

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

**Tuesday, July 30, 2024
9:30 a.m.
Room 130, State Capitol
Little Rock, Arkansas**

- A. Call to Order**
- B. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309 to Be Considered Pending Suspension of the Subcommittee Rules Due to Submission of Materials After the Deadline for Placement on July Agenda**
- 1. DEPARTMENT OF EDUCATION, DIVISION OF ELEMENTARY AND SECONDARY EDUCATION (Courtney Salas-Ford, Andrés Rhodes, Daniel Shults, Stacy Smith)**

- a. SUBJECT: Rules Governing the Educational Freedom Account Program**

DESCRIPTION: This rule was promulgated per Act 237 of 2023, codified at Ark. Code Ann. § 6-18-2501 et seq. for the Department to implement the newly-created Educational Freedom Account Program. An emergency rule was promulgated to establish authority for payments under the statutory scheme for the 2023-2024 school year; a permanent rule was simultaneously promulgated. This rule was promulgated as an emergency rule and a permanent rule in 2023; after one public comment period, the rule was exhaustively revised, effectively creating an entirely new rule.

The rule in its current form identifies several key new types of service providers, clarifies student eligibility, creates a robust application procedure, funding mechanism, and appeals process for educational freedom accounts, and establishes requirements for qualifying schools and the Division regarding monitoring and accountability.

After the initial public comment period, there were many substantive changes made. These changes include: adding pertinent definitions, updating eligibility requirements to contemplate the 2024-2025 school year and beyond, clarifying the application process, adding language related to funding accounts, incorporating the Department administrative rule governing payment processing, qualifying the term of eligibility for students and how students might be removed from eligibility, adding

requirements for accrediting agencies for participating schools, adding parameters for reviews of education service providers, revising monitoring and compliance requirements for education service providers, adding an appeals process for several administrative actions, and revising testing and evaluation requirements.

After the second public comment period, a few non-substantive changes were made.

On July 11, 2024, the State Board of Education met to make a minor adjustment to the final draft of the rule which was initially approved June 13, 2024. The changes were as follows: The definition of “education service provider” in 2.04 was amended to include public school districts as eligible to act as public service providers within the EFA program. Also, a definition for “participating school” was added in 2.14.

PUBLIC COMMENT: A public hearing was held on August 25, 2023, and that public comment period expired on August 28, 2023. A second public hearing was held on May 22, 2024, and the second public comment period expired on May 28, 2024. The agency provided a summary of the public comments it received. Due to its length, that summary is attached separately.

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

(1) Section 2.15 – The definition of “Participating school or service provider” appears to track the definition of “Participating Service Provider,” found in Ark. Code Ann. § 6-18-2503(9), as amended by Act 237, § 42. Is there a reason why the two definitions do not mirror each other? **RESPONSE:** This section will be amended to mirror the statutory language.

(2) Section 2.06 – Did the agency purposefully forego spelling out “qualifying expenses” in the rule, and instead simply refer to the statutory provision outlining such expenses? *See* Ark. Code Ann. § 6-18-2503(11), as amended by Act 237, § 42. **RESPONSE:** Yes, “qualifying expenses” is defined in the statute.

(3) Section 3.01 – This section, concerning student eligibility, provides as one condition of eligibility that an individual be “a resident of the State of Arkansas[.]” Is this provision of the rule limited to the definition of “resident” as it appears in Ark. Code Ann. § 6-18-202, as is contemplated in Ark. Code Ann. § 6-18-2506(a)? **RESPONSE:** Yes, a student must be a resident of the State of Arkansas as defined by the statute and meet the

other eligibility criteria to be an eligible student for the Educational Freedom Account program.

(4) Section 4.03 – This section, concerning student enrollment, refers to “procedures set by the Department to become enrolled in the EFA Program [.]” Are these procedures outlined elsewhere in these, or other agency rules? If not, will they be introduced through future rulemaking?

RESPONSE: These procedures will be introduced through future rulemaking.

(5) Section 5.02.3 – This section appears to track the language of Ark. Code Ann. § 6-18-2508(1), as amended by Act 237, § 42, concerning students with disabilities. Is there a reason why this section includes notice of a “waiver of procedural rights to a Free and Appropriate Public Education” as opposed to “[a]n explanation of the rights that parentally placed students possess under the Individuals with Disabilities Education Act” as provided for in both the language of the Act and the Arkansas Code? **RESPONSE:** The agency chose this language to give clearer notice to parents of eligible students who chose to enroll their students in the EFA program.

(6) Section 5.06 – This section, concerning per student allocations, appears to track Ark. Code Ann. § 6-18-2505(a)(1), as amended by Act 237, § 42. Is there a reason why the language of the rule differs from that in the Arkansas Code? **RESPONSE:** This section will be amended to mirror the statutory language.

(7) Section 6.03 – This section, concerning the term of EFA eligibility, refers to “procedures for withdrawal from the EFA Program set by the Department.” Are these procedures outlined elsewhere in these, or other agency rules? If not, will they be introduced through future rulemaking? **RESPONSE:** These procedures will be introduced through future rulemaking.

(8) Section 7.00 – This section, which concerns participating schools and service providers, appears to track the provisions of Ark. Code Ann. § 6-18-2507, as amended by Act 237, § 42, which concerns eligibility of participating schools and service providers. Is there a reason why the rules do not contain the provision set out in § 6-18-2507(a)(1)(B)(i), that “a private school shall no longer be eligible if the private school has not received accreditation within four (4) years of becoming eligible” to participate in the EFA program? **RESPONSE:** This section will be amended to mirror the statutory language.

(9) Section 7.01.3.b – This section, concerning private school eligibility, appears to track Ark. Code Ann. § 6-18-2507(a)(12), as amended by

Act 237, § 42, which requires a private school to complete background checks and fingerprinting for “any employee working in the private school.” Is there a reason why the rule adds the qualifier that only “school personnel who are allowed direct contact with participating students” be subject to the background checks and fingerprinting? **RESPONSE:** This section will be amended to mirror the statutory language.

(10) Section 8.04 – Should this subsection be indented? **RESPONSE:** Yes. Will amend in promulgation.

(11) Section 9.08.4 – This section, which concerns step two of the EFA appeals process, provides that the state board may pose questions to any party at any time during the appeal hearing. Does the time taken up by the state board questioning count against the twenty (20) minute limitation each party has to present their case to the state board, as set out in sections 9.08.2 and 9.08.3? **RESPONSE:** No. Generally, the state board waits to ask questions until after the parties have presented. However, the state board may ask questions at any time during any public meeting. The time spent answering questions does not count for or against the time limits of any party being questioned.

(12) In the updated Financial Impact Statement provided following the close of the first public comment period, the agency indicates in Question 1 that the proposed rule has a financial impact. Nothing in the remainder of the statement reflects any financial impact, however. Can the agency clarify what the financial impact of the proposed rule is? **RESPONSE:** This was an error, there is no financial impact for year two since the program is already being implemented.

(13) Section 2.04 – The definition for “educational service provider” appears to track the definition of “participating service provider” found in Ark. Code Ann. § 6-18-2503(9). Is there a reason why the definition in the proposed rule excludes private schools when the definition provided in the Arkansas Code explicitly includes private schools? **RESPONSE:** The definition for “educational service provider” has been corrected to remove the language you’ve referenced.

(14) Section 2.14.18 – This section, which establishes transportation costs as a “qualifying expense” under the Program, appears to track Ark. Code Ann. § 6-18-2503(9)(B)(x), which also sets transportation costs as a qualifying expense under the Program. Is there a reason why the proposed rules add as a qualifying condition that the cost of transportation “not exceed the reimbursement rate adopted by the State for state employees” when that condition is not in the referenced Arkansas Code section? **RESPONSE:** This provision of the rule provides a limiting principal to establish parameters around the amount of funding that can be used for

transportation, similar to the parameters for technology purchases. The state reimbursement rate is established and is a well understood principal for reimbursement.

(15) Section 4.01 of the proposed rules provides that an EFA student application should be submitted to the department “during a window established by the department.” Will this window be established in these, or other department rules? **RESPONSE:** No, the application period will be noticed on the website and advertised as are other application periods administered by ADE.

(16) Sections 7.01.4.2 and 7.04.1.4 of the proposed rules provide that both private schools and student-facing education service providers who seek to participate in the program must attest in writing that all personnel have cleared a background check every five (5) years. Does this provision also apply to new hires or personnel who have been employed with the provider less than five (5) years? **RESPONSE:** Yes, they’ll be required to attest personnel hired have cleared a background check.

(17) Section 7.01.4.4 of the proposed rules, which concerns private school teacher qualifications, appears to track Ark. Code Ann. § 6-18-2507(a)(5), which provides that a private school who seeks to participate in the program shall employ or contract only with teachers who hold at least baccalaureate degrees or have equivalent documented experience. Is there a reason why the rules add the qualifying condition that the equivalent experience may be “determined by the private school” where that condition is not listed in the Arkansas Code? **RESPONSE:** Yes, while the Department of Education is the accrediting agency for public school districts, the Department is not the accrediting agency for private schools. The District approves accrediting agencies that oversee the quality of private schools, thereby ensuring that they also hire qualified teachers, but it is not involved in the hiring decisions of private schools.

These rules were filed on an emergency basis and were reviewed and approved by the Executive Subcommittee on July 20, 2023; the agency states that the emergency rule expired on November 29, 2023. The proposed effective date for the permanent rule is pending legislative review and approval.

FINANCIAL IMPACT: The agency has indicated that the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-18-2504(a), as amended by Act 237 of 2023, § 42, the Division of Elementary and Secondary Education shall administer the Arkansas Children’s Educational Freedom Account Program, which shall be subject

to the rules adopted by the State Board of Education. The rules adopted by the state board under the subchapter shall include without limitation the: (1) process for determining the eligibility of students and service providers, including the awarding of accounts to eligible students and removal of unnecessary barriers or disincentives to participation by potential participating service providers; (2) process for conducting account and program audits, including establishing the authority for the division to conduct or contract for the auditing of accounts; (3) authority of the division to deem any participating student ineligible for the program, and refer a case involving the misuse of account funds for investigation to the Attorney General or the Secretary of the Department of the Inspector General; (4) authority of the division to contract with a vendor or other supplier for the administration of the program or parts of the program; (5) requirement that the program shall begin enrolling participating students no later than the beginning of the 2023-2024 school year and be fully implemented to serve all Arkansas children eligible to enroll in a public school by the beginning of the 2025-2026 school year; (6) establishment or creation of a contract for the establishment of an online anonymous fraud reporting service, including without limitation a telephone hotline; (7) requirement for a surety bond for a participating service provider that receives more than one hundred thousand dollars (\$100,000) in account funds; (8) mechanism for the refunding of payments from service providers back to the account from which they were paid; (9) required compliance with all state procurement laws and procedures; and (10) means for preventing unreasonable inflation or fraud in participating school tuition and fees. *See Ark. Code Ann. § 6-18-2504(b)*, as amended by Act 237, § 42.

Further authority for the rulemaking can be found in Ark. Code Ann. § 6-18-2504(d), as amended by Act 237, § 42, which states that, to ensure that account funds under the Arkansas Children's Educational Freedom Account Program provide for the expansion of access to education options by reducing family financial burdens and are not abused by service providers for financial gain, the state board shall take all necessary action in establishing rules under the Program, including without limitation the disqualification of a participating school or a participating service provider.

Additionally, the state board shall promulgate rules: (1) for the implementation of the Arkansas Children's Educational Freedom Account Program; and (2) to effectively and efficiently administer the Arkansas Children's Educational Freedom Account Program, including without limitation the awarding of funds to participating students, the oversight of the Arkansas Children's Educational Freedom Account Program, and any other necessary aspects for the operation of the Arkansas Children's Educational Freedom Account Program. *See Ark. Code Ann. § 6-18-*

2506(d), as amended by Act 237, § 42. *See also* Ark. Code Ann. § 6-18-2505(h) and § 6-18-2507(j), both as amended by Act 237, § 42 (providing that the state board may promulgate rules to implement the Arkansas Children’s Educational Freedom Account Program).

The state board may also establish rules to determine the maximum amount of funds allowed to remain in each participating student’s account under Ark. Code Ann. § 6-18-2505(f)(3)(B)(i), as amended by Act 237, § 42, and the process by which account funds will be returned to the appropriate fund within the department. *See* Ark. Code Ann. § 6-18-2505(f)(3)(B)(ii), as amended by Act 237, § 42. Likewise, the State Board of Education and the Department of Education may adopt rules to provide the least disruptive process for a participating student who desires to stop receiving funds disbursed under the subchapter and enroll full-time in a public school. *See* Ark. Code Ann. § 6-18-2506(k), as amended by Act 237, § 42.

Finally, by not later than June 30, 2024, the state board shall adopt rules providing for program eligibility for participating service providers that are not participating schools, including without limitation an application process that is executed, at a minimum, annually for the purpose of determining service provider eligibility. *See* Ark. Code Ann. § 6-18-2507(c), as amended by Act 237, § 42.

b. SUBJECT: Rules Governing Educator Licensure

DESCRIPTION: The Department of Education, Division of Elementary and Secondary Education seeks to amend its Rules Governing Educator Licensure. The rules are amended to add definitions necessary for implementation of the rules as well as definitions consistent with Act 237 of 2023 and executive orders signed by Governor Sarah Sanders. Additionally, the definitions section of the rules is amended to remove outdated or unnecessary definitions. Much of the underlined language in the rules is not new language but is existing language that has been reorganized for coherence and clarity.

