution, non-renewal, or revocation, unpaid employee wages accrued prior to that date are paid in accordance with employee contracts and the school’s policies in effect at the beginning of the school year.

Section 10.00 Section added to incorporate Act 1200 of 2015, which created the Adult Education Charter School program. This section outlines the rules applicable to adult education charter schools including, but not limited to, the application process, the requirements of the sponsoring entity, enrollment, funding, authority, reporting responsibilities, facilities, and hearing procedures.

**A summary of the changes made as a result of the public comment period:**

Section 3.05 Definition source removed.

Section 3.08 Definition source corrected.

Section 3.09 Definition source corrected.

Section 3.11 Definition source corrected.

Section 3.12 Definition source corrected.

Section 3.14 Definition updated to include license requirements under Section 10.3 for adult education charter schools. Definition source removed.

Section 3.15 Definition source corrected.

Section 3.17 Definition source corrected.

Section 3.18 Definition source corrected.

Section 3.19 Definition source corrected.

Section 3.20 Definition source removed.

Section 4.08.6 Electronic acknowledgement of submitted letters of intent added.

Section 4.08.7 Electronic acknowledgement of submitted charter applications added.

Section 6.15 Removed “as added” as it was inadvertently left in the first draft.

Section 10.3 Requirements for licensing of a charter school included in the adult education charter section for clarity. Following Sections renumbered accordingly.

**PUBLIC COMMENT:** A public hearing was held on February 2, 2016. The public comment period expired on February 16, 2016. The Department received public comments and revised the Rules based on those comments. The following comments were received:

**John Walker, Amy Lafont**

Comment: Does the nonprofit applying for an adult charter have to comply with providing the following information pertaining to desegregation? Also, has e‐Stem or UALR provided information for 4.04.4? *See also* 4.02.4.3. Was any of this done with Quest? Didn’t the District deny them a change in location? If so, perhaps the Commissioner “overruled” them? **RESPONSE:** Comments considered. Section 4.00 of these rules is applicable to all public charter schools—open enrollment, district conversion, and adult education. No changes made as a result of these comments.

Comment on 4.06.1.2 and 4.06.1.3: Can we get documentation of every child denied entry into e-Stem and Quest? In order to keep track of desegregation compliance of the schools? Is there any way to get racial make-up of schools after the typical October report? Who will be responsible for ensuring fidelity with desegregation in public charter schools? **RESPONSE:** Comments considered. No changes made as a result of these comments.

Comment: Was this rule added in? Was something changed and not recorded? **RESPONSE:** Comments considered. This section (4.04.6.~~5~~6) was not added, but rather re-numbered as the numbering was duplicated and incorrect. No changes made as a result of these comments.

Comment on 4.07.2: Is the ADE actually doing this? If so, what is the static web address for this report? Who goes to these schools to monitor “best or promising practices”? Also, what educational or discipline‐specific theories or practices do these schools evidence for “best or most promising practices” for this particular section?

**RESPONSE:** Comments considered. No changes made as a result of these comments.

Comment on 5.01.1: Will this impact the LRSD since Johnny Key is our school board, and he is a proponent of charter schools? **RESPONSE:** Comments considered. No changes made as a result of these comments.

Comment on 5.01.2.3: Is there evidence of “partnering” taking place right now? If so, which specific charter schools are pairing with district schools? Does the ADE have data for this? **RESPONSE:** Comments considered. No changes made as a result of these comments.

Comment on 6.07.1.14.1: Is there a policy explaining “random student selection?” It seems as though quite a few white children and middle class children are selected more often. This should be compared with the data in 4.06.1-3. **RESPONSE:** Comments considered. No changes made as a result of these comments.

Comment on 6.23.1: Why does “the Chair of the body conducting the hearing” have the authority to swear in a witness? Is this legal? **RESPONSE:** : Comment considered. The practice has been for the Chair of the panel to swear the witnesses in and the rules were updated to reflect the practice. No changes made as a result of these comments.

Comment: Why are we getting rid of limited public charters? **RESPONSE:** Comment considered. Limited public charter schools were repealed in Act 846 of 2015. No changes made as a result of these comments.

Comment on ~~9~~8.02.2: Is this a conflict of interest? **RESPONSE:** Comment considered. No changes made as a result of these comments.

Comment: Comments 11-20 appear to be duplicates of comments 1-10.

**RESPONSE:** Comments 11-20 appear to be duplicates of comments 1-10. No changes made as a result of these comments.

**Jennifer Dedman, Arkansas Public School Resource Center**

Comment on 4.08.6 and 4.08.7: These sections could be improved by adding the ADE will electronically acknowledge receipt. **RESPONSE:** Comment considered. Electronic acknowledgment added to these sections as that is the existing practice of the Charter Office.

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following questions:

1. Rule 3.05 – I noticed that the Department has included “adult education” charter schools and stricken “limited public,” when Ark. Code Ann. § 6-23-103(2), the source for the definition, does not. Is the Department comfortable that the two are not consistent? **RESPONSE:** To not cause any confusion, we will remove the source for this definition.
2. Rule 3.20 – Like Rule 3.04, the Department’s definition of “Public charter school” has been amended to include “adult education” charter schools and has stricken “limited public,” yet the statutory definition in Ark. Code Ann. § 6-23-103(13) does not. Is the Department comfortable that the two are not consistent? **RESPONSE:** To not cause any confusion, we will remove the source for this definition.

**FOLLOW-UP QUESTION:** I just wanted to follow up on questions (1) and (2) involving the definitions. Unfortunately, I don't think that removing the source will cure the inconsistency between the statutory definitions of the terms and those definitions used by the Department. **RESPONSE:** I understand your concerns. The Department doesn’t feel that the addition of “adult education” into the two definitions is inconsistent with state law or legislative intent. In fact, we feel it brings it more into compliance with the intent of the law creating the adult education charter schools and cuts down on the confusion of the differences between when there is a reference to a district conversion, open enrollment, or adult education charter school.

**UPDATED RESPONSE:** The definition sources were removed.

1. Section 3.00 – In reviewing this section, I happened to notice that for several of the sources, the subsection of the cited statute, Ark. Code Ann. § 6-23-103, had changed, such as the sources for Rules 3.05, 3.08, 3.09, 3.11, 3.12, 3.15, 3.17, 3.18, 3.19, and 3.20. **RESPONSE:** These sources will be updated to point to the correct source; that was inadvertently overlooked.