The following changes are made for coherence and clarity:

- Sections of Chapter 4 of the existing rules are added to the amended Chapter 2.
- Sections of the existing Chapter 2 are added to the amended Chapter 4.
- Section 2-6.0 of the current rules regarding the career continuum is moved to Chapter 6 of the amended rules, which addresses requirements for adding areas, endorsements, and designations.
- Section 3-4.0 of the current rules is moved to the amended Chapter 4.

Section 2-9.0 of the amended rules is added to outline Special Education Personnel Qualifications and Alternate Certifications. This new section allows the Division to provide opportunities for districts to put individuals on pathways to Special Education licensure and to meet the requirements of federal law.

Language is added to the rules to clarify that a substitute teacher may not provide instruction to any student for longer than two semesters.

Section 7-8.0 regarding aspiring teacher permits is added to outline the processes and requirements for the permit.

References to “ArkansasIDEAS” are removed from the rules to allow flexibility in the event that the name of the platform changes.

The existing Appendix A is removed from the rules so that the Division may include information regarding levels and areas of licensure on the Division website and update as needed rather than include this information in administrative rules. Career Technical Permit areas are listed in Section 2-1.0 of the rules.

Appendix B is removed from the rules. Updated information regarding licensure application fees will now be available on the Division website rather than being part of administrative rules. This will allow the Division to make necessary updates without amending the rules.

An appendix regarding updated professional development requirements is added to the rules as “Appendix A.” For this reason, language regarding specific professional development requirements is removed from the rules.

Duplicative language is removed from the rules and technical changes are made.

Following the public comment period, several non-substantive changes were made to correct scrivener’s errors, internal references, and to ensure consistency. In addition, Appendix B was added in response to public comment in order to clarify the provisions of the rule. Also, the SPED 101 academy was defined as a three-hour course. Other minor changes were made including adding language that provided a person 62 years of age or older [is not required to verify] their retirement status and that SPED 101 modules are provided by the Office of Special Education.

PUBLIC COMMENT: A public hearing was held on May 31, 2024. The public comment period expired on June 10, 2024. The agency provided its public comment summary. Due to its length, that summary is attached separately.

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

1) Section 2-1.0 – Is the Division of Career Education referenced in this section the same entity as the “Division of Career and Technical Education” created in Arkansas Code Annotated § 25-30-107?

RESPONSE: This is the same entity; the terminology is aligned to Division of Career and Technical Education in the final draft of the rule following the public comment period.

2) Section 3-1.03.4.1.1 – Does this section of the proposed rules pertain to a clinical internship requirement, a residency requirement, or both?

RESPONSE: The section applies to both clinical internship requirement and a residency requirement. The residency requirement does not take effect until the 2026-2027 school year.

3) Section 1-2.40 – Does the definition of “Preservice Teacher” include an individual with an Aspiring Teacher permit? **RESPONSE:** Yes, they are a “Preservice Teacher” if working under an Aspiring Teacher Permit. (Always) It is technically during their internship.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the amended rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-17-402(b), the State Board of Education shall promulgate rules for the issuance, licensure, relicensure, and continuance of licensure of teachers in the public schools of this state that require at a minimum that each in-state applicant for teacher licensure completes an educator preparation program approved by the Division of Elementary and Secondary Education and demonstrates licensure content area knowledge and knowledge of teaching methods and that require at a minimum that each in-state applicant for an administrator’s license demonstrates knowledge of state-adopted competencies and standards for educational leaders. The State Board may further promulgate rules for a tiered system of licensure, which may include without limitation an emergency teaching permit; a technical permit; a provisional license; a novice or first-time license; a standard license; and a license with advanced requirements. Further authority for the rulemaking can be found in Ark. Code Ann. § 6-17-410(i), which provides that the State Board shall adopt the necessary rules to fully implement the provisions of Ark. Code Ann. § 6-17-410, concerning the application, renewal application, revocation, suspension, and probation relating to teacher licensure. Additionally, the State Board of Education

shall promulgate rules to implement the Highly Qualified Professor and Teacher Act. *See* Ark. Code Ann. § 6-63-105.

The proposed amendments are those made in light of the following Acts:

Act 237 of 2023, § 29, sponsored by Senator Breanne Davis, which created the LEARNS Act and amended various provisions of the Arkansas Code as they relate to early childhood through grade twelve (12) education in the state of Arkansas;

and Act 732 of 2023, sponsored by Representative Brian Evans, which amended provisions of the Arkansas Code as they relate to teacher licensure; amended the conditions under which an individual may teach without a license; amended the qualifications an individual must have to obtain a teaching license; amended the types of licenses that may be considered under a tiered system of teacher licensure; amended the length of time during which a provisional teaching license is valid; and repealed the licensed personnel testing program.

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

1. DEPARTMENT OF EDUCATION, DIVISION OF CAREER AND TECHNICAL EDUCATION (Courtney Salas-Ford, Andrés Rhodes, Daniel Shults, Stacy Smith)

a. SUBJECT: Rules Governing the Arkansas Adult Diploma Program

DESCRIPTION: The Arkansas Department of Education, Division of Career and Technical Education proposes its Rules Governing the Arkansas Adult Diploma Program. Act 546 of 2023 created the Adult Diploma Program and directed the Department of Education to establish a program to allow adult students who have not received a high school diploma to enroll in a program under an approved provider to complete any outstanding requirements for the diploma.

The Division is promulgating this rule to establish a process and legal authority to issue payments pursuant to both grant programs. The rules are necessary to implement Act 546 of 2023. Additionally, the Department believes that rule language is necessary based on requirements established during the development of the request for qualifications required by the Act.

After the public comment period, minor technical changes were made to the rule numbering. All changes were non-substantive.

PUBLIC COMMENT: A public hearing was held on April 23, 2024. The public comment period expired on May 15, 2024. The agency provided the following public comment summary:

Commenter Name: Kristian Starner, Graduation Alliance, VP of Public Policy and Government Affairs

COMMENT: Please consider the following statements as public comment for the document for the Division of Career and Technical Education Rules governing the Arkansas Adult Diploma Program (hereafter shortened to the Arkansas Adult Diploma Rules). The following edits are intended to bring the proposed rules into alignment with the statutory intent of Act 546. Proposed Section 2.03: “Adult dropout recovery services” means any type of assistance provided to a diploma-seeking individual in Arkansas including without limitation:

RESPONSE: Comment considered. No changes made. Any individuals seeking a diploma are students for the purpose of this rule.

Commenter Name: Kristian Starner, Graduation Alliance, VP of Public Policy and Government Affairs

COMMENT: Proposed Section 3.03.2: “Approved program providers who have operated adult education programs for two years or more shall submit a roster for the previous two years of enrolled students, as defined by Section 2.20.” Proposed Section 4.03: “Once a program provider enrolls a student into its program, it shall provide the Department of Education an anticipated average cost of completion of the program for that graduate.” Proposed Section 4.03.1: “The program provider shall provide the department with an updated anticipated average cost of completing the program after each year the student completes.”

RESPONSE: Comment considered. No changes made. It is intended that the Department receive anticipated costs of completion for each student since student needs will vary greatly from student to student. The average cost of completion may not be an accurate estimate.

Commenter Name: Kristian Starner, Graduation Alliance, VP of Public Policy and Government Affairs

COMMENT: Proposed edit to Arkansas Adult Diploma Rules Appendix A: Add “Earned half credit units of high school credit” to the list of milestones for which providers may receive compensation at the rate of \$250 for each earned half credit unit of high school credit. However, “Earned units of high school credit” are not included in Appendix A. Arkansas Code Title 6, Chapter 44, “Arkansas Adult Diploma Act” Section 18A stipulates that a provider will be paid for “Earned units of high school credit.” **RESPONSE:** Comment considered. No changes made. A.C.A. §6-44-302(18)(A) allows reimbursement of accrued units and does not authorize fractional units.

Commenter Name: Kristian Starner, Graduation Alliance, VP of Public Policy and Government Affairs

COMMENT: The legislative intent of Act 546 was to create a policy framework for the Arkansas Adult Diploma Program based on ten years of best practices in over seven states that provide a similar model. The best practices for these policies are structured to compensate providers \$250 for each earned half credit unit of high school credit. In the past two years, Arizona and Missouri implemented programs similar to the Arkansas Adult Diploma Program. Arizona's defined billable milestones, which include earned half credit units of high school credit, can be found in Arizona Revised Statute Section 15-217.02,2 Section E6 and Missouri billable milestones are outlined in Exhibit A, Payment Schedule in the Missouri Workforce Diploma Program RFP S30034902301084 bid solicitation. **RESPONSE:** Comment considered. No changes made. A.C.A. § 6-44-302(18)(A) allows reimbursement of accrued units and does not authorize fractional units.

Commenter Name: Kristian Starner, Graduation Alliance, VP of Public Policy and Government Affairs

COMMENT: Proposed edit to Arkansas Adult Diploma Rules Appendix A: Change the proposed payment for a student who attains a high school diploma to \$1,000 to reflect best practices. The payment proposed in the Arkansas Adult Diploma Rules Appendix A for a student who attains a high school diploma is \$500. Best practices in other states with similar adult education programs, such as Arizona and Missouri, stipulate payment amount for completion of the milestone of graduation is \$1,000. Arizona's defined billable milestones, which include graduation, can be found in Arizona Revised Statute Section 15-217.02, Section E6. Missouri billable milestones, including graduation, are outlined in Exhibit A, Payment Schedule in the Missouri Workforce Diploma Program RFP S30034902301084 bid solicitation. **RESPONSE:** Comment considered. Substantive changes were made which are reflected in the final rules.

Commenter Name: Kristian Starner, Graduation Alliance, VP of Public Policy and Government Affairs

COMMENT: Proposed edits to Arkansas Adult Diploma Rules Appendix A: Change "Industry-Recognized Credentials" to "Workforce Credentials," which reflects best practices; Add workforce credentials that require fewer than 50 hours of training at a rate of \$250; Change the rate for workforce credentials that require between 51-100 hours of training to \$500; Change the rate for workforce credentials that require more than 100 hours of training to \$750; Remove "a student who graduates and is placed in a job within an in-demand career pathway" and associated dollars. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Kristian Starner, Graduation Alliance, VP of Public Policy and Government Affairs

COMMENT: Best practices in these other states stipulate compensation for a workforce credential that requires fewer than 50 hours of training is \$250, a workforce credential that requires between 51-100 hours of training is \$500, and a workforce credential that requires more than 100 hours of training is \$750. The language in the Arkansas Adult Diploma Rules should align with statute to use the term “workforce credentials” instead of “Industry-Recognized Credentials,” because third-party credentials requiring fewer than 50 hours of training “are part of a sequence of credentials that can be accumulated over time” are an important component of adult education. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Dennis Felton, ResponsivEd – Premier High Schools of Arkansas, Director of Virtual Learning

COMMENT: The first comment I want to address was in 2.18 looking at the milestones that’s identified, for which payment is determined. Just want to have the department consider, I know, early on in the transcript evaluation and learning plan development there was consideration of funding from making that milestone and so just want to reiterate the importance of being able to onboard an adult as well as the transcript evaluation and the work is done with their learning plan development should be consideration and payment for that. Also, in 2.18 it identifies a workforce credential. And it uses language the equivalent to a high school credit and just want the department to take into consideration workforce credentials such as safeserve things like Fort Lift operator certification, computer based applications, 1st aid, CPR, OSHA T, OSHA 30, Lifeguard, certified nursing system, phlebotomist programs that things should be considered also as well in the work for credential, even though they may not be equivalent to a high school diploma as far as hours go. **RESPONSE:** Comment considered. No changes made. A change to include credentials beyond high-wage, high-growth fields falls outside the scope of rulemaking.

Commenter Name: Dennis Felton, ResponsivEd – Premier High Schools of Arkansas, Director of Virtual Learning

COMMENT: The other comment was referencing to 2.11, which kind of defined as a graduate, it says a graduate means a student that has successfully completed all the approved program provider requirements in order to obtain a high school diploma. And I just had notes there that I know the state, in looking at the high school diploma graduation requirements the state over the past few years has added a few components such as the student must complete a digital learning, course for credit. A students also must take personal and family finance. A students must pass the Arkansas Civics exam, A student must complete CPR training. And

the computer science requirement and then also just recently added a community service learning requirement. And so just want to state to take some consideration, to us providers that are seeking to meet the 22 credit threshold as far as meet the graduation requirements and limiting the adults receiving high school diplomas to just the 22 credit threshold.

RESPONSE: Comment considered. No changes made. The comment provided falls outside the unit and workforce credentials that may be reimbursable.

Commenter Name: Dennis Felton, ResponsivEd – Premier High Schools of Arkansas, Director of Virtual Learning

COMMENT: The other comment I had, you know, is still regarding 2.18. Where it indicates the milestone to be met. I mean, it's referencing appendix A. If you look at appendix A, it outlines the payment schedule, I mean the payment amount for each milestone. And just looking at, for each credit earned, it says a student, I mean, it says, that it completes. I mean a student who completes a unit of high school credit will receive \$250. And so, in looking at that, I hope the state is taking some consideration to maybe increasing that amount. I know, previously in the RFQ, the amount, the average cost shouldn't exceed 7,000. And so, looking at that. Even, look like compared to K-12 funding for high school student too, will hang out around \$335 per credit hour and so hope to stay take some consideration that maybe increases that amount of \$250 per credit hour to support the sustainability of the program. Overall, I just hope the state, does consider, the milestones and probably we can add milestones to this list or increasing so amounts in particular, looking at that same document Appendix A where it says a student who obtains an industry recognized credentials requiring 50 to a hundred hours of training. Then the provider will receive a hundred \$225. In our research the programs that will require 50 to a hundred hours exceed \$225. They're totally range between \$1,500 to \$2,000 on the lower. And so taking some consideration to make sure that the program and the quality, the quality of the program is sufficiently sustainable. **RESPONSE:** Comment considered. No changes made. Increases to Appendix A reimbursable amounts were discussed and as previously noted the amount for a high school diploma was increased. No other amounts were increased pursuant to public comment.

Commenter Name: Dennis Felton, ResponsivEd – Premier High Schools of Arkansas, Director of Virtual Learning

COMMENT: The state should consider waiving the following graduation requirements for Adults over the age of 21: Students must complete a digital course for credit - A.C.A. § 6-16-1406; Students must earn a credit in a course that includes Personal and Family Finance in grades 9-12- A.C.A. § 6-16-135; Students must pass the Arkansas Civics Exam - A.C.A. § 6-16-149; Students must complete CPR training - A.C.A. § 6-16-

143 Beginning with the entering ninth grade class of 2022-2023, a public high school student shall be required to earn one (1) unit of credit in an ADE-approved high school computer science course before the student graduates. -A.C.A. § 6-16-152. **RESPONSE:** Comment considered. No changes made. Waivers of state requirements fall outside of this rule.

Commenter Name: Dennis Felton, ResponsivEd – Premier High Schools of Arkansas, Director of Virtual Learning

COMMENT: Definition: According to the Draft Rules, “Graduate” means a student who has successfully completed all of the approved program provider requirements in order to obtain a high school diploma. Does this mean that the provider develops their own graduation requirements? Reimbursable Costs: The state should consider reasonable and essential costs associated with educating adult learners. These costs include, but are not limited to technology, backpack, pens, paper, notebook etc. Does IDEA or 504 Applicable for Adults over the age of 21? **RESPONSE:** Comment considered. No changes made. Graduates must complete the state required 22 credits. A provider may exceed that number of credits but may not fall below this threshold. Any reimbursements to costs fall outside the milestones set in Arkansas law and would require legislative changes.

Commenter Name: Dennis Felton, ResponsivEd – Premier High Schools of Arkansas, Director of Virtual Learning

COMMENT: A student who completes an employability skills certification program equal to at least one unit of high school credit obtained through classroom or online instruction. \$250.00. The state should consider offering a minimum of \$1,000.00 for this. The average cost for employability skills certification in Arkansas exceeds \$250.00. A student who attains an industry-recognized credential requiring between fifty and one hundred (50–100) hours of training. \$125.00.

RESPONSE: Comment considered. No changes made. Increases to Appendix A reimbursable amounts were discussed and as previously noted the amount for a high school diploma was increased. No other amounts were increased pursuant to public comment.

Commenter Name: Dennis Felton, ResponsivEd – Premier High Schools of Arkansas, Director of Virtual Learning

COMMENT: The state should consider offering a minimum \$1,000.00 for this. The average cost for employability skills certification in Arkansas exceeds \$250.00. A student who attains an industry-recognized credential requiring more than one hundred (100) hours of training. \$375.00. The state should consider offering a minimum \$1,000.00 for this. The average cost for employability skills certification in Arkansas exceeds \$250.00. A student who attains a high school diploma. \$500.00. Arkansas’ per pupil expenditures for public K-12 is \$12,139. Whereas,

these are adults, this is a significant reduction in funds being available to purchase essential items for educating an adult. A student who graduates and is placed in a job within an in demand career pathway. \$1,250.00.

RESPONSE: Comment considered. No changes made. Increases to Appendix A reimbursable amounts were discussed and as previously noted the amount for a high school diploma was increased. No other amounts were increased pursuant to public comment.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director

COMMENT: Section 2.20 - The subsections here have flipped numbers so that they should be 2.20.1, 2.20.2, and 2.20.3 instead of the 2.02.1, 2.02.2, and 2.02.3 that they currently are. **RESPONSE:** Comment considered. Non-substantives changes were made.

These rules were filed on an emergency basis and were reviewed and approved by the Executive Subcommittee on April 23, 2024; the agency states that the emergency rule expires on August 25, 2024. The proposed effective date for permanent promulgation is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-44-303(d), the Department shall promulgate rules necessary to implement the Arkansas Adult Diploma Program Act, codified in Ark. Code Ann. §§ 6-44-301 through 308. Further rulemaking authority is found in Ark. Code Ann. § 6-44-304(b)(1), which provides that the Department shall promulgate rules necessary to establish the: 1) criteria as described under Ark. Code Ann. § 6-44-304(b)(2), under which an entity becomes an approved program provider; and 2) performance standards as specified under the Act for an approved program provider to continue to participate in the program.

The proposed rules implement Act 546 of 2023, sponsored by Representative David Ray, which established the Arkansas Adult Diploma Program Act.

b. SUBJECT: REPEAL: 1990 Methods of Administration

DESCRIPTION: The Department of Education, Division of Career and Technical Education seeks to repeal its 1990 Methods of Administration. In 1977, the *Adams v. Califano* decision required the federal Department of Education (DOE), to enforce civil rights protections contained in Title VII of the Civil Rights Act in career and technical education (CTE)

programs by requiring states to submit to the DOE a desegregation plan called Methods of Administration (MOA), which outlined how the states would implement CTE in a non-discriminatory way, including the civil rights protections. The DOE did this by promulgating rules for compliance with Title VII, then later issuing guidance for the states in the form of a Memorandum of Procedures (MOP) in 1979. In 1980, Arkansas submitted its original MOA, which was not promulgated as a rule.

In 1996, the DOE revised its MOP for states to use when preparing their MOAs. Arkansas, through the former Arkansas Department of Education, Vocational and Technical Education Division, made its second major revision to its MOA, which was promulgated as a rule – which are the ones the Division is proposing to repeal. Various statutes enacted by Congress, including Perkins III in 1998, Perkins IV in 2006, the Workforce Opportunity and Investment Act of 2014, the Every Student Succeeds Act of 2015, and Perkins V in 2018, as well as “Dear Colleague” letters from the DOE, made substantive changes to those civil rights protections for, and the related state requirements when implementing CTE. In February 2020, the DOE released a revised MOP based on those substantive changes to the state, including a new guidance to use when updating their MOAs. In July 2020, Arkansas, through the since renamed Division of Career and Technical Education prepared its new MOA based on the updated MOP.

Some key points concerning the repeal include the following:

- Federal law only requires that the State Education Agency receiving federal funds submit a plan for how it intends to implement CTE in the state.
- Civil rights enforcement responsibility still rests with the federal Department of Education through the Office of Civil Rights (OCR).
- Arkansas, through the Department of Education, Division of Career and Technical Education, has submitted a plan, titled Arkansas’ Methods of Administration (MOA), that complies with federal requirements.

Because the 1990 MOA is outdated and incorrect due to substantive changes in the law, it should be repealed. Additionally, because the new Arkansas MOA, as written, complies with federal law and the Division is only obligated to provide oversight, auditing, data gathering and reporting of noncompliance to the OCR, promulgation of the MOA as a rule is unnecessary and inefficient.

PUBLIC COMMENT: A public hearing was held on May 31, 2024. The public comment period expired on June 10, 2024. The agency indicated that it received no public comments.

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

1) Is the agency satisfied that these rules are not required by either state or federal law? **RESPONSE:** When we researched this issue long ago, we could find no legal requirement for us to have this in rule, either under state or federal law. The OCR requires that the Department have a policy of nondiscriminatory CTE programs and a program for implementation of CTE programs in a nondiscriminatory way. Both of those are addressed in the Methods of Administration document found on our website, which [is] linked here [<https://dcte-admin.ade.arkansas.gov/docs/Resources/Arkansas%20MOA%20Plan.pdf>]. To my knowledge, we are not required to notify either OCR or the federal Department of Education that we're repealing the rule – according to our folks at DCTE, they have reviewed and approved our most recent revision of the MoA that [is] linked.

2) Is the agency required to notify the Office of Civil Rights that it is repealing this rule? **RESPONSE:** See response to Question 1.

3) Is the agency required to notify the United States Department of Education that it is repealing this rule? **RESPONSE:** See response to Question 1.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The division has indicated that the rule repeal has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-11-105(a)(13), the State Board of Education shall administer the state's early learning and education system, which shall include the administration of relevant rules related to administering funding, licensing, standards, and program requirements. Further authority for the rulemaking can be found in Ark. Code Ann. § 6-11-205(a)(3), which provides that the State Board may promulgate rules as are necessary on the part of the state to meet any requirement of the United States Government in the distribution of federal aid. Finally, the State Board may make plans and rules as are necessary in order for this state to meet the requirements of any law enacted by the United States Congress for vocational-technical education or any supplementary federal regulations pertaining to that legislation. *See* Ark. Code Ann. § 6-11-207.

2. **DEPARTMENT OF EDUCATION, DIVISION OF ELEMENTARY AND SECONDARY EDUCATION** (Courtney Salas-Ford, Andrés Rhodes, Daniel Shults, Stacy Smith)

a. **SUBJECT: Rules Governing Professional Development**

DESCRIPTION: The Department of Education’s Division of Secondary and Elementary Education proposes amendments to its Rules Governing Professional Development. These rules are being amended pursuant to Acts No. 745 of 2017; No. 765 of 2017; No. 936 of 2017; No. 666 of 2019; No. 1029 of 2019; No. 620 of 2021; No. 648 of 2021; and No. 548 of 2023. These rules are being amended to remove outdated language referencing the Arkansas Comprehensive Testing, Assessment, and Accountability Program Act, which was repealed by Act 930 of 2017. The rules also amend language to remove some of the barriers to professional development by including a process by which educators can earn professional development through a micocredential or a specific course instead of only being able to earn professional development through hours of orientation. The rules remove some of the unnecessary structure for professional development, allowing districts to be more flexible and innovative in providing professional development, and educators to be more flexible in meeting requirements. Finally, the rules add language to comply with laws requiring professional development in several key subject areas, including bullying prevention, human trafficking prevention, mental health awareness, and family and community engagement.

After a public comment period, a few substantive changes were made, which necessitated a second round of public comment. Those changes included: allowing education service cooperatives to offer professional development to their own staff without going through the formal Department approval process, aligning rule language with statutory language, and adding professional development requirements for school districts identified as in need of targeted or comprehensive support.

After a second round of public comment, minor non-substantive changes were made.

PUBLIC COMMENT: A public hearing was held on January 2, 2024. The public comment period expired on January 22, 2024. A second public comment hearing was held on May 31, 2024, and the second public comment period expired June 10, 2024. The Division provided the following summary of comments it received and its responses thereto:

Commenter Name: Lucas Harder, Policy Services Director, Arkansas School Boards Association

COMMENT: In 3.01.1.1 (formerly 3.02.1.1) that there is nothing specifically stated the ESCs can offer PD to their own staff without going through the approval process unless we are including them under the school districts. 3.01.1.2 allows ESCs to provide training to districts without receiving training, but does not include their own staff.

RESPONSE: Comment considered. A substantive change was made.

Commenter Name: Lucas Harder, Policy Services Director, Arkansas School Boards Association

COMMENT: Several sections are being repealed despite them still being included in the statutes:

- 3.06 is still included in 6-17-705 by reference to the sick leave statutes 6-17-1201.
- 3.07 is still included in 6-17-705 by reference to the sick leave statutes 6-17-1201.
- 3.14 is still included in the list of options in 6-17-704(d)
- 4.04 is included in 6-17-704
- 4.07 is still in 6-17-705
- 9.01.2.4 would still be covered by 6-15-2907(i) as it is nearly identical language as was previously found in 6-15-438.
- 9.01.2.9 effectively got moved from 6-18-1004 to 6-18-2004 with the transition to the Comprehensive School Counseling Plan by Act 190 of 2019.

RESPONSE: Comment considered. Non-substantive changes were made.

Commenter Name: Sally Bennett, PLC Regional Network Consultant, AAEA

COMMENT: “Learning Teams - a group of educators who meet regularly as a team to identify essential and valued student learning, develop common formative assessments, analyze current levels of achievement, set achievement goals, share strategies, and then create lessons to improve upon those levels.” I would like to see this section remain in the rules. Research is clear regarding the collective teacher efficacy of teams of teachers working collaboratively. In the rules governing professional learning communities, this language is prevalent. In an aligned system, all components of the system should support one another. **RESPONSE:** Comment considered. No changes made. Learning teams is not used within the rule and therefore, needs no definition.

Commenter Name: Sally Bennett, PLC Regional Network Consultant, AAEA

COMMENT: ““Study Group” means a group of educators who meet to learn, implement, and reflect on research-based techniques in a focus

area(s). Members read and discuss current research, examine and reflect on effective instruction, or examine student work.” The collaborative work teachers do with one another is much more than a “study group.” They are collaborative teams who have a common goal and who work interdependently to support high levels of learning. I would recommend changing the “study group” term to “collaborative team” to emphasize the important professional work and job-embedded learning done by teachers. **RESPONSE:** Comment considered. No changes made. Study group is not used within the rule and therefore, needs no definition.

Commenter Name: Sally Bennett, PLC Regional Network Consultant, AAEA

COMMENT: “Collaborative learning community” Inserting the word “professional” would align with the rules governing professional learning communities. This would support the significance of this work that has been and will continue across the state. **RESPONSE:** Comment considered. No changes made. Collaborative professional learning community is not a term used in this rule and the insertion of the term professional would be redundant.

Commenter Name: Christopher Smith

COMMENT: Replacing School Districts with Public School Districts sets a clear line that private schools will not be required to have professionally trained and effective educators. What’s good for the goose is good for the gander, and if government money is being used to subsidize private education it should be required to adhere to the same level of professionalism that is expected and required of all public schools. **RESPONSE:** Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.