**UPDATED RESPONSE:** The definition sources were corrected.

1. Rule 6.05 – In Rule 3.14 defining “License,” the Department has two conditions: that the already-existing charter (1) maintains an existing open-enrollment or adult-education charter, and (2) meets the requirements on Rule 6.05. However, Rule 6.05’s provisions seem to be limited to open-enrollment charters with no reference made of its applicability to adult-education charters. I recognize Ark. Code Ann. § 6-23-1001(a)(2) provides that adult-education charters shall be recognized by the State Board as open-enrollment charters, but was this the Department’s intent? **RESPONSE:** While the adult-education charter schools are considered open-enrollment, the rules specifically use the term “adult education” as separate from “open-enrollment” to not cause confusion since there are quite a few things vastly different (mainly adult education does not get state funding). However, the license is applicable to both AE and OE charters. To cut down on the confusion since the rules specifically state the rules for AE charters are in section 10, I will be copying the license requirements from 6.05 into section 10 and will update this definition to include the new section. I will also remove the source.

**UPDATED RESPONSE:** The requirements for licensing of a charter school were included in the adult education charter section for clarity, and the subsequent sections were renumbered accordingly.

1. Rule 6.15 – Should the “as added” language in the source have been stricken like the other rules? **RESPONSE:** Yes, this was inadvertently overlooked.

**UPDATED RESPONSE:** The correction was made.

The proposed effective date is pending legislative review and approval.

**CONTROVERSY:** This is not expected to be controversial.

**FINANCIAL IMPACT:** There is no financial impact.

**LEGAL AUTHORIZATION:** These rule changes implement Act 1200 of 2015, which established adult education charter schools. Pursuant to Ark. Code Ann. § 6-23-1008, the State Board of Education may adopt rules for adult education public charter schools, including, without limitation, rules that address: (1) industry needs in the state; (2) standardized secondary exit-level assessment instruments appropriate for assessing adult education charter school program participants, including the level of satisfactory performance; (3) reporting requirements for adult education charter schools; and (4) eligibility requirements and procedures. These rules further include changes necessitated by Act 846 of 2015, § 31, which repealed those portions of the Arkansas Code pertaining to limited public charter schools.

 **6. OIL AND GAS COMMISSION (Lawrence Bengal, Shane Khoury)**

 **a. SUBJECT:** **General Rule A-2: General Hearing Procedures**

**DESCRIPTION:** The proposed amendments to this rule, along with the proposed amendments to AOGC General Rule A-3, are amendments to implement changes to Ark. Code Ann. § 15-71-111, 15-72-304 and 15-72-323 in accordance with Act 906 of 2015. These amendments set forth the process for the issuance of administrative integration orders without the need for a hearing before the Commission in certain circumstances when the interest is less than one (1) acre, and notice has been given and no objection is received. The administrative process will reduce the time needed to integrate interests while still providing notice and an opportunity for a hearing for the royalty owner.

**PUBLIC COMMENT:** A public hearing was held on December 10, 2015, in Fort Smith, and on December 17, 2015, in El Dorado. The public comment period expired on December 19, 2015. No public comments were received.

Mary Cameron, an attorney with the Bureau of Legislative Research, asked the following questions:

1. Does section (i)(2) require a failure to appear at a hearing as is required in (i)(1)? **RESPONSE:** Section (i)(2) does not require a failure to appear at a hearing as there may not be a hearing. Section (i)(2) comes into play when the mineral owner has been given notice of the application and doesn’t file an objection within the prescribed time period. If no response is received from a mineral owner subject to the application, then no hearing is actually required. They have an “opportunity for a hearing,” but there isn’t a necessity for a hearing if they fail to file an objection.
2. In section (i)(2)(A)(vii), it states that the applicant shall submit proof of publication of “such notice” in a newspaper. It is unclear to what “such notice” it is referring. In the previous subsection, it discusses the mailing of notices to the mineral interests owners, but not publication in a newspaper. **RESPONSE:** With regard to the notice, we can amend the language if necessary. The practice for integrations currently is both mailing of a notice of hearing and publication of a notice of hearing. The intent is that the mineral owner would still receive the same level of notice in that they would receive notice of the filing of the application and right to object in the mail, and the notice of the filing of the application and right to object would also be published in a newspaper of general circulation in the county.
3. Also, I have a general concern that the affected mineral interests owners have not received due process before having their interests affected by a Default Integration Order being issued. **RESPONSE:** I understand the due process concern. We have tried to come up with a rule that implements the legislative changes made during the past general session, which provides both notice and an opportunity for a hearing.
4. Arkansas Code Annotated § 15-71-110(d)(7) grants the Commission the authority to promulgate rules “to identify the ownership of all oil or gas wells, producing leases. . . .” after “hearing and notice”? **RESPONSE:** I believe the relevant notice requirement for integrations is found in section 15-72-304, as amended by Act 906. Section 15-71-110(d)(7) is talking about wells and producing leases, in the sense of who is the owner/operator of the well and/or producing lease (unit). I don’t think it applies when we are talking about the integration of unleased mineral owners.
5. Rule A-2 concerns hearings, but the amendment that was added apparently does not concern a hearing, which is confusing to me. Does the Default Integration Order follow a default on a hearing of the applicant, or does the applicant just file the application and request the order? If so, should this language be somewhere else? **RESPONSE:** We will review to see if it is better suited to be somewhere else. The original thought is that there could be two different versions of default. One, when someone doesn’t appear after having a hearing scheduled (section (i)(1)), and now a default for failure to object in accordance with (i)(2).
6. The affected mineral interests owners are only being allowed fifteen (15) days to respond after the application is received by the Commission. Since the public notice of the application can occur up to five (5) days after the filing of the application, this would result in the affect mineral interests owners having only ten (10) days to object to the granting of the application. **RESPONSE:** I understand the concern. We probably should amend this in some manner to give the mineral owner the full fifteen (15) day time period. We can either amend the original fifteen (15) to a twenty (20) or require the notice be sent when filing the application.
7. In reading the amended language to this rule, I don’t see where the affected mineral interests owners specifically have an opportunity for a hearing. Under section (viii), they have fifteen (15) days to object to the granting of the application in which case the application will be denied. After that happens, it is the applicant that can request a hearing. Are you treating this process to be the affected mineral interests owners’ opportunity for a hearing as required by Ark. Code Ann. § 15-72-304?