Commenter Name: Lucas Harder, Policy Services Director, Arkansas School Boards Association

COMMENT: The “and” at the end of 1.02.2.1 should be stricken and moved to be after 1.02.2.2 instead. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Policy Services Director, Arkansas School Boards Association

COMMENT: The period at the end of 1.02.2.2 should be changed into a semicolon and followed by an “and” to account for the extension of the list. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Policy Services Director, Arkansas School Boards Association

COMMENT: In section 1.03, given that the acts being cited are eight years old at this point and were being cited for the changes in 2016, I would recommend removing these from the citations. In addition, 6-17-701 and 6-17-402 are out of numerical order. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Policy Services Director, Arkansas School Boards Association

COMMENT: In section 3.01.1., for consistency with other places in the rules and further clarification, I would recommend changing this to read “school district, open-enrollment public charter school, or education service cooperative”. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Policy Services Director, Arkansas School Boards Association

COMMENT: In section 3.01.1.3, due to this being the end of the list, the semicolon on the end should be a period. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Policy Services Director, Arkansas School Boards Association

COMMENT: In section 3.02, as individuals teaching under a waiver can also use Arkansas IDEAS, I would recommend striking “licensed” so that it just reads “Arkansas educators”. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Policy Services Director, Arkansas School Boards Association

COMMENT: In former sections 3.06 and 3.07, both of these are still required by A.C.A. § 6-17-705(c)(1) through its incorporation of A.C.A. § 6-17-1202. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Policy Services Director, Arkansas School Boards Association

COMMENT: In other places in the Rules, “Division” is used while “Department” is used in section 3.13. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Policy Services Director, Arkansas School Boards Association

COMMENT: In section 4.02.3, for grammatical purposes, I would recommend changing this to read “Required for the educator to obtain”.

RESPONSE: Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Policy Services Director, Arkansas School Boards Association

COMMENT: In section 4.03, for grammatical purposes, a “that” needs to be included before “earned”.

RESPONSE: Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Policy Services Director, Arkansas School Boards Association

COMMENT: In former section 4.04, this language is still required by A.C.A. § 6-17-704(f) and A.C.A. § 6-17-705(c)(1).

RESPONSE: Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Policy Services Director, Arkansas School Boards Association

COMMENT: In former section 4.06.2, this language is required by

A.C.A. § 6-15-1004(b)(2)(B)(i). **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Policy Services Director, Arkansas School Boards Association

COMMENT: In former section 4.07, this language is still required by

A.C.A. § 6-17-705(a) and (b). **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Policy Services Director, Arkansas School Boards Association

COMMENT: In section 5.04.1.2.b, I would recommend changing “under

this section” to “under section 6.04.2.2 5.04.1.2.a”. **RESPONSE:**

Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Policy Services Director, Arkansas School Boards Association

COMMENT: Section 6.02 is missing the sudden cardiac arrest prevention training requirement from Act 1013 of 2017.

RESPONSE: Comment considered. No changes made. The substance of this comment is partially addressed §7.02.14.2.

Commenter Name: Lucas Harder, Policy Services Director, Arkansas School Boards Association

COMMENT: In section 6.04.4, to match the language in A.C.A. § 6-17-706(a)(4), this should be “High school equivalency test examiners”.

RESPONSE: Comment considered. A substantive change was made.

Commenter Name: Lucas Harder, Policy Services Director, Arkansas School Boards Association

COMMENT: In section 8.03.3, “Study groups” are still a valid option

under A.C.A. § 6-17-704(d). **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Policy Services Director, Arkansas School Boards Association

COMMENT: In section 7.03.6, there is an extra “s” at the end of

“service” in Education Service Cooperative”. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Policy Services Director, Arkansas School Boards Association

COMMENT: 9.01.2.4: As A.C.A. § 6-15-420 was repealed by Act 930 of 2017, I would recommend replacing this statutory citation with A.C.A. § 6-15-2907. For purposes of our model policy on professional development, we have been citing to A.C.A. § 6-15-2907(i) especially to make sure that a staff person would only be disciplined under 6-15-2907(i)(3) after receiving appropriate training. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Policy Services Director, Arkansas School Boards Association

COMMENT: ~~9.01.2.9:~~ Act 190 of 2019 replaced the student services plan with the Comprehensive School Counseling Plan under 6-18-2004 that has similar training language. **RESPONSE:** Comment considered. A substantive change was made.

Commenter Name: Lucas Harder, Policy Services Director, Arkansas School Boards Association

COMMENT: ~~9.01.2.10~~ 8.01.2.8: I would recommend replacing “Department of Education” with “Division” for consistency with other places in the Rules. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Policy Services Director, Arkansas School Boards Association

COMMENT: ~~9.02~~ 8.02: As written, the language would not expressly allow for a district or open enrollment charter that is under intensive

support to be required to undertake specific PD. I would recommend changing this to “targeted, comprehensive, or intensive support”.

RESPONSE: Comment considered. A substantive change was made.

Commenter Name: Alexis Jackson, Senior Fellow, Teach Plus

COMMENT: Teach Plus Arkansas Policy Fellowship Recommendations
Our team of Teach Plus Policy Fellows has reviewed the proposed draft of the Rules Governing Professional Development. We commend the Department of Elementary and Secondary Education (DESE) for its commitment to enhancing the depth and quality of teacher preparation. Based on the insights gleaned from the Professional Development and Teacher Evaluations 2022 Adequacy Study, which emphasizes the positive impact of effective professional development on teacher well-being and retention, we present three key recommendations for refining the proposed draft rules governing professional development:

1. Enhance transparency in Professional Development Plans

Within the Arkansas Department of Education, Division of Elementary and Secondary Education’s (DESE) Rules for Governing Professional Development, School Districts provide yearly DESE-approved professional development plans. The ability of teachers to partake in purposeful and appropriate professional development is integral for the preparation and implementation of instruction that ensures all students acquire skills necessary to demonstrate proficiency on the state academic standards. We propose that Professional Development Plans should be submitted and those plans made public in advance on each district website and ADE Data Center (My School Info) to ensure purposeful professional development is provided each of the required six days.

The transparency facilitated by the subsequent posting by school districts will guarantee consistency and high-quality training for teachers and administrators across the state. We recommend that school districts post their professional development plans on district websites to foster collaboration and the sharing of effective professional development ideas.

RESPONSE: Comment considered. No changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.

Commenter Name: Alexis Jackson, Senior Fellow, Teach Plus

COMMENT: 2. Clarify the state-wide minimum requirement for annual professional development hours.

The draft rules for professional development mention specific professional developments to be completed and the minimum number of professional development days required be made more clear. According to rule 1.02.1,

districts must provide at least six professional development days. We recommend the inclusion of a clearer language of the state-wide minimum requirement for annual professional development hours within the draft rules. While Rule 1.02.1 specifies that districts must provide at least six professional development days, the total annual professional development hours are only mentioned in the definitions section 3.08. To ensure educators and administrators fully understand their professional development expectations, it is essential to explicitly state the total annual required professional development hours. This clarity will empower educators to plan and schedule their professional development effectively and provide districts with guidance for documentation and tracking. This also allows uniformity across the state considering the variations of time configurations to determine “school days.”

Considering the time and purpose of professional development, educators could benefit by clearly knowing the required hourly total, thus allowing educators to appropriately plan and schedule for professional development. Mandating a minimum annual hour requirement will also provide districts with guidance for documentation and tracking of professional development and expectations for educators and administrators. This also ensures educators will be provided with a sufficient amount of training to properly reach building-level, district-level, state-level, and academic standards. **RESPONSE:** Comment considered. No changes made, §3.13 defines a professional development day to include six hours and therefore, six days of professional development would equate to thirty-six hours.

Commenter Name: Alexis Jackson, Senior Fellow, Teach Plus

COMMENT: 3. Expand Approved Professional Development Activities to Include Onboarding Training

In section 7.02, the draft rules provide an outline of approved professional development focus areas. Notably absent is an opportunity for teachers new to a school building to receive onboarding training relevant to the specific context and culture of the school. We recommend adding a new subsection to the list of approved focus areas, encompassing training in building-level routines, procedures, and logistics.

- Building level routines – such as arrival, dismissal, and mid-day transitions,
- Onboarding Information as behavior management strategies, discipline referral process, and procedures for accessing support services (such as the school nurse, counselors, special education coordinator, gifted and talented director, etc.)
- Expense and requisition processes – such as field trips, enrichment planning, and acquiring classroom supplies.

Teachers who are new to a school building need training and preparation to acclimate to a different school culture. By including onboarding activities in the approved focus areas, we aim to standardize and enhance the onboarding experience for teachers across the state. This modification will provide clarity and guidance to school districts, ensuring that onboarding activities contribute to educators' required professional development hours. In conclusion, we express our support for DESE's efforts to implement professional development rules that ensure professional development that prioritizes purposeful guidance, detailed expectations, and flexibility in learning and planning. This approach will result in equitable and accurate measurement of the training and development provided to educators, ultimately benefiting all students. We believe that by collaboratively establishing a system to increase the number of prepared, quality teachers, we contribute to the betterment of education for all. **RESPONSE:** Comment considered. No changes made. The requested policy is within the discretion of the local school district and concerns school business as opposed to professional development. Nothing in these rules prevents a school district from awarding credit for new employee training that satisfies the requirements of this rule in their orientation process.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director

COMMENT: 1.02.1 – The citation to “3.10” should be a citation to “3.13”. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director

COMMENT: 1.03 – Language from A.C.A. § 6-15-1104 is still being used in the rules, especially subsection (b) is being used at “4.06 4.07” through “4.06.3.2 4.08.2”. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director, 05/29/2024

COMMENT: 3.15: – Study groups are still included in the list of options for PD under A.C.A. § 6-17-704(d). **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director

COMMENT: 4.01.1 – Due to the definition of “TESS” at 3.19, this could be shortened to just “Based on the teacher’s evaluation and professional growth plan under TESS;”. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director

COMMENT: ~~4.05~~ 4.06 – The requirement for all professional development that an educator provides to receive two (2) hours of credit must be approved by the employer could substantially hinder getting presenters during the summer. I can see where it would make sense for a district to have to sign off on providing a professional leave day for an employee to be able to get trainer credit during the student instructional days, but not during the time that it outside of the basic teacher contract period. If this is instead to require the teacher’s employer to sign off on it receiving two (2) hours of credit for a training, I could see that as being problematic as what employer is going to want to sign off on it as being a training if they can get extra hours out of an employee. **RESPONSE:** Comment considered. No changes made. The local school district contracts with the educator regarding compensation for professional development. Consequently, based on the principle of local control, the department vests determinations regarding hours satisfying contractual obligations with the local school district.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director

COMMENT: ~~4.06.3~~ 4.08 – The citation to “4.06.1” should be to “4.07” instead. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director

COMMENT: ~~4.06.1~~ ~~4.06.2.2~~ – These are all statutorily required under A.C.A. § 6-15-1004(b). **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director

COMMENT: 5.04.1.1: The “two” is missing the parenthetical Arabic numeral. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director

COMMENT: 5.04.1.2: The “two” is missing the parenthetical Arabic numeral. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director

COMMENT: ~~7.02~~ 6.02: This section is missing the requirement for the training to include sudden cardiac arrest prevention from Act 1013 of 2017 and codified at A.C.A. § 6-18-708(a)(4). **RESPONSE:** Comment considered. No changes made. The substance of this comment is partially addressed §7.02.14.2.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director

COMMENT: 8.03.3 – “Study groups” are still an option for earning PD under A.C.A. § 6-17-704(d). **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director

COMMENT: ~~9.01.2.3~~ 8.01.2.3: As A.C.A. § 6-15-420 was repealed by Act 930 of 2017, I would recommend replacing this statutory citation with A.C.A. § 6-15-2907 as it covers similar language. **RESPONSE:** Comment considered. A non-substantive change was made.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses from the Division:

(1) Section 1.02.1 of the proposed rules, concerning regulatory authority, references the basic contract for educators contemplated in Ark. Code Ann. § 6-17-2402, which provides that a public school district shall not require more than four (4) days of professional development in addition to the six (6) days of professional development included in a basic contract under Ark. Code Ann. § 6-17-2402(1)(A)(i). Was it the division’s intent not to explicitly include within these rules the four (4) day cap set out in the Arkansas Code provision referenced above? **RESPONSE:** We didn’t see the need to explicitly include that language since the statute is clear on the cap.

(2) Section 5.04.1, which concerns scheduled professional development, provides that the listed areas of professional development are required **within one (1) year** of receiving a teaching license. This language appears to be at odds with Ark. Code Ann. § 6-17-709(e)(3)(A), which provides that, upon the issuance of an initial teaching license by the division, an applicant shall obtain training in the following areas within his or her *first two (2) years* of initial employment as a licensed teacher in this state: mandated reporting; family and community engagement; teen suicide awareness and prevention; Arkansas history; and human trafficking. Should this section of the proposed rules reference two (2)

years as opposed to one (1) year? **RESPONSE:** This language has been amended.

(3) Section 5.04.1.7 – Under what authority does the division require dyslexia professional awareness training within the first year of receiving a teaching license? **RESPONSE:** Arkansas Code § 6-41-608 requires that the Division ensure that each teacher receives professional awareness on the characteristics of and interventions for dyslexia. The statute is silent on when that has to happen, so the agency is establishing a timeline via rule.

Changes were made to the rules after the initial public comment period. The following questions were asked based upon those changes:

(4) Did the agency intend to leave unaltered the language in Section 5.04.1, concerning the one (1) year limitation on newly licensed teachers receiving professional development on mandated reporting? **RESPONSE:** Yes, the agency intended the one-year limitation. It appears that the corresponding statute sets a maximum ceiling of two years. However, it leaves a possibility of noncompliance if a licensed educator is never employed as a licensed teacher by a district. By requiring professional development to be completed within one year of receiving a license, the agency is ensuring compliance with the two-year requirement found in statute for all licensed educators equally.

(5) Section 8.03.3 – Did the agency intend to remove “learning teams” from the list of approved forms of professional development? If so, did the agency intend to leave the definition of the term “Learning Teams” in Section 3.09 of the proposed rules? **RESPONSE:** Yes, the agency intended to remove that reference. It was removed from the final draft rule after the second round of public comment. The agency is satisfied that that was a non-substantive change.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the amended rules do not have a financial impact.

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 6-17-704(g), accreditation for or approval of professional development for public school teachers and administrators is governed by the rules of the State Board of Education. Additionally, Ark. Code Ann. § 6-10-122, which concerns automated external defibrillators, provides that the state board shall promulgate rules to require appropriate school personnel be adequately trained on an ongoing basis. Further rulemaking authority is found in Ark. Code Ann. § 6-11-105(a)(13), which provides that the state

board shall administer the state's early learning and education system, which shall include the administration of relevant rules related to administering funding, licensing, standards, and program requirements. Further, the state board may promulgate rules to implement the certification process for instructional staff development sessions. *See* Ark. Code Ann. § 6-17-702(a)(2).

The state board shall promulgate the rules necessary for the proper implementation of Ark. Code Ann. § 6-17-705, which concerns professional development credit. *See* Ark. Code Ann. § 6-17-705(e). The state board shall also promulgate the rules necessary for the proper implementation of Ark. Code Ann. § 6-17-706, which concerns professional development credit exemption. *See* Ark. Code Ann. § 6-17-706(b). Additional rulemaking authority is found in Ark. Code Ann. § 6-17-402(b), which provides that the state board shall promulgate rules for the issuance, licensure, relicensure, and continuance of licensure of teachers in the public schools of this state. The state board is further authorized to promulgate rules consistent with the provisions of Ark. Code Ann. § 6-20-2204, which concerns required training under the Arkansas Educational Financial Accounting and Reporting Act of 2004. *See* Ark. Code Ann. §§ 6-20-2201 – 2210. Finally, the Division of Elementary and Secondary Education shall promulgate rules to administer the additional professional development funding under Ark. Code Ann. § 6-20-2305(b)(5)(C)(i), which concerns school funding for professional development. *See* Ark. Code Ann. § 6-20-2305(b)(5)(C)(ii)(a).

The proposed rules implement Act 548 of 2023, sponsored by Representative DeAnn Vaught, which amended the professional development schedule required for licensed school personnel and amended the definition of a “basic contract” under the Teacher Compensation Program of 2003 to limit the number of additional days of professional development a public school district shall require.

b. SUBJECT: Rules Governing Public School Policies Relating to Overnight Travel and Use of Public School Lavatories

DESCRIPTION: The Department of Education, Division of Elementary and Secondary Education seeks to promulgate its Rules Governing Public School Policies Relating to Overnight Travel and Use of Public School Lavatories. Per the agency, pursuant to Act 317 of 2023 and the authority of Ark. Code Ann. § 6-11-105, the Division is charged with promulgating rules regarding overnight trips for public schools and open-enrollment public charter schools. Act 317 is codified at Ark. Code Ann. § 6-10-317. The purpose of this rule is to provide guidelines for public school districts and open-enrollment public charter schools to provide for the privacy and

safety of students during overnight trips and during the use of lavatories or multiple occupancy changing rooms.

KEY POINTS

- Each public school district and open-enrollment public charter school is required to designate multiple occupancy restrooms or changing areas as either for the exclusive use of the male or female sex.
- Establishes that access to single-occupancy restrooms or changing area is a reasonable accommodation and the guidelines for such an accommodation.
- Creates exemptions for coaches and personnel providing services required by an IEP.

DISCUSSION

This rule is being promulgated to implement Act 317 of 2023 and to ensure that Arkansas Public Schools comply with the requirements of the Act. Following the first public comment period, language was added which provides the rule does not apply to coaches addressing student athletes before, during, or after an athletic event so long as no person is in a state of undress and a school employee of the same sex as the student athlete is present. Language was also added which provides the rule does not apply to personnel providing service required by an Individualized Education Program.

POST PUBLIC COMMENT CHANGES

The primary change was the addition of section 6 which creates exemptions to the prohibitions under the portions of the rule governing restrooms and changing areas for personnel providing services required by a student's IEP as well as coaches or athletic personnel under limited circumstances.

In addition, one typographical error was corrected and one error in an internal citation was corrected.

PUBLIC COMMENT: A public hearing was held on April 18, 2024. The public comment period expired on April 24, 2024. A second public comment hearing was held on May 22, 2024 and the second public comment period expired on June 10, 2024. The agency provided a summary of the public comments it received. Due to its length, that summary is attached separately.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following questions and was provided with the following agency responses:

1) Section 2.02 – Is there a reason why the definition of “multiple occupancy restroom or changing area” refers to use by two (2) or more individuals, when Arkansas Code Annotated § 6-21-120(a)(1)(A), as amended by Act 317 of 2023, § 2, refers to use by one (1) or more individuals? **RESPONSE:** The rules clarify ambiguity in the statute. Without this clarification, the definition of multiple occupancy restrooms would encompass single occupancy restrooms.

2) Section 6.02 of the proposed rules adds an exception for coaches or athletic personnel when addressing student athletes participating in athletic activities a reasonable time before, during, or immediately after an athletic event. Does the agency feel comfortable that it has the authority to create this exception, in light of Ark. Code Ann. § 6-21-120, which concerns public restrooms and designations based on sex? **RESPONSE:** Yes, the 6.02 exception is designed only to apply when the room is being used as a room designed and designated as a meeting room and not designed and designated as a restroom or changing area.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-11-105, the State Board of Education shall administer the state’s early learning and education system, which shall include the administration of relevant rules related to administering funding, licensing, standards, and program requirements. Further authority for the rulemaking can be found in Ark. Code Ann. § 6-21-120(g), which provides that the Division of Elementary and Secondary Education shall promulgate rules to implement Ark. Code Ann. § 6-21-120, as amended by Act 317 of 2023, which concerns public school restrooms and designation based on sex.

The rules implement Act 317 of 2023, sponsored by Representative Mary Bentley, which concerned a public school district or open-enrollment public charter school policy relating to the sex of a public school student who attends a public school sponsored or supervised overnight trip, and concerned the designation of a multiple occupancy restroom or changing area based on an individual’s sex.

c. **SUBJECT: Rule Governing School Transformation Contracts**

DESCRIPTION: The Arkansas Department of Education, Division of Elementary and Secondary Education proposes its Rule Governing School Transformation Contracts. Act 237 of 2023 created contracts for school transformation, a process by which a public school or public school

district that is classified as a “D” or an “F” school or in Level 5 Intensive Support can contract with an existing open-enrollment public charter school to turn the public school or public school district into a transformation campus. The transformation campus would be under the oversight and governance of the local school board, but the open-enrollment charter operator would take over management and day-to-day operations of the school or school district for the duration of the contract.

This rule expands on the statute in several key areas. The rule includes provisions that clarify what terms must be included in a transformation contract, including: 1) ensuring comprehensive management of the transformation campus by the transformation charter operator; 2) identifying annual goals, milestones, and performance targets that the transformation charter operator should achieve; 3) terminating a contract when the goals and purpose of the contract have been satisfied; and 4) reporting requirements that enable the Division to monitor effectiveness of transformation contracts.

Post-public comment, there were some non-substantive changes made.

PUBLIC COMMENT: A public hearing was held on April 23, 2024. The public comment period expired on May 15, 2024. The agency provided the following public comment summary:

Commenter Name: Lucas Harder, Arkansas School Boards Association
COMMENT: 1.01 – The citation to 6-16-156 should be a citation to 6-15-3204. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association
COMMENT: 3.01 – While I recognize that this language matches with the statute, it does not appear to align with current practice as the school rating system provides a letter grade for an individual school but that districts instead receive a given level of support instead of a letter grade. **RESPONSE:** Comment considered. No changes made. The rule has been drafted to include the statutory language referenced and we have noted this comment for future legislation.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director
COMMENT: As 6.04 is the only section that mentions financial incentives, I would recommend changing the citation from “6.00” to “6.04”. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director

COMMENT: 4.01 – There is an “of” missing from between “board” and “directors”. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director

COMMENT: 5.01.3.17 – There should be a “the” between “with” and “Standards”. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director

COMMENT: 5.05 – There is a missing parenthetical Arabic numeral one after “one” for consistency with other Rules. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director

COMMENT: 6.01.1 – This should be 6.02.1 instead. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director

COMMENT: 6.01.1 – This should be 6.02.1.1 instead. The citation to 6.01.1 here should be to 6.02.1 instead. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director

COMMENT: 6.01.2 – This should be 6.02.2 instead. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Arkansas Public School Resource Center

COMMENT: Section 1.01, Page 1: Shouldn’t the Rules should be entitled Arkansas State Board of Education (SBE) Rules rather than Division of Elementary and Secondary Education (DESE) Rules (see Ark. Code Ann. §6- 15-3204). **RESPONSE:** Comment considered. No changes made. While the rules are approved by the State Board of Education, the division is the agency charged with implementing its rules.

Commenter Name: Arkansas Public School Resource Center

COMMENT: Section 2.05, Page 1, Definition of “Transformation Campus Operator”: The definition is too vague, arbitrary and capricious. The SBE should create a definition of the term “another entity” that

defines the clear parameters of such an entity and what criteria is necessary for the SBE to approve such an entity, similar to the requirements for approval of charter schools as parties to a school transformation contract. Otherwise, this vague, undefined term may be abused in an arbitrary and capricious manner that creates potential enforcement, accountability, and legal issues for the SBE and/or DESE. **RESPONSE:** Comment considered. No changes made. The language in the rule mirrors Arkansas Code § 6-15-3201.

Commenter Name: Arkansas Public School Resource Center

COMMENT: Sections 3.02.1 and 5.05.1, Pages 2 and 6, respectively, School Eligibility and Terms of School Transformation Contract Sections: There is no authority in law allowing the State to subsequently invalidate or void an otherwise valid contract; these provisions of the Rules are thus ultra vires and illegal. **RESPONSE:** Comment considered. A non-substantive change was made. Section 3.02.1 was struck from the rule; section 5.05.1 highlights the relationship between the school district and the transformation campus operator, in that the transformation campus operator should be working in the best interest of the school district as its fiduciary.

Commenter Name: Arkansas Public School Resource Center

COMMENT: Section 5.01.1.1, Page 3, Terms of School Transformation Contract Section: The SBE should move Section 5.01.1.1 to the Definitions section of these Rules, and clarify that the term “any student” includes any student eligible to attend a transformation campus or school district and not only “... public school students with protections under Arkansas and federal law.” **RESPONSE:** Comment considered. No changes made. The rule language contemplates this comment, as the rule is currently written. Additionally, the provision cited states that insofar as it is being applied to section 5.01.1, “any student” includes students identified as having specialized educational needs and as a catch-all “students with protections under Arkansas and federal law.”

Commenter Name: Arkansas Public School Resource Center

COMMENT: Section 5.02.1, Page 5, Terms of School Transformation Contract Section: The Phrase “... shall be for the benefit of the public school district...” as a required legal term or purpose of a transformation contract is not contained within the language of the school transformation contract law, and therefore, should be considered ultra vires. The primary purpose of these contracts is for the educational benefit of public school students attending an academically failing state take-over or D-F designation public school or district through the transformation of the school or district. The purpose of this law is to allow for the transformation of the school or district’s management, culture, design, operations, etc. by a qualified independent third-party in any innovative

manner allowed by law, and approved by the SBE and DESE, for the primary benefit of the students. The misrepresentation of a required term or purpose of a transformation contract that is counter or perverse to the full authority of Arkansas law governing transformational contracts, and is therefore, ultra vires. For example, to mandate such a restricted required phrase or purpose in a transformation contract as described in Section 5.01.1 acts to limit the greater flexibility and autonomy of school transformational contract terminology and focus to the more restricted or limited contractual legal authority of school improvement work.

RESPONSE: Comment considered. No changes made. The language cited highlights the relationship between the school district and the transformation campus operator, in that the transformation campus operator should be working in the best interest of the school district as its fiduciary.

Commenter Name: Arkansas Public School Resource Center

COMMENT: Sections 5.02.1.1 and 5.06.1, Pages 5 and 6, respectively, Terms of School Transformation Contract Section: These provisions are ultra vires because they are too broad. The State cannot conduct an illegal taking of private property without lawful authority (Fifth Amendment to the Constitution). For example, these provisions would claim to allow the State to take a private grant, or resources obtained by an operator to assist in serving a transformation school, even if those resources never were intended to, nor became, public resources of the transformation school or district. **RESPONSE:** Comment considered. No changes made. The language cited highlights the relationship between the school district and the transformation campus operator, in that the transformation campus operator should be working in the best interest of the school district as its fiduciary. Nothing in this rule prevents contracting and negotiations, nor allows the State to take private property. These sections only apply to actions taken by transformation campus operators on behalf of the school district, not in any other capacity.