**RESPONSE:** Yes, if anyone objects, the applicant will then have to file a traditional integration and give notice of the public hearing before the Commission to the mineral owner.

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following question:

I wanted to touch base on Rule A-2. I was wondering if any revisions had been made regarding this rule. I have reviewed the emails between you and Mary, and I, like Mary, am concerned that the changes do not provide an “opportunity for a hearing” to affected mineral interests owners (“AMIO”) as required by both Ark. Code Ann. § 15-71-111(b)(1) and § 15-72-304(a). I recognize that if the AMIO objects, then the application is automatically denied, unless the objection is withdrawn. However, my concern is if an AMIO fails to timely object, it appears that the order will be issued as the Director is authorized to approve the application administratively. It would seem then that that order entered would be without the AMIO having had the opportunity for a hearing. I recognize that the idea is for a default order, but my concern is that such a default order might run afoul of the changes specifically made in Act 906 to require the opportunity for a hearing before the entry of any order not deemed an emergency. Can you reconcile this for me? **RESPONSE:** To provide you some background, the bill was an industry bill and not initiated by the Commission. While our Commissioners may have supported it, our involvement as staff of the AOGC was to work with the sponsors of the bills to attempt to accomplish their intent in a legal way. Given that due process requires both notice and an opportunity for a hearing, we worked with the sponsors to ensure that the statutes were amended to provide for both notice and an opportunity for a hearing. The previous wording of the statute required an actual hearing. There are many types of administrative hearings that we do, and I am sure other agencies do, wherein notice is given, and if no opposition is received, an action may be taken administratively. This is not contemplated as an emergency application by the Commission; rather the statute allows the Director the authority to integrate these types of interests after notice and an opportunity for a hearing. Also, as an aside, the Arkansas Supreme Court recently ruled that an integration is not a taking, rather it is a valid use of the state’s police powers, *Gawenis v. Arkansas Oil & Gas Commission*, 2015 Ark. 238, 464 S.W.3d 453.

Based on Ms. Cameron’s questions and comments, the Commission changed the format of the placement of the proposed changes concerning the administrative issuance of default integration orders, and it amended the language to ensure that mineral owners who are subject to the provisions of the rule have a full fifteen (15)-day time period in which to object.

The proposed effective date of this rule is pending legislative review and approval.

**CONTROVERSY:** This is not expected to be controversial.

**FINANCIAL IMPACT:** There is no financial impact.

**LEGAL AUTHORIZATION:** This rule implements Act 906 of 2015, which amended certain provisions to provide Arkansas’s citizens the opportunity for a hearing on issues before the Arkansas Oil and Gas Commission (“Commission”) and to provide the Commission with flexibility in decisions regarding the holding of hearings. Pursuant to Ark. Code Ann. § 15-71-111(a)(1), the Commission (“Commission”) “shall prescribe its rules of order or procedure in hearings or other proceedings before the commission.” With respect to integration orders specifically, all orders requiring integration shall be made after notice and an opportunity for a hearing. *See* Ark. Code Ann. § 15-72-304(a).

 **b. SUBJECT:** **General Rule A-3: Additional Requirements for Specific Types of Hearings**

**DESCRIPTION:** The proposed amendments to this rule, along with the proposed amendments to AOGC General Rule A-2, are amendments to implement changes to Ark. Code Ann. § 15-71-111, 15-72-304 and 15-72-323 in accordance with Act 906 of 2015. These amendments set forth the process for the issuance of administrative integration orders without the need for a hearing before the Commission in certain circumstances when the interest is less than one (1) acre, and notice has been given and no objection is received. The administrative process will reduce the time needed to integrate interests while still providing notice and an opportunity for a hearing for the royalty owner.

**PUBLIC COMMENT:** A public hearing was held on December 10, 2015, in Fort Smith, and on December 17, 2015, in El Dorado. The public comment period expired on December 19, 2015. No public comments were received during the public comment period.

The effective date of this rule is pending legislative review and approval.

**CONTROVERSY:** This is not expected to be controversial.

**FINANCIAL IMPACT:** There is no financial impact.

**LEGAL AUTHORIZATION:** This rule change merely clarifies that, unless otherwise specified, General Rule A-2 shall apply to all drilling unit integration proceedings “heard by the Commission.” General Rule A-2, submitted separately but simultaneously for legislative review and approval, implements Act 906 of 2015, which amended certain provisions to provide Arkansas’s citizens the opportunity for a hearing on issues before the Commission and to provide the Commission with flexibility in decisions regarding the holding of hearings. Pursuant to Ark. Code Ann. § 15-71-111(a)(1), the Commission “shall prescribe its rules of order or procedure in hearings or other proceedings before the commission.”

 **c. SUBJECT:** **General Rule A-8: Reporting Requirements for Mineral Proceeds Escrow Accounts**

**DESCRIPTION:** This is a proposed repeal of existing AOGC General Rule A-8. This is a reduction of a regulatory burden in accordance with Act 1039 of 2015. The existing rule is repealed as holders of mineral proceeds (typically producers or purchasers) are no longer required to provide annual reports to AOGC, and such funds will escheat/transfer to the state in three years (in accordance with Act 1039) instead of the previous five years.

**PUBLIC COMMENT:** Public hearings were held in Fort Smith on December 10, 2015, and in El Dorado on December 17, 2015. The public comment period expired on December 19, 2015. No public comments were received during the public comment period.

The proposed effective date is pending legislative review and approval.

**CONTROVERSY:** This is not expected to be controversial.

**FINANCIAL IMPACT:** There is no financial impact.

**LEGAL AUTHORIZATION:** Act 1039 of 2015, § 2, repealed that portion of Ark. Code Ann. § 18-28-402, which had required an annual report for mineral proceeds escrow accounts be submitted to both the Auditor of State and the Oil and Gas Commission. This rule change implements that portion of the Act, striking General Rule A-8 that had set out the reporting requirements for such accounts.

 **7. COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION (Lori Freno)**

 **a. SUBJECT:** **Arkansas Public School Academic Facility Manual, Appendix “A” to the Rules Governing the Academic Facilities Partnership Program**

**DESCRIPTION:** These are uniform construction standards to guide in planning, design, and construction of public school academic facilities. Ark. Code Ann. § 6-20-809(d) requires that the division shall review and update the manual annually.