Commenter Name: Arkansas Public School Resource Center

COMMENT: Section 5.03.2, Page 6, Terms of School Transformation Contract Section: This section is vague and ultra vires as it purports to grant the State legal authority to compel or require "... any additional information the division deems is necessary..." from any party. The SBE should limit this authority to only the parties associated with the transformation public school or district and/or those parties contracting with the State or the transformation school or district. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Arkansas Public School Resource Center

COMMENT: Section 5.04, Page 6, Terms of School Transformation Contract Section: Since the State does not specifically limit the length of

the contract, there may be a question as to the State's ability to set a time limit on a contract due to ultra vires. As a matter of best practice, Section 5.04 is not necessary, as the State has authority to approve or not any agreement it enters. The State should leave itself its lawful flexibility to contact with third party providers as necessary to serve the students under the relevant circumstances of each case. Obviously, to the extent the State is the governing authority over school districts under State takeover, the State would be a necessary party to approve the transfer of property of an affected district. **RESPONSE:** Comment considered. No changes made. The law requires that the State Board of Education return public school districts to local control no more than five years after the assumption of authority. If the school district wishes to contract with the transformation campus operator after return to local control, nothing in this rule prohibits it from doing so.

Commenter Name: Arkansas Public School Resource Center

COMMENT: Sections 5.04.1 and 5.04.2, Page 6, Terms of School Transformation Contract Section: It appears that the authority to approve or deny approval to a transformation contract lies with the SBE, and not the DESE (see Ark. Code Ann. § 6-15-3202 (a): "... with approval from the State Board of Education..."). As a result, the term "division" in each section should likely be replaced with "SBE". **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Arkansas Public School Resource Center

COMMENT: Section 5.07, Page 6, Terms of School Transformation Contract Section: This provision is ultra vires, arbitrary and capricious.

The SBE does not have the legal authority to prevent or deny a subsequent, lawfully constituted SBE; school board, or other lawful governing party lawful authority to transfer property or resources of a transformation school or district as otherwise allowed by state law.

RESPONSE: Comment considered. No changes made. The language cited highlights the relationship between the school district and the transformation campus operator, in that the transformation campus operator should be working in the best interest of the school district as its fiduciary. The language cited simply highlights that property belonging to the public school district will remain property of the public school district. Likewise, property belonging to the transformation campus operator will remain property of the transformation campus operator. The parties to the contract are distinct entities.

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

1) Section 5.01.4 of the proposed rule provides that the transformation campus operator acts as the executive of the transformation campus and

the public school board of directors retains its powers and responsibilities with respect to oversight and governance of the transformation campus. Which entity does the agency anticipate will have ultimate decision making authority under the rule? **RESPONSE:** The ultimate decision-making responsibility will still lie with the local board of directors for the school district. The transformation campus operator effectively acts as the superintendent in a traditional executive relationship with a school board – the transformation campus operator is responsible for managing the functions of the district. Similarly, the Commissioner is responsible for performing the functions of a school board when a district is under state authority but can delegate the functions of managing the school district to a transformation campus operator; however, the Commissioner retains the responsibility of making policy decisions for the district.

2) Sections 5.01.6 and 5.01.7 of the proposed rule each provide circumstances under which a school transformation contract may be terminated by “a public school district and transformation campus operator”. Do these provisions imply that a school transformation contract may not be unilaterally terminated by either entity? If not, which entity does the agency anticipate will have ultimate decision making authority with respect to terminating a contract under the rule? **RESPONSE:** 5.01.6 anticipates that a public school district can unilaterally terminate the transformation contract if the goals identified in the contract are not met. The inclusion of “or the State Board of Education” was intended to anticipate a situation where a school district was under state authority and the State Board made the decision to terminate a transformation contract where the goals identified in the contract were not being met. 5.01.7 anticipates that there be mutual agreement that continued performance under the contract would lead to less desirable outcomes for students than the public school or public school district’s previous performance prior to the transformation contract.

3) Section 6.04 of the proposed rule provides that the Division of Elementary and Secondary Education shall provide, where allowable, financial incentives to support transformations under this rule. This language appears to be based on Arkansas Code Annotated § 6-15-3203(c), which states that the division may provide, *through state and federal funds* where allowable, financial incentives to support transformations under Ark. Code Ann. §§ 6-15-3201 through 3204, which concern school transformation contracts. (Emphasis added). Is there a reason why the language of the rule is different from the language found in the Arkansas Code? **RESPONSE:** The language in the rule presupposes that the financial incentives are coming from state or federal funding; the Department can only provide funding that it has authority to spend pursuant to an appropriation by the General Assembly. The rule has

been drafted to account for any and all incentives provided by law, so that if statutes are later amended, this provision will not need revision.

4) Section 6.01.1 of the proposed rule provides that the “alternate letter grade” referenced throughout the rule shall be established and defined by the State Board. Is that term established and defined within this rule? If not, will the term be defined through future rule promulgation? If not, how does the agency anticipate the term will be defined? **RESPONSE:** The agency anticipates that the term will be defined through future rule promulgation, more specifically the DESE Rule Governing Public School Rating System on Annual School Performance Reports and the School Recognition Program.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-15-3204, the State Board of Education shall promulgate rules as necessary to implement and administer Ark. Code Ann. §§ 6-15-3201 through 3204, which concern school transformation contracts. Further authority for the rulemaking can be found in Ark. Code Ann. § 6-15-3202, which provides that the state board shall establish by rule the procedures for a public school district to notify the commissioner as required under Ark. Code Ann. § 6-15-3202(d)(1), including without limitation the time period within which the notification is required before the school year in which the proposed contract would take effect and, if necessary, the entity to which a public school district shall submit information as required under Ark. Code Ann. § 6-15-3202(d)(1).

The proposed rule implements Act 237 of 2023, §14, sponsored by Senator Breanne Davis, which created the LEARNS Act and amended various provisions of the Arkansas Code as they relate to early childhood through grade twelve (12) education in the state of Arkansas.

d. **SUBJECT: Rules Governing the Requirements and Procedures for Obtaining an Arkansas Birth through Prekindergarten Teaching Credential**

DESCRIPTION: The Department of Education, Division of Elementary and Secondary Education seeks to amend its Rules Governing the Requirements and Procedures for Obtaining an Arkansas Birth through Prekindergarten Teaching Credential. Pursuant to Ark. Code § 20-78-205(b) and 20-78-801 et seq., the Division shall adopt the necessary rules to implement these code sections. Act 237 of 2023 moved the Office of

Early Childhood from the Division of Childcare and Early Childhood Education to the Arkansas Department of Education. This amendment changes the rule language to reflect that change.

The rules are amended to reflect that the Early Intervention Day Treatment has replaced the Developmental Day Treatment Clinic Service.

The rules are amended to reflect that Traveling Arkansas Professional Pathways has been replaced by the Arkansas Professional Development.

The Department received one public comment and made non-substantive changes based on this comment.

PUBLIC COMMENT: A public hearing was held on May 31, 2024. The public comment period expired on June 10, 2024. The agency provided the following public comment summary:

Commenter Name: Lucas Harder, Arkansas School Board Association

COMMENT: *Submitted Electronically*

5.3: The longhand and parentheses are missing from “10” and “30”.

6.1.1: There is a “through” or a “by” missing from between” completed” and “one”.

6.1.1.1: There is a “a” missing from between “submit” and “transcript”.

6.1.1.2: There is a “the” missing from between “within” and “Arkansas”.

7.1: There appear to be two “(b)”s here with the second one should be a “(c)”.

The longhand and parentheses are missing from “30”. **RESPONSE:** Changes were made to correct erroneous non-substantive changes consistent with the comments. No additional changes were made.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The division has indicated that the amended rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Ann. § 20-78-205(b)(9), the Division of Child Care and Early Childhood Education shall have the following duties: administration of the birth through prekindergarten teaching credential and the promulgation of rules to implement the teaching credential program under Ark. Code Ann. §§ 20-78-801 through 20-78-805. Further rulemaking authority can be found in Ark. Code Ann. § 20-78-804, which provides that the Division shall periodically monitor and assess a person holding a birth through prekindergarten teaching credential as the division may determine by rule. Under Ark. Code Ann. § 25-43-105, which concerns cabinet-level department transfers, the administration of the programs under Ark. Code

Ann. § 6-87-101(b) currently overseen by the Division of Child Care and Early Childhood Education shall be transferred to the Office of Early Childhood. *See* Ark. Code Ann. § 6-87-101(c). Ark. Code Ann. § 6-87-101(b), provides that the Office of Early Childhood shall be responsible for all programs funded through state or federal resources that provide early childhood care or educational services.

The amended rules implement Act 237 of 2023, §§ 58 and 71, sponsored by Senator Breanne Davis, which created the LEARNS Act and amended various provisions of the Arkansas Code as they relate to early childhood through grade twelve (12) education in the state of Arkansas.

e. **SUBJECT: Rules Governing Background Checks**

DESCRIPTION: The Department of Education, Division of Elementary and Secondary Education proposes amendments to its Rules Governing Background Checks. Pursuant to Ark. Code Ann. §§ 6-17-410 and 6-17-414, the Division shall adopt the necessary rules to implement these code sections. Act 237 of 2023 added new requirements regarding background checks for registered volunteer coaches as well as additional mandated reporting requirements for superintendents, directors of educational entities, and third party vendors.

Summary of Amendments

- The definition of “registered volunteer coach” is added to the rules.
- The rules are amended to state that registered volunteer coaches, as defined by the rules, must, as a condition for unsupervised contact with students, complete a background check per Ark. Code Ann. § 6-17-414 (background checks for classified applicants) and meet the requirements of Section 4.6 of the rules.
- The rules are amended to state that a registered volunteer coach may not work in an educational entity if he or she has a true report in the Child Maltreatment Central Registry or has pled guilty or nolo contendere to, or has been found guilty of, any offense identified in Ark. Code Ann. § 6-17-414(b).
- The rules are amended to state that school districts should review all records of registered volunteer coaches to see when their last background check was completed.
- The rules are amended to state that superintendents, directors of educational entities, and third party vendors have the same mandated reporting requirements for registered volunteer coaches as currently exist for classified staff.
- The rules are amended to include the new requirement that superintendents, directors of education entities, and third party vendors must now report arrests or charges for disqualifying offenses.

- The rules are amended to include language stating that when a superintendent, director of an educational entity or a third party vendor reports an arrest or charge for a disqualifying offense, an individual's employability status will be changed to "under review" pending resolution of the individual's criminal case.

After the public comment period, a few non-substantive changes were made.

PUBLIC COMMENT: A public hearing was held on May 31, 2024. The public comment period expired June 10, 2024. The agency provided the following public comment summary:

Commenter Name: Lucas Harder, Arkansas School Boards Association

COMMENTS:

6.1.1: There appears to be a space between "6-17-" and "414".

7.2.4: This section can be repealed in entirety as both sets of statutes have been repealed. **RESPONSE:** Comments considered. Non-substantive changes made.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency has indicated that the proposed rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-17-410(i), the State Board of Education shall adopt the necessary rules to fully implement the provisions of Ark. Code Ann. § 6-17-410, which concerns teacher licensure application, renewal application, revocation, suspension, and probation. Further authority for the rulemaking can be found in Ark. Code Ann. § 6-17-414(i), which provides that the state board shall adopt the necessary rules to implement Ark. Code Ann. § 6-17-414, which concerns criminal records check as condition for initial employment of nonlicensed personnel.

The proposed amendments include those made in light of the following Acts:

Act 237 of 2023, §§ 23 – 25, 46, sponsored by Senator Breanne Davis, which created the LEARNS Act and amended various provisions of the Arkansas Code as they relate to early childhood through grade twelve (12) education in the state of Arkansas;

and Act 792 of 2023, sponsored by Senator Jane English, which amended provisions of the Arkansas Code concerning school employee misconduct and background checks for registered volunteers.

f. **SUBJECT: Rules Governing Maternity Leave Cost Sharing**

DESCRIPTION: The Department of Education, Division of Elementary and Secondary Education proposes its Rules Governing Maternity Leave Cost Sharing. The rule implements Act 237 of 2023, § 21, which requires the Division to promulgate rules concerning maternity leave cost sharing.

Summary of Amendments

- The rules define the following terms: adoptive child, cost sharing, Division, education personnel, and maternity leave.
- The rules outline the procedures for cost sharing management, including the requirements that the Division and participating school districts must enter into a cost sharing agreement, the Division must, on an annual basis, determine the reimbursement rates for paid maternity leave expenses, and that the Division must annually monitor the effectiveness of the program.
- The rules provide a deadline for districts to opt in or out of the program.
- The rules list reimbursement requirements for both the Division and participating school districts. Reimbursement requirements include: limitations regarding the time period and days for which districts may claim reimbursement; the manner by which reimbursement reports are submitted; and the deadline for reimbursement by the Division.
- The rules clarify that the Division will determine reimbursement rates. The reimbursement rates will also be outlined in the cost sharing agreement between the Division and the participating district.

After the public comment period, a few non-substantive changes were made.

PUBLIC COMMENT: A public hearing was held on May 31, 2024. The public comment period expired June 10, 2024. The agency provided the following public comment summary:

Commenter Name: Lucas Harder, Arkansas School Boards Association

COMMENTS:

- 1.02: Due to the length of Act 237 of 2023, I would recommend citing to 6-17-122 instead.
- 1.03: Due to the length of Act 237 of 2023, I would recommend citing to 6-17-122 instead.
- 2.05: I believe that this is supposed to be a citation to A.C.A. § 21-4-214(d)(2) instead of 21-4-414(d)(2).
- 2.05.1: For consistency with other rules, the “30” here is missing the long hand and should be in parentheses.
- 3.01: For consistency with other rules, the “30” here is missing the long hand and should be in parentheses. **RESPONSE:** Comments considered. Non-substantive changes made.