**PUBLIC COMMENT:** An initial public hearing was held on November 3, 2014, and the initial public comment period expired on November 10, 2014. Due to substantive changes having been made in response to the comments received, a second public hearing was held on May 26, 2015, and the second public comment period expired on June 8, 2015. Additional comments were received; however, only a few non-substantive changes were made.

The Commission received the following public comments:

**FIRST PUBLIC COMMENT PERIOD**

**Verlon P. McKay, II, FCSI**

Comment: Team facilities guideline comments. I am a commercial kitchen planner. I want to make sure that in the commercial kitchens that space is allocated for an office, bathroom and janitor’s closet. The bathroom and janitor’s closet is required by code in the “Arkansas board of health rules and regulations pertaining to food establishments.”

Agency Response: Comment considered. Included in support spaces. No change.

**Dawn Shafer, Interior Designer**

Comment: Section 6101; Elementary Academic Core: E-AC-3 and E-AC-7 Kindergarten Classroom and Elementary Classroom: Requiring a plumbing sink with drinking fountain. Per Plumbing Codes, we cannot have a sink and a drinking fountain in one.  We have been providing a separate drinking fountain within these classrooms and a separate plumbing sink.  It would be better for this to read plumbing sink and drinking fountain.  School Districts do not know the codes, and in existing conditions, they believe the two-in-one is still able to be used.

Agency Response: Comment considered. Code Review will determine. No change.

Comment: Section 6101; Elementary Academic Core: E-AC-7 Kindergarten Restroom: Requires 2’0” x 5’0” mirror. We have provided this above the sink, and it seems a bit too tall for use.  If the idea is for a full height mirror, the requirement may be better to read two mirrors—one 2’0” x 5’0” for full-height viewing, along with the sink mirror max 4’0” to still accommodate for taller teachers.

Agency Response: Comment considered. Design discretion. No change.

Comment: Section 6103; Elementary Administration: E-AD-2 Secretary Areas: Requires high counter. For universal design, we like to provide a low counter for ADA accessibility as well.

Agency Response: Comment considered. Design discretion. No change.

Comment: Section 6109; Elementary Food Service: E-FS-2 and E-FS-1 Kitchens: Additional areas to be added: office, restroom, locker room, and janitor closet. These areas are needing to be added per code for at least restrooms and janitor closet area….per design criteria and design standards; consultants add the office and locker room for the kitchen layout.  It would be best if these spaces are designated in the POR as required spaces and given sq footages that are funded by facilities in addition to the kitchen square footage.

Agency Response: Comment considered. Included in support spaces. No change.

Comment: Occupancy Sensors RR: Requiring occ sensors in restrooms for the smaller age children (including Kindergarten and possibly First) are not practical because they are not big enough to trigger these sensors.  Sometimes this may cause panic and distress.

Agency Response: Comment considered. Available by variance. No change.

Comment: Interior Occupancy Sensors required: Requiring occ sensors are perfect for the classrooms and areas to conserve electricity, but better design would be where required, the occ sensors should be ceiling mounted and not wall mounted. The teacher spaces and furniture tend to cover the wall mounted sensors and cannot detect motion.

Agency Response: Comment considered. Design discretion. No change.

Comment: Exit Lights: Shall be wall mounted, in lieu of ceiling mounted. Ceiling mounted provides for dual visual in hallways and at doors.  Ceiling mounted is really a better look and design.  Painting and maintenance does not have to paint around fixtures.  No patching of block walls if additions to buildings take place in the future.

Agency Response: Comment considered. Design discretion. No change.

Comment: Electrical Outlet Mounting Heights - Toggle Switches: Please reconsider the toggle switch height to coordinate with other electrical that will be placed at doors and in close proximity to the switches.  Per ADA code, 48” is maximum height….this means it can be lower than 48” and does not have to be 48”. In some cases, the maximum is actually 46” if located over millwork with base cabinets.  A better design is 44” for universal design and accommodates ADA requirements as well.  You are locating all other devices at 44” for your first row of requirements in a “4” mounting height above floor to bottom of outlet box.” I would ask that you consider 44” being your max height for lighting switches and other thermostats and pull stations, etc. All electrical and outlet device types should line up when placed side by side in height above floor.

Agency Response: Accepted. Change title block to “recommended” Device Locations.

Comment: Electrical Outlet Mounting Heights - Countertop heights:  Per ADA requirements, base cabinets can only be a maximum of 24” deep and 34” high for side approach, meaning all cabinets designed for classroom spaces will be maximum with these dimensions. Deeper cabinets or taller cabinets are not accessible.  To accommodate for teachers, administrators, and students with needs, requiring or suggesting taller or deeper cabinets does not accommodate ADA requirements.  Also, upper cabinet requirements have requirements that affect design of millwork.  As designers, we have to provide a section that is ADA accessible, and at least one of everything that is provided has to also be ADA accessible: open shelving, base cabinets, upper cabinets, countertops, etc.

Agency Response: Accepted. Change title block to “recommended” Device Locations.

Comment: Electrical Outlet Mounting Heights - Countertop electrical heights: If our max is 24” deep and 34” high for our millwork, our maximum for electrical outlets to top of outlet device is 46” max according to ADA requirements. 44” would be a perfect universal height for electrical outlets, switches, and other electrical devices.

Agency Response: Accepted. Change title block to “recommended” Device Locations.

**Leslie Dyess**

Comment: Section 7110: Thank you for the opportunity to submit public comments for the newly proposed rules affecting the AR Public School Academic Facilities Manual.  I would request that further consideration be given to the following: Section 7110 (framing systems), item number 6, prohibits the use of calcium chloride in concrete.  This exclusion is not included in section 7100 (foundations & floor slabs at grade).  Is it intended to be acceptable for calcium chloride to be used in foundation systems?

Agency Response: Accepted. Add language in 7100 to exclude calcium chloride.

Comment: Section 7130; Shingle and Metal Roofing Systems: Performance standards for these two types of roofing systems state that they should have “energy star compliant surface treatments.” To my knowledge, this energy star compliance is based on solar reflectance and not all available color options will meet this requirement.  The popularity of the metal roofing option is partly driven by the wide range of colors available (purple, blue, red, etc.) and requiring energy star compliance for these systems may be considered restrictive in design as highly reflective surfaces are typically white in nature.

Agency Response: Comment considered. Minimum standard. May request variance. No change.

Comment: POR (E/M/H FS-2): It has been brought to my attention that the AR State Board of Health has rules and regulations in place that require a toilet and custodial closet with mop sink be provided for the kitchen area.  It seems appropriate to include these areas on the POR as E/M/H FS-2f (toilet) & E/M/H FS-2g (custodial closet).

Agency Response: Comment considered. Included in support spaces. No change.

**Mike Mertens, Arkansas Association of Educational Administrators**

Comment: The following comments are submitted by the Arkansas Association of Educational Administrators (AAEA) in response to the proposed changes to the Public School Academic Facility Manual. Chapter 2, Page 1-2.  While school districts have specific submittal dates for preliminary and final master plan reports, the Manual does not include specific dates for the Division to conduct the consultation meetings.  The Manual states that the Division will hold these meetings “as soon as practicable” and sometime in the “summer or fall.”  AAEA recommends a date of November 1 for all of these consultation meetings to be held in order to give school districts ample time to meet the February 1 date for the final master plan.

Agency Response: Comment considered. Scheduling 236 school districts on one day cannot be done. Flexibility required. No change.

Comment: Chapter 7, Section 7050; Civil Sitework, Page 1, #2:  Include the words “or similar” after AutoCAD DWG.  A requirement for the use of specific software is not necessary and could be costly.

Agency Response: Accepted. Insert “or .pdf” before “format.”

Comment: Chapter 7, Section 7050; Civil Sitework, Page 2, #3:  Include the words “main or primary” before entry doors in the first line.  Sidewalks should not be required for all entry doors such as a doorway that leads to and from a school playground.   Also in this same section, the term “street” in an urban setting may be entirely different than a “street” in a rural setting.  “Driveway or school drive” may be a more appropriate term.

Agency Response: Comment considered. Request variance if desired. No change.

Comment: Chapter 7, Section 7050; Page 2, #4:  Include the words “at trash truck collection points” after trash enclosure at the beginning of the sentence.  All trash enclosures should not be subject to these strict guidelines.

Agency Response: Accepted. Change “require a pair of gates” to “be gated.”

Comment: Chapter 7, Section 7050; Page 2, #5:   The standards for curbing should be a guideline and left to the discretion of the design professional in consultation with the local school district.

Agency Response: Comment considered. Required standard for storm water flow. Variance may be requested. No change.

Comment: Chapter 7, Section 7050; Civil Sitework:  Site design and geotechnical analysis should be the call of the architect and structural engineer.  There should not be a requirement that this work be done by a civil engineer and/or geotechnical engineer.  Parking design should be controlled by city codes if they exist.  Required curbing on ALL paving edges should not be required and would be a waste of State and local money.  Building pad and subgrade should be the responsibility of the architect and structural engineer, not the geotechnical engineer.

Agency Response: Comment considered. Geotechnical Engineer licensed expert in this area. No change.

Comment: Chapter 7, Section 7100; Foundation and Floor Slabs:  Requiring the structural engineer to meet requirements of the geotechnical engineer is in conflict with the person required to certify the overall plans.

Agency Response: Comment considered. Geotechnical Engineer licensed expert in this area. No change.

Comment: Chapter 7, Section 7110; Framing Systems:  Not all structural framing requires a structural engineer.  The size of the project matters.

Agency Response: Comment considered. See Ark. Code Ann. § 22-9-101. No change.

Comment: Chapter 7, Section 7140; Openings: The requirement that interior doors have factory finish should be removed.  Field finish is acceptable and in some cases preferred. AAEA appreciates the opportunity to submit comments regarding the proposed changes in the Facility Manual and respectfully requests that these comments be carefully considered.

Agency Response: Comment considered. Factory finish more consistent. Required for new buildings only. No change.

**Dr. Benny Gooden**

Comment: The following comments are submitted in response to the proposed changes to the Public School Academic Facility Manual which accompanies COM-15-028. Although the proposed changes have been characterized by some staff members of the Department of Public School Academic Facilities and Transportation as primarily associated with “reformatting,” a closer examination reveals that the revisions to the Manual are far more than mere reformatting and will assuredly result in significantly increased costs to local school districts as facilities are improved in Arkansas. When reviewing the lengthy document, several major areas of concern emerge. These include:

Agency Response: Comment only by author. No change.

Comment: Section 1000; Chapter 1, Page 2: *The Arkansas School Facility Manual APSAFM is the exclusive property of the Arkansas Department of Education of the State of Arkansas, and the Arkansas Department of Education DPSAFT, who reserves the right to add, delete, modify, or otherwise change the content of this manual at any time.* If the Division reserves the right to change the standards at any time without public comment, the process of analysis and comment seems to be fruitless. This process appears to disregard the requirements of the Administrative Procedure Act in its present form. It also is not consistent with the recently approved requirement for legislative review of agency rules.

Agency Response: Comment considered. Changes to Facilities Manual comply with Rule and Statute. No change.

Comment: Section 2000; Chapter 2, Page 1: *February 1 of each odd-numbered year—districts must submit a master plan report and preliminary master plan for the upcoming final master plan submission.* Are changes allowed between the submission of the preliminary and final master plan? The time frame between the preliminary and final master plan submittal is so long as to prevent districts from properly addressing emerging needs within the process. *The division shall establish procedures and timelines for a school district to submit a preliminary facilities master plan or a master plan outline to the division before the submission of the school district’s final facilities master plan.* This requirement fails to require presentation of new rules within the parameters of the Administrative Procedure Act.

Agency Response: Comment considered. Districts may amend Master Plan as needed. No change.

Comment: Section 4000: Is the above chart a standard or a guideline? The page placement and shape of the table is misleading. The previous staffing levels for custodial and maintenance employees in this manual were based on square footage. This seems to be staffing levels on the number of students without consideration of the type of building or buildings on a campus. If this is a standard, most of the districts in the state will be out of compliance. Staffing levels should be left to the discretion of local school districts unless sufficient funding is provided within the Foundation Funding Matrix. Recent research by the Bureau of Legislative Research documents that spending on these categories currently far exceeds the Matrix funding. This is an adequacy issue as defined by the Arkansas Supreme Court.

Agency Response: Comment considered. Custodian Manual is guideline. No change.

Comment: Section 7050; Chapter 7, Page 1, # 2: *All drawings including surveys and civil plans shall be prepared in AutoCAD.DWG format.* Dictating to an engineer what type of software to use seems to be outside the authority of the division. A requirement for the use of specific software is not consistent with the professional standards that consultants in various fields may use. Many firms have transitioned to producing drawings in Revit, which is an AutoCAD product, due to the fact that they allow modeling the building and coordination with consultants and contractors to eliminate conflicts between different disciplines. It is required to work in Revit when working on many higher education campuses in the state.