Commenter Name: Mike Mertens, Assistant Executive Director, AAEA
COMMENTS: Section 2.05 – Definitions. The definition of “Education personnel” references Ark. Code Ann. 21-4-414 that does not exist. It should be 214. **RESPONSE:** Comments considered. Non-substantive change made.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following questions and was provided with the following agency responses:

1) Section 2.05 – Is there a reason why the definition of “education personnel” in this section of the proposed rules does not mirror the definition of “education personnel” as it appears in Arkansas Code Annotated § 6-17-122(b)(2), which concerns paid maternity leave?

RESPONSE: The definition of educational personnel reflected in the rule comports with the requirements of the Ark. Code Ann. 21-4-214(d)(2) and Executive Order entered on October 19, 2024.

2) Sections 2.07.1 and 2.07.2 of the proposed rules, which concern maternity leave, appear to track with the provisions in Ark. Code Ann. §§ 6-17-122(b)(3)(A) and 6-17-122(b)(3)(B). Is there a reason why the language in the proposed rule does not mirror the language provided for in the Arkansas Code? **RESPONSE:** The language was adapted to cross site within the rule.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-17-122(c)(3), the Division of Elementary and Secondary Education shall promulgate rules outlining: management of a cost-sharing agreement required under Ark. Code Ann. § 6-17-122(c)(1); reimbursement processes; and other related procedures required to implement Ark. Code Ann. § 6-17-122, which concerns paid maternity leave.

The proposed rule implements Act 237 of 2023, § 21, sponsored by Senator Breanne Davis, which created the LEARNS Act and amended various provisions of the Arkansas Code as they relate to early childhood through grade twelve (12) education in the state of Arkansas.

g. SUBJECT: Rules Governing the Code of Ethics for Arkansas Educators

DESCRIPTION: The Department of Education, Division of Elementary and Secondary Education seeks to amend its Rules Governing the Code of Ethics for Arkansas Educators. Pursuant to Ark. Code Ann. § 6-17-422, the Professional Licensure Standards board shall establish a code of ethics for administrators and teachers. Per Ark. Code Ann. § 6-17-428, the Professional Licensure Standards Board shall establish procedures regarding the code of ethics. Act 237 of 2023 made amendments to Ark. Code Ann. § 6-17-428. In addition, further changes to the rules are necessary to establish and clarify procedures related to the code of ethics.

Summary of Amendments

- Per Act 237 of 2023, the definition of “educator” is expanded in the rules to include persons holding an aspiring teacher permit and registered volunteer coaches.
- Per Act 237 of 2023, the definition of “substantiated allegation” is added to the rules.
- Clarifying language is added to Section 7.2 of the rules to allow individuals to apply for licensure in Arkansas if a license was revoked, nonrenewed, or suspended in another state for an offense that is not disqualifying in Arkansas.
- Language is added to the rules to clarify that State Board orders remain on the Division’s website until the educator has met the terms of the State Board order. This is consistent with information reflected in the Arkansas Educator Licensure System for suspension or probation of a license.
- Per Act 237 of 2023, language is added to the rules regarding the requirement for public school supervisors to report violations of Standard 1 of the Code of Ethics within 24 hours of the matter coming to the attention of the public school supervisor.
- Language is added to the rules regarding recusal of an ethics subcommittee member or ethics hearing subcommittee member if the member has any potential conflict of interest.
- For confidentiality purposes, to prevent potential conflicts of interest, and to ensure fair and impartial hearings, additional procedures for the Ethics Hearing Subcommittee are added to the rules. The procedures include, but are not limited to, guidance and requirements regarding communication with witnesses, communication with educators, and recusal due to conflicts of interest.
- The rules are amended to include revised and expanded sanctioning guidelines to help ensure consistency in sanctioning. These guidelines are based on five years of data with average sanctions and also include language from other states’ sanctioning guidelines. The guidelines also

provide additional clarifying information for educators regarding the potential sanctions for violations of the Code of Ethics.

Following the public comment period, the following non-substantive changes were made:

- Technical changes were made to the rules.
- Section 5.11 – “May” from previous markup draft was removed. Language will remain the same for consistency with the law.

PUBLIC COMMENT: A public hearing was held on May 31, 2024. The public comment period expired on June 10, 2024. The agency provided the following public comment summary:

Commenter Name: Lucas Harder, Arkansas School Boards Association

COMMENTS: 2.01: I would recommend removing the reference to Act 96 of 2021 as it was incorporated into the previous changes to the rules.

14.2.15.2: This should be 14.2.20.2 instead of 14.2.16.2.

14.4.2: I would recommend changing “to the State Board on its consent agenda” to “to the State Board for placement on its consent agenda” to clarify that it is the State Board’s consent agenda.

16.1: I would recommend changing “from a consent agenda” to “from its consent agenda” to align with other references to the State Board’s consent agenda in the rules.

16.3.4: There is a “the” missing from in front of “State Board”.

RESPONSE: Comments considered. Non-substantive changes made.

Commenter Name: Mike Mertens, Assistant Executive Director, AAEA

COMMENTS: Section 10.0 – Mandatory Filing of Allegation and Ethics Violations Review. Concern: The new language requires a supervisor at an Arkansas public educational setting to file an ethics complaint of Standard 1 of the Code of Ethics within 24 hours. This is problematic since the current process for filing a complaint requires a form to be completed, printed, and mailed. Suggestion: Consider changing the filing process to allow for an electronic submittal. **RESPONSE:** Comments considered. No changes made. The language is taken verbatim from statute and the change proposed in the comment would require a legislative change.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following question and received the following response:

1) Section 5.2 – Should the last line of this section, which defines an Authorized Ethics Complaint Investigation, state that the Ethics Subcommittee shall authorize *investigation of* an ethics complaint, as it appears in Arkansas Code Annotated § 6-17-428(e)(1)? (Emphasis added.)

RESPONSE: Yes, this change was made following the public comment period.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the amended rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-17-422(h)(3)(A), the Professional Licensure Standards Board shall establish a code of ethics for administrators and teachers, including those employed under a waiver from licensure as a teacher of record or as an administrator, in educational environments for students in prekindergarten through grade twelve (preK-12), including procedures and recommendations for enforcement as provided in Ark. Code Ann. § 6-17-422(h)(3). The Board shall establish procedures for receiving and investigating an ethics complaint, enforcing the code of ethics, granting and conducting hearings under Ark. Code Ann. § 6-17-428, and publicizing notifications equivalent to the recommendations for enforcement of the code of ethics; make recommendations for enforcement of the code of ethics; develop public notifications equivalent to the recommendations for enforcement of the code of ethics; and establish an ethics subcommittee of the Professional Licensure Standards Board with equal representation of public school teachers and administrators as well as one (1) member from any other category of representation on the Professional Licensure Standards Board. *See* Ark. Code Ann. § 6-17-428(b)(1).

All rules, procedures, hearings, and appeals relating to the code of ethics complaints under Ark. Code Ann. § 6-17-428 shall be promulgated and implemented under the Arkansas Administrative Procedure Act, § 25-15-201 et seq. *See* Ark. Code Ann. § 6-17-428(b)(2). The code of ethics shall include without limitation the following provisions: 1) a standard that an educator maintains a professional relationship with each student, both in and outside the classroom; 2) within twenty-four (24) hours of a matter coming to the attention of a public school supervisor, an educator in a supervisory role in an Arkansas school shall file an ethics complaint if he or she observes, has reasonable cause to suspect, or there is a substantiated allegation that an educator has violated the standard in Ark. Code Ann. § 6-17-428(p)(2)(A); and 3) the failure to submit an ethics complaint under Ark. Code Ann. § 6-17-428(p)(2)(B) is a violation of the code of ethics.

The amended rules implement Act 237 of 2023, §§ 25 – 26, sponsored by Senator Breanne Davis, which created the LEARNS Act and amended various provisions of the Arkansas Code as they relate to early childhood

through grade twelve (12) education in the state of Arkansas.

h. SUBJECT: Rules Governing Water Safety Information Provided by Public Schools

DESCRIPTION: The Department of Education, Division of Elementary and Secondary Education proposes its Rules Governing Water Safety Information Provided by Public Schools. Act 101 of 2023 amended the Water Safety Information provided by public schools laws, codified at Ark. Code Ann. § 6-16-158. As part of the amendment, the Act requires that each public school district and open-enrollment public charter school shall provide information on the important role that water safety education courses and swimming lessons plays in saving lives.

Act 101 of 2023 establishes that the information must be provided electronically or in hard copy and include information pertaining to water safety education courses and swimming lessons, resulting in a certificate indicating successful completion of the water safety education course or swimming lesson, including without limitation, water safety education courses and swimming lessons offered at a free or reduced price.

Act 101 further specifies that if a public school student is eighteen years of age or older, or under twenty-one and enrolling in an adult education class, the information shall be provided to the public school student.

After the public comment period, minor non-substantive changes were made.

PUBLIC COMMENT: A public hearing was held on May 31, 2024. The public comment period expired on June 10, 2024. The agency provided the following public comment summary:

Commenter Name: Lucas Harder, AR School Board Assoc.

COMMENT: 1.01 – The citation to “6-16-156” should be to “6-16-158”.

RESPONSE: Comment considered and non-substantive changes were made.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following question and received the following response:

1) Section 3.01 of the proposed rules appears to track with Ark. Code Ann. § 6-16-158, as amended by Act 101 of 2023. Is there a reason why this section does not include the qualifier “Beginning with the 2023-2024 school year”, as it appears in both the Code and Act 101? **RESPONSE:** Will include the language for clarity.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the amended rules have no financial impact.

LEGAL AUTHORIZATION: The Division of Elementary and Secondary Education shall promulgate rules to implement Ark. Code Ann. § 6-15-158, which concerns water safety information provided by public schools. *See* Ark. Code Ann. § 6-15-158(c).

The proposed rules implement Act 101 of 2023, sponsored by Representative Mary Bentley, which required public school districts and open-enrollment public charter schools to provide information to public school students regarding water safety education courses and swimming lessons.

i. **SUBJECT: Rules Governing Emergency Response Equipment and Training in Arkansas Public Schools**

DESCRIPTION: The Department of Education, Division of Elementary and Secondary Education seeks to amend its Rules Governing Emergency Response Equipment and Training in Arkansas Public Schools. Acts 737 and 811 of 2023 amended the emergency response equipment and training in Arkansas public schools law, codified at Ark. Code Ann. §§ 6-18-723 and 6-10-122. As part of the amendment, Act 811 requires that DESE collaborate with the Criminal Justice Institute and the office of the Arkansas Drug Director to ensure opioid overdose rescue kits be located on each campus of each public high school and state-supported institution of higher education. Kits must be clearly visible and labeled with specific language like “Overdose Rescue Kit.” Act 811 specifies the location of these kits, who they shall be registered with, in addition to reporting and training requirements pertaining to these kits.

Act 737 requires automated external defibrillators at school-sponsored sporting events for grades 7 through 12. Act 737 also requires collaboration between the Arkansas Higher Education Board with all public university and community college presidents and chancellors to develop and adopt rules for automated external defibrillators on campuses of institutions of higher education and specifies the requirements for these rules.

Following the public comment period, a few non-substantive changes were made.

PUBLIC COMMENT: A public hearing was held on May 31, 2024. The public comment period expired on June 10, 2024. The agency provided the following public comment summary:

Commenter Name: Lucas Harder, AR School Board Association

COMMENT:

3.03 – I would recommend changing “in this regulation” to “in this Rule”.

3.1 –I would recommend putting a “the” before “Federal”.

5.01.1 – As FDA is already defined above, I believe that the longhand and parentheses are unnecessary here.

5.2.2 – For consistency with other rules, I would recommend changing “3-5” to “three to five (3-5)”.

7.02.5 – “Department” should be changed to “Division”.

10.01 – I would recommend changing “Arkansas Department of Education” to “Division of Elementary and Secondary Education”.

11.01 – “Commissioner of Education” should be changed to “Commissioner of Elementary and Secondary Education”.

12.03.3 – “U.S. Food and Drug Administration” could be replaced with “FDA” as it has been previously defined in the Rules.

12.04.3 – “U.S. Food and Drug Administration” could be replaced with “FDA” as it has been previously defined in the Rules. **RESPONSE:**

Comment considered and non-substantive changes were made.

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

1) Did the Department of Education consult with the Department of Health in developing these rules based on guidelines for automated external defibrillator and cardiopulmonary resuscitation training, per Arkansas Code Annotated § 6-10-123(a)? **RESPONSE:** The original rules most definitely had the Department of Health guidance. Since that time any updates that have been made [are] in alignment with the national guidelines through the American Heart Association and any language changes they provided in best practice, and as a health agency this is the [guideline] ADH must follow.

2) The Division’s memorandum mentions collaboration between the Arkansas Higher Education Board and all public university and community college presidents and chancellors to develop and adopt rules for automated external defibrillators on campuses of institutions of higher education. Does this rule concern institutions of higher education?

RESPONSE: This rule only applies to DESE; there is a separate rule for ADHE.

3) Section 3.17 – In the definition of “School campus”, what does the acronym “ADE” represent? **RESPONSE:** Will spell this out as Arkansas Department of Education.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the amended rules have no financial impact.