Agency Response: Accepted. Insert “or .pdf” before “format.”

Comment: Section 7050; Chapter 7, Page 2: *Sidewalks - Sidewalks shall be designed for access from the parking areas to all entry doors, as well as an accessible path from the street frontage, per ADA guidelines. Sidewalks shall be a minimum of 5’ in width and shall be constructed of a minimum of 4” thick Portland cement concrete and minimum strength of 2500 psi.* What is the definition of “all entry doors”? Some doors are installed to provide convenient access while not routinely used for entry or egress. The length of the sidewalk(s) required to all exterior doors from the parking lot and street will greatly increase the cost of a project. The definition of “street” in a rural area with a large plot of land must be addressed. Large school sites may not require sidewalks to the “street” as used in this context. “Driveway” may be a better designation.

Agency Response: Comment considered. May be addressed through variance request. No change.

Comment: Section 7050; Chapter 7, Page 2, # 4: *Trash Enclosure - Trash enclosure shall be provided in a location accessible to trash trucks without conflicting with pedestrian routes or bus pick-up/drop-off point. The size of the enclosure may vary by size and number of dumpsters available from the provider. Where practical, recycling may also be staged in the trash enclosure area. The standard enclosure shall have three sides constructed of durable wood, synthetic, or masonry to a minimum height of 6’ and capable of screening the dumpster(s) from view. The enclosure will require a pair of gates on the “open” side to screen the dumpster interior and provide access. The enclosure shall be positioned so that the “open” side faces a drive entrance with a minimum of 35’ direct approach to the enclosure. The trash enclosure shall be constructed on an 8” concrete slab and slab shall extend at least 15’ in front of dumpster for the entire opening.* This requirement makes no sense for school districts with large centralized trash collection dumpsters.

Agency Response: Accepted. Change “require a pair of gates” to “be gated.”

Comment: Section 7050; Chapter 7, Page 2: *Curbing - Curbing shall be provided around the entire pavement perimeter and at all pavement edges. All curbing shall be defined on the site work drawings as to type of curb, size, and general location. All permanent curbing shall be concrete. Extruded concrete curbing epoxied to the pavement surface is not permitted. Asphalt curbing shall only be allowed along pavement edges when it is adjacent to a future development area.* This standard should be a guideline and curbing should be left to the discretion of the design professional in consultation with the local school district.

Agency Response: Comment considered. Required standard for storm water flow. Possible variance. No change.

Comment: Section 7050; Specific items, which our architectural consultants have identified and which appear to be ill-advised include: Section 7050, Civil Sitework - General Standards #3: We do not agree with site design being required to be done by a civil engineer. If it is a small project, there is no need for this additional cost to the owner when a licensed architect can perform.

Agency Response: Comment considered. See Ark. Code Ann. § 22-9-101. No change.

Comment: Section 7050; General Standards #5: We do not agree with the requirement of needing geotechnical analysis being performed by a geotechnical engineer. The size of the project may be small enough to not require. This should be the call of the architect or structural engineer. Additions to existing buildings for which prior soil investigations have been made make this unnecessary.

Agency Response: Comment considered. See Ark. Code Ann. § 22-9-101. No change.

Comment: Section 7050; Site Design Standards #2: Parking should be controlled by the City of Fort Smith, not DPSAFT. City standards are frequently more restrictive.

Agency Response: Comment considered. More restrictive standard would apply. No change.

Comment: Section 7050; Site Design Standards #3: Sidewalk width should be at the discretion of the district. Requiring a minimum of 5.0’ wide is arbitrary.

Agency Response: Comment considered. May be addressed by variance request. No change.

Comment: Section 7050; Site Design Standards Paragraph #5: Requiring curbing on all paving edges is not needed. Some designs could be best served by no curbs for better site drainage. The cost of the curb could be a waste of school and State money.

Agency Response: Comment considered. May be addressed by variance request. No change.

Comment: Section 7050; Pavement Design Standards # 2: Pavement should not be required to meet geotechnical engineer’s recommendations. These reports are recommendations only. Final say should be left to the architect or project engineer stamping the project.

Agency Response: Comment considered. Geotechnical Engineer licensed expert in this area. No change.

Comment: Section 7050; Pavement Design Standards (General): DPSAFT is trying to design paving….not a good idea.

Agency Response: Comment considered. Minimum only presented. No change.

Comment: Section 7050; Subgrade and Building Pad Preparation Standards (General): Building pad and subgrade should be the responsibility of the architect and structural engineer, not geotechnical engineer.

Agency Response: Comment considered. Geotechnical Engineer licensed expert in this area. No change.

Comment: Section 7050; Grading and Drainage Design Standards: Any slopes and drainage issues should be left to architects and engineers, not DPSAFT. They are trying to set minimums without knowing specific site conditions.

Agency Response: Comment considered. Variance may be requested. No change.

Comment: Section 7050; Water and Sewer Design Standards (General): Standards should stop at paragraph #1. “Domestic water and sewer shall conform to the requirements of the Arkansas Department of Health.” Any other specific requirements muddy the water and may be in conflict with the Arkansas Department of Health.

Agency Response: Comment considered. More restrictive standard would apply. No change.

Comment: Section 7100; Foundation and Floor Slabs - Standards #1: Requiring structural engineer to meet requirements of geotechnical engineer is in conflict with the person required to certify the overall plans. Geotechnical engineers should not require; they only recommend. Final responsibility is by structural engineer.

Agency Response: Comment considered. Geotechnical Engineer licensed expert in this area. No change.

Comment: Section 7100; Not all foundations need to be designed by a structural or civil engineer. The size of the project and use matters. It could be a ramp or a stair that wouldn’t need structural engineering.

Agency Response: Comment considered. See Ark. Code Ann. § 22-9-101. No change.

Comment: Section 7100; Standards Paragraph #8: DPSAFT is playing designer with minimum concrete strength. Leave to architect and engineers. This holds true for paragraphs 9 -12.

Agency Response: Comment considered. Minimum standard. No change.

Comment: Section 7110; Framing Systems - Standards #2: Not all structural framing requires a structural engineer. The size of the project matters.

Agency Response: Comment considered. See Ark. Code Ann. § 22-9-101. No change.

Comment: Section 7110; Standards (General): The building code covers this area. Section not needed.

Agency Response: Comment considered. Minimum standard. No change.

Comment: Section 7120; Walls Exterior Walls - EIFS: Does not require impact resistant mesh past a certain height. This requirement costs the owner and State money and is unnecessary.

Agency Response: Comment considered. Height not specified. No change.

Comment: Section 7120; Walls Exterior Walls - EIFS: Does not require impact resistant mesh past a certain height. This requirement costs the owner and State money and is unnecessary.

Agency Response: Comment considered. No change. DUPLICATE.

Comment: Section 7120; Masonry Veneer Cavity Walls: Air cavity is a design decision and varies from project to project. Omit 1” minimum air cavity requirement.

Agency Response: Comment considered. Minimum industry standard. No change.

Comment: Section 7120; Masonry Veneer Cavity Walls – Standards #4: Weep holes are governed by code. Omit from DPSAFT regulations.

Agency Response: Comment considered. More restrictive standard would apply. No change.

Comment: Section 7120; Masonry Veneer Cavity Walls – Standards #9: “R” values are governed by energy code and take into account entire wall assembly. Omit from regulations.

Agency Response: Comment considered. More restrictive standard would apply. No change.

Comment: Section 7120; Masonry Veneer on Metal Framing: Weep holes governed by building code.

Agency Response: Comment considered. More restrictive standard would apply. No change.

Comment: Section 7120; Masonry Veneer on Metal Framing: “R” values and building insulation type are the call of the designer not DPSAFT.

Agency Response: Comment considered. More restrictive standard would apply. No change.

Comment: Section 7120; Pre-Cast Concrete Insulated Sandwich: Insulation type is dictated by the architect and panel company. Setting types of insulation allowed is not DPSAFT’s call.

Agency Response: Comment considered. Minimum standard. No change.

Comment: Section 7120; Pre-Cast Concrete Insulated Sandwich: Requiring paint and skim coat on all concrete panels is not a construction standard, but a design choice. What if the owner and architect want natural concrete?

Agency Response: Accepted. Delete Standard #8. Correct heading; change “Pre-Case” to “Pre-Cast.”

Comment: Section 7120; Metal Panel on Metal Framing - Standards #8: “Insulation could be soybean oil-based polyurethane, open cell, semi-rigid foam or equal.” The word “could” implies recommendation. Move to recommend column. This holds true for all insulation in 7120 walls.

Agency Response: Comment considered. Minimum standard with options. No change.

Comment: Section 7130; Roofing Systems: In the section for Metal Roof with Blanket Insulation, it requires a solid substrate. It is very unusual to see a solid substrate over blanket insulation. Later in the requirements for this system, it requires thermal spacers. There would be no need for thermal spacers if the roof is installed over a solid substrate. The thermal spacers are to provide a break when the standing seam metal roof is attached to the steel purlins.

Agency Response: Accepted. Under Components, delete “solid substrate.” Under Construction Standards #2, change “Thermal spacers” to “Provide break.”

Comment: Section 7130: In the section for Shingle Roof Systems, it calls for ice and water shield to be installed on slopes less than 4:12. We agree that this is the best way to handle low slopes with shingle roofs. However, there should be a caveat that the installation of ice and water shield will not void the warranty for the shingles. The literature from a lot of manufacturers states you must have two layers of roofing felt where slopes are below 4:12.

Agency Response: Comment considered. Most shingle manufacturers accept ice and water shield. May request variance. No change.

Comment: Section 7130; Performance Standards: “R” value, Paragraph #2: Set by energy code. Don’t need.

Agency Response: Comment considered. More restrictive standard would apply. No change.

Comment: Section 7130: Why 20 year warranty?

Agency Response: Comment only by author. Reasonable minimum standard. No change.

Comment: Section 7130; Shingle Roof Systems – Performance Standards #1: “Not fail when exposed to weather.” Define weather. Why not use staples?

Agency Response: Comment considered. Better wind load resistance. No change.

Comment: Section 7130; Metal Roof with Blanket Insulation: Components galvanized steel purlins should not be required. Painted will be and should be acceptable.

Agency Response: Accepted. Under “Components,” insert “factory primed or” before “Galvanized.”

Comment: Section 7130; Snow Guards: Depends on location. Not all metal roofs should have snow guards.

Agency Response: Comment considered. Safety issue. No change.

Comment: Section 7130: Standing seam metal roofs are approved by manufacturer at 1/4:12 slope. Requirement for 1:12 is overkill.

Agency Response: Comment considered. Minimum not excessive. No change.

Comment: Section 7130; Metal Roof with Rigid Insulation: “Not fail when exposed to weather.” Define weather.

Agency Response: Comment considered. No change.

Comment: Section 7130: Energy Star doesn’t mean anything. Remove from standards.

Agency Response: Comment only by author. Reasonable minimum standard. No change.

Comment: Section 7130: Slope of 1:12 is overkill.

Agency Response: Comment considered. Minimum not excessive. No change.

Comment: Section 7130; Built-Up Asphalt Roof System: Omit Energy Star; covered in Energy Code.

Agency Response: Comment considered. More restrictive standard would apply. No change.

Comment: Section 7130: 20 year warranty is an additional cost.

Agency Response: Comment considered. Minimum not excessive. No change.

Comment: Section 7130; Single Ply Roof System: Slope is dependent on roof size. Minimum slope is excessive.

Agency Response: Comment considered. Minimum slope not excessive. No change.

Comment: Section 7140; Openings, Standards Doors and Windows: Interior doors to have factory finish should be removed. Field finished is acceptable and in some cases preferred. This should be at the discretion of the architect and owner.

Agency Response: Comment considered. Factory finishes more consistent. May request variance. No change.

Comment: Section 7160; Interior Floor Finishes: Why remove hardwood floors used in older buildings?

Agency Response: Accepted. Remove strike through on “Hardwood.” Move Examples right side of page.

Comment: Section 7170; Walls and Ceiling Finishes Construction Standards: NRC of .65 is not based on any standard ceiling tiles. We specify NRC of .55 for Armstrong 1728 and 1729. What about band and music rooms? May want different NRC rating.

Agency Response: Accepted. Agree to change .65 to .55.