LEGAL AUTHORIZATION: Arkansas Code Annotated § 6-10-122(a)(1) provides that the State Board of Education shall promulgate rules to require that each school campus have an automated external defibrillator, that appropriate school personnel be adequately trained on an ongoing basis, and that each school-sponsored sporting event for grades seven through twelve (7-12) have an automated external defibrillator at the school-sponsored sporting event. To enhance the potential life-saving capability of each automated external defibrillator, the rules shall include without limitation provisions regarding the availability of the school’s automated external defibrillator at school-related activities, such as athletic events. *See* Ark. Code Ann. § 6-10-122(a)(2). Further authority for the rulemaking can be found in Ark. Code Ann. § 6-10-123(a), which provides that the state board, after consultation with the Department of Health, shall develop rules based on guidelines for automated external defibrillator and cardiopulmonary resuscitation training that incorporates at least the following: 1) healthcare provider oversight, including planning and review of the selection, placement, and maintenance of automated external defibrillators; 2) appropriate training of anticipated rescuers in the use of the automated external defibrillator and in cardiopulmonary resuscitation; 3) testing of psychomotor skills based on the American Heart Association scientific guidelines, standards, and recommendations for the use of the automated external defibrillator, as they existed on January 1, 2021, and for providing cardiopulmonary resuscitation as published by the American Heart Association or the American Red Cross as they existed on January 1, 2021, or equivalent course materials; 4) coordination with the emergency medical services system; and 5) an ongoing quality improvement program to monitor training and evaluate response with each use of the automated external defibrillator.

The proposed amendments are those made in light of the following Acts:

Act 737 of 2023, sponsored by Representative Lee Johnson, which required automated external defibrillators at certain school-sponsored sporting events and on campuses of institutions of higher education;

and Act 811 of 2023, sponsored by Representative Tara Shephard, which required that opioid overdose kits be located on each campus of each

public high school and state-supported institution of higher education.

j. **SUBJECT: REPEAL: Rules and Regulations Governing Duty to Report Student Criminal Acts**

DESCRIPTION: The Department of Education, Division of Elementary and Secondary Education seeks to repeal its Rules and Regulations Governing Duty to Report Student Criminal Acts. Pursuant to Act 1520 of 1999, the Division was charged with promulgating rules regarding the Duty to Report Student Criminal Acts, which was codified at Ark. Code Ann. § 6-17-113. The purpose of this rule was to provide guidelines under which schools will report all threats of violence or acts of violence on school property. The relevant portions of this rule were added to the DESE Rules Governing School Safety, and this rule is no longer necessary.

The rule:

- Established guidelines for schools to report incidents or threats of violence.

PUBLIC COMMENT: A public hearing was held on May 31, 2024. The public comment period expired on June 10, 2024. The agency indicated that it received no public comments.

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

1) Is the agency satisfied that these rules are not required by either state or federal law? **RESPONSE:** The agency is satisfied that these rules are not required by state nor federal law.

2) Did the agency consider it necessary to consult with the office of the Attorney General concerning the repeal of these rules, in light of Arkansas Code Annotated. § 6-17-113(e)? **RESPONSE:** We consulted with the Attorney General's office when promulgating the DESE Rules Governing School Safety, which replace these rules.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The division has indicated that the repeal has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 6-17-113(e), the State Board of Education shall promulgate rules to ensure uniform compliance with the requirements of Ark. Code Ann. § 6-17-113, which concerns the duty to report and investigate student criminal acts,

and shall consult with the office of the Attorney General concerning the development of these rules.

k. **SUBJECT: REPEAL: Rules Governing the Educator Compensation Reform Program**

DESCRIPTION: The Department of Education, Division of Elementary and Secondary Education seeks to repeal its Rules Governing the Educator Compensation Reform Program. Pursuant to Acts 170 and 877 of 2019, the Division was charged with promulgating rules regarding the Educator Compensation Reform Program, which was codified at Ark. Code Ann. § 6-17-2403. The purpose of this rule was to provide guidelines which address the implementation, calculation, and disbursement of teacher compensation. The underlying legislation through which this rule was promulgated was amended by Act 237 of 2023, Section 35. The legislation as amended is inconsistent with this rule. Additionally, the relevant provisions of the new legislation are incorporated into other Department rules. Therefore, this rule is no longer necessary.

The rule:

- Established guidelines for receiving increased compensation for teaching in school districts below the minimum teacher salary schedule.
- Established guidelines for implementing, calculating, and disbursing the program funds.

PUBLIC COMMENT: A public hearing was held on May 31, 2024. The public comment period expired on June 10, 2024. The agency indicated that it received no public comments.

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

- 1) Is the agency satisfied that these rules are not required by either state or federal law? **RESPONSE:** The agency is satisfied that this rule is not required by state or federal law.
- 2) The agency has indicated that relevant provisions of the rules have been incorporated into other Department rules. Can the agency specify which provisions have been moved and to which rules? **RESPONSE:** The relevant provisions of this rule have been incorporated into the DESE Rule Governing Educator Performance, which are in the promulgation process. [Bureau Staff Note: The Rules Governing Educator Performance recently received legislative review and approval on June 21, 2024.]

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency has indicated that the proposed repeal has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 6-17-2403(h), the State Board of Education may promulgate rules to implement the Teacher Compensation Program of 2003. *See* Ark. Code Ann. §§ 6-17-2401 through 6-17-2407.

The proposed repeal implements Act 237 of 2023, § 35, sponsored by Senator Breanne Davis, which created the LEARNS Act and amended various provisions of the Arkansas Code as they relate to early childhood through grade twelve (12) education in the state of Arkansas.

I. SUBJECT: REPEAL: Rules Governing Eligibility of Participating School Districts in the Traveling Teacher Program

DESCRIPTION: The Department of Education, Division of Elementary and Secondary Education seeks to repeal its Rules Governing Eligibility of Participating School Districts in the Traveling Teacher Program. Pursuant to Act 1027 of 2007, the Division was charged with promulgating rules regarding the Arkansas Traveling Teacher Program, which was codified at Ark. Code Ann. § 6-13-808. The purpose of this rule was to provide guidelines for participating school districts to partake in the Traveling Teacher Program. This rule is being repealed. Act 237 of 2023 repealed the underlying statutory authority for the Traveling Teacher Program.

The rules:

- Established guidelines for schools to participate in the Traveling Teacher Program.
- Established payment guidelines for fees and bonus eligibility.

PUBLIC COMMENT: A public hearing was held on May 31, 2024. The public comment period expired on June 10, 2024. The agency indicated it received no public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency has indicated that the repeal has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-13-808(g)(1), the Division of Elementary and Secondary Education shall establish any rules and agreement forms necessary for the administration of the Arkansas Traveling Teacher Program. *See* Ark. Code Ann. § 6-13-808. In establishing the rules, the division shall: prioritize the

approval of agreements for traveling teacher services based on subject-area course needs; establish appropriate travel limitations; develop a method of equitable distribution of traveling teachers among the area's education service cooperatives; and provide a means by which education service cooperatives may assist in facilitating traveling teachers. *See* Ark. Code Ann. § 6-13-808(g)(2).

m. **SUBJECT: REPEAL: Rules Governing Reimbursement by School Districts for Election Expenses**

DESCRIPTION: The Department of Education, Division of Elementary and Secondary Education seeks to repeal its Rules Governing Reimbursement by School Districts for Election Expenses. Pursuant to Act 292 of 2009, the Division was charged with promulgating rules regarding the reimbursement by school districts to county governments for election expenses, which is codified at Ark. Code Ann. § 6-14-118. The purpose of this rule was to provide guidelines under which schools will reimburse the county for the cost of school elections. The rule is being repealed because a rule promulgated by the State Board of Election Commissioners administers this process. Additionally, this rule is inconsistent with Arkansas Code § 6-14-118 and is no longer necessary.

The rule:

- Established guidelines for school districts to reimburse counties for election expenses.

PUBLIC COMMENT: A public hearing was held on May 31, 2024. The public comment period expired on June 10, 2024. The agency indicated that it received no public comments.

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

1) Is the agency satisfied that these rules are not required by either state or federal law? **RESPONSE:** The agency is satisfied that this rule is not required by state nor federal law.

2) The agency has indicated that the reimbursement process contemplated in this repealed rule is administered by a State Board of Election Commissioners rule. Can the agency specify what rule that is?

RESPONSE: The rule is the State Board of Election Commissioners Rules for Reimbursement of Expenses for State-Funded Elections. We've provided a link [here](https://static.ark.org/eeuploads/elections/Final_2023_Reimbursement_Rules.pdf) [https://static.ark.org/eeuploads/elections/Final_2023_Reimbursement_Rules.pdf].

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency has indicated that the rule repeal has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 6-11-105(a)(13), the State Board of Education shall administer the state's early learning and education system, which shall include the administration of relevant rules related to administering funding, licensing, standards, and program requirements.

- n. **SUBJECT: REPEAL: Rules and Regulations for Reporting Compliance with Ark. Code Ann. § 6-13-631 and for Withholding Aid from School Districts Not in Compliance with Ark. Code Ann. § 6-13-631 (School Board Zones and Rezoning)**

DESCRIPTION: The Department of Education, Division of Elementary and Secondary Education seeks to repeal its Rules and Regulations for Reporting Compliance with Ark Code Ann. § 6-13-631 and for Withholding Aid from School Districts Not in Compliance with Ark Code Ann. § 6-13-631 (School Board Zones and Rezoning). Pursuant to Act 786 of 1993, the Division was charged with promulgating rules regarding school board zones and rezoning, which was codified at Ark. Code Ann. § 6-13-631. The underlying legislation the rules were promulgated under was repealed pursuant to Act 424 of 2023. Accordingly, the rules are no longer necessary.

The rules:

- Established guidelines for schools to report compliance or noncompliance with Ark. Code Ann. § 6-13-631.

PUBLIC COMMENT: A public hearing was held on May 31, 2024. The public comment period expired on June 10, 2024. The agency indicated that no public comments were received.

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

1) Is the agency satisfied that these rules are not required by either state or federal law? **RESPONSE:** To our knowledge, these rules are not required by state or federal law.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency has indicated that the repeal has no financial impact.

LEGAL AUTHORIZATION: Ark. Code Ann. § 6-13-631(i) granted the State Board of Education authority to adopt rules necessary for the implementation of Ark. Code Ann. § 6-13-631, which concerned the effect of minority population on school district board of directors elections. Act 424 of 2023, § 1, repealed Ark. Code Ann. § 6-13-631 in its entirety.

The proposed repeal enacts Act 424 of 2023, § 1, sponsored by Representative Bruce Cozart, which repealed requirements placed on school districts that have a ten percent (10%) or greater minority population out of the total population.

o. **SUBJECT: REPEAL: Rules Governing the Succeed Scholarship Program**

DESCRIPTION: The Department of Education, Division of Elementary and Secondary Education seeks to repeal its Rules Governing the Succeed Scholarship Program. Pursuant to Act 1178 of 2015, the Division was charged with promulgating rules regarding the Succeed Scholarship Program, which was codified at Ark. Code Ann. § 6-41-901 et seq. The purpose of this rule was to provide guidelines under which participants were able to determine eligibility for the program. The underlying legislation that this rule was promulgated under was repealed by Act 237 of 2023, Sections 42 and 52. Accordingly, this rule is no longer necessary.

The rules:

- Established guidelines for compliance with the Succeed Scholarship Program
- Established guidelines for eligibility for the Succeed Scholarship Program.

PUBLIC COMMENT: A public hearing was held on May 31, 2024. The public comment period expired on June 10, 2024. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency has indicated that the repeal has no financial impact.

LEGAL AUTHORIZATION: Arkansas Code Annotated § 6-41-906(a)(1) required the State Board of Education to adopt rules and develop notices and other documentation necessary to administer the Succeed Scholarship Program, including without limitation rules concerning the method for applying for a scholarship, that are in the best interest of the

students. Act 237 of 2023 repealed the Succeed Scholarship program, previously codified at Ark. Code Ann. §§ 6-41-901 through 6-41-908.

The proposed repeal implements Act 237 of 2023, § 52, sponsored by Senator Breanne Davis, which created the LEARNS Act and amended various provisions of the Arkansas Code as they relate to early childhood through grade twelve (12) education in the state of Arkansas.

p. **SUBJECT: REPEAL: Rules Governing Incentives for Teacher Recruitment and Retention in High Priority Districts with an Average Daily Membership of 1,000 or Fewer**

DESCRIPTION: The Department of Education, Division of Elementary and Secondary Education, seeks to repeal its Rules Governing Incentives for Teacher Recruitment and Retention in High Priority Districts With an Average Daily Membership of 1,000 or Fewer. Pursuant to Act 101 of Second Extraordinary Session of 2003, the Division was charged with promulgating rules regarding the Incentives for Teacher Recruitment and Retention, which was codified at Ark. Code Ann. § 6-17-811. The purpose of this rule was to provide guidelines under which eligible teachers were able to receive incentive pay. The underlying legislation through which this rule was promulgated was repealed by Act 237 of 2023. Accordingly, this rule is no longer necessary.

The rule:

- Established guidelines for receiving teacher incentive pay;
- Established incentive guidelines to determine the amount of incentive.

PUBLIC COMMENT: A public hearing was held on May 31, 2024. The public comment period expired on June 10, 2024. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency has indicated that the repeal has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-17-811(d)(3), the Division of Elementary and Secondary Education shall promulgate any rule necessary to administer the requirements of the teacher recruitment and retention program. *See* Ark. Code Ann. § 6-17-811. Act 237 of 2023, § 31, repealed Ark. Code Ann. § 6-17-811 in its entirety.

The proposed repeal implements Act 237 of 2023, § 31, sponsored Senator Breanne Davis, which created the LEARNS Act and amended various provisions of the Arkansas Code as they relate to early childhood through grade twelve (12) education in the state of Arkansas.

D. Adjournment