Comment: Section 7500: The section for Technology Systems requires a technology plan to be prepared by a Registered Communications Distribution Designer. It is unknown how many Registered Communication Distribution Designers are available in the state. Most engineers probably do not hold that designation. This could also be considered beyond Basic Services provided by most architects and need to be an additional service. At any rate, this will significantly increase costs to school districts.

Agency Response: Accepted. Page #1, under Standards - General #1, delete “as part of the overall building design process before construction begins.” Move #1 last sentence to right hand of page as recommendation.

Comment: In summary, the Division of Public School Academic Facilities and Transportation has made extensive changes to the Rules governing any construction. The items noted and possibly others go beyond the scope of necessary or reasonable regulation by DPSAFT. The rules should be revised and resubmitted for review prior to final adoption.

Agency Response: Comment only by author. No change.

**Jimmy Alessi**

Comment: Section 7400; Page 3, Standards - Lighting #1: Cleanup language to allow lighting other than fluorescent. Delete “fluorescent,” and delete “utilizing low harmonic electronic ballasts and low-mercury certified lamps.”

Agency Response: Accepted. Cleanup language to allow lighting other than fluorescent. Delete “fluorescent” and delete “utilizing low harmonic electronic ballasts and low-mercury certified lamps.”

**SECOND PUBLIC COMMENT PERIOD**

**Melinda Moss, Harrison SD**

Comment: Rule 3.34.1: Concerned with suitability analysis in the Program of Requirements (POR). Clarify how single use spaces built larger than standard, both before and after 2008, will be used against public schools in future. Also concerned charter schools do not have to submit master plans, utilize School Dude, or meet any standards and accountability measures with which regular public schools must comply, nor will they need follow Facility Construction Manual. As a taxpayer, believes some accountability for “$5 to 15 million dollars should be in place.”

Agency Response: Comment considered. There is no provision in law providing that charter schools meet similar requirements as traditional public schools (e.g., submit master plans, use School Dude, etc.). Regarding single-use spaces built before and after 2008, *see* Partnership Program Rule 3.34.1, addressing suitability: “However, the state recognizes that four particular space areas existing in school districts on or before 2008 may skew the comparison of existing space to that of the required POR space. Therefore, the Division will not count as existing space that total gross footage area above the required POR standard for the following four areas that existed on or before 2008: Physical Education, Media Center, Student Dining and Performing Arts.”

**Julie Mayberry, State Representative**

Comment: Sections 6103, 6203, 6303: Although there is space for health center restroom in POR, there’s no indication it’s only for students using health center, nor that it’s adjoining health center. This could lead to privacy and contamination issues.

Agency Response: Accepted. Comment considered. The pages in the Facilities Manual addressing the Health Clinic and Health Center Restroom all have been changed to reflect “[r]estroom must be located adjacent to health clinic with entrance from the health clinic.”

Comment: Sections 6103, 6203, 6303: Concerned health center restroom is 45 square feet, but a family restroom elsewhere is 50 square feet; concern is whether there is enough space for wheelchair to maneuver.

Agency Response: Comment considered. The 45 square foot space for the health center restroom is ADA compliant and provides sufficient room for an individual in a wheelchair along with another person in the case assistance is needed. School districts may choose to make the restroom larger (at a greater cost); 45 square feet is the minimum required.

Comment: Sections 6103, 6203, 6303: Regarding design of health center, shows potential space for cots, but with curtain separating them. Encourages additional privacy for students by placing cot behind a door that can shut. There is a room where private conversations can be held but not where procedures can be conducted.

Agency Response: Comment considered. Placement of a curtain is only a recommendation; a school district may place a wall if it so chooses.

Comment: Sections 6103, 6203, 6303: The 250 square foot health center space is not large enough; it needs to be larger with more privacy. Doesn’t take into consideration number of students on campus (more student population would need more health center space for students).

Agency Response: Comment considered. The 250 square foot space for the health center is the *minimum* required. If a school district has a larger student population, it could increase the size of the health center (at a greater cost).

Comment: Sections 6103, 6203, 6303: Health center needs sinks and sharps containers.

Agency Response: Accepted. Comment considered. Sink already included in health center, sharps container added.

Comment: Chapter 4: Regarding parking spots, manual outlines number of spots needed, but does not include number of handicap spots and van accessible spots required by ADA. Although manual reads that ADA guidelines must be followed (in another section of the manual), it would be handier to have the language with the chart where the parking spot numbers are.

Agency Response: Accepted. Comment considered. Minimum number of accessible parking spaces (including van accessible) added to Chapter 4 parking spaces that are consistent with ADA guidelines.

Comment: Sections 6103, 6203, 6303: Having running water in school nurse’s office would be like manna from heaven, and a flushing toilet would be increasingly important, considering amount of procedures done in a school nurse’s office. Many students have special health care needs that are receiving peritoneal dialysis, medications, tube feedings, bowel and bladder training programs.

Agency Response: Comment considered. The health clinics include a sink; the adjoining health center restroom contains a toilet.

The proposed effective date is pending legislative review and approval.

**CONTROVERSY:** This is not expected to be controversial.

**FINANCIAL IMPACT:** There is no financial impact.

**LEGAL AUTHORIZATION:** The Commission for Arkansas Public School Academic Facilities and Transportation (“Commission”) is authorized to perform any act and provide for the performance of any function necessary or desirable to carry out the purposes of the Arkansas Public School Academic Facilities Program (“Program”). *See* Ark. Code Ann. § 6-21-114(e)(1). The Commission is vested with the authority to adopt, amend, and rescind rules as necessary or desirable for the administration of the Program. *See* Ark. Code Ann. § 6-21-114(e)(2)(A). As specifically set forth in the Arkansas Public School Academic Facilities Program Act (“Act”), codified at Ark. Code Ann. §§ 6-21-801 through 6-21-814, the Commission shall promulgate rules necessary to administer the Program, all its component and related programs, and the provisions of the Act. *See* Ark. Code Ann. § 6-21-804(b). Pursuant to the Act, the Division of Public School Academic Facilities and Transportation (“Division”) shall develop a comprehensive Arkansas Public School Academic Facilities Program that includes, as one of several components, a Public School Academic Facility Manual containing “uniform standards to guide the planning, design, and construction of new academic facilities and additions to existing academic facilities.” Ark. Code Ann. § 6-21-804(a)(3). The Division shall review and update the manual on an annual basis. *See* Ark. Code Ann. § 6-21-809(d).

**D. Adjournment.**