

**DIVISION OF ELEMENTARY AND SECONDARY EDUCATION RULES GOVERNING
PUBLIC SCHOOL POLICIES RELATING TO OVERNIGHT TRAVEL AND USE OF
PUBLIC SCHOOL LAVATORIES**

Effective date:

1.00 AUTHORITY

1.01 The State Board of Education enacted these rules pursuant to its authority as set forth in Ark. Code Ann. §§ 6-11-105, 6-21-120, and 25-15-201 et seq.

2.00 DEFINITIONS

2.01 "Immediate family" means a public school student's parent, brother, sister, or grandparent.

2.02 "Multiple occupancy restroom or changing area" means an area in a public school district or open-enrollment public charter school building that is designed or designated to be used by two (2) or more individuals at the same time and in which one (1) or more individuals may be in various stages of undress in the presence of other individuals.

2.02.1 "Multiple occupancy restroom or changing area" includes without limitation the following:

2.02.1.1 A restroom;

2.02.1.2 A locker room;

2.02.1.3 A changing room; and

2.02.1.4 A shower room.

2.03 "Sex" means the physical condition of being male or female, as defined in Arkansas Code § 6-21-120.

2.03.1 A public school district or open-enrollment public charter school may rely upon a public school student's sex as identified on his or her original birth certificate issued at or near the time of his or her birth.

3.00 PRIVACY AND SAFETY IN PUBLIC SCHOOL RESTROOMS

3.01 To ensure privacy and safety, each public school district and open-enrollment public charter school that serves students in prekindergarten through grade twelve (preK-12) in this state shall:

3.01.1 Require each multiple occupancy restroom or changing area to be designated as follows:

3.01.1.1 For the exclusive use by the male sex; or

3.01.1.2 For the exclusive use by the female sex; and

3.01.2 Provide a reasonable accommodation to an individual who is unwilling or unable to use a multiple occupancy restroom or changing area **individuals** designated for the individual's sex.

3.01.2.1 As provided in Arkansas Code § 6-21-120, a reasonable accommodation shall not include access to a restroom or changing area that is designated for use by members of the opposite sex to an individual while members of the opposite sex of the individual are present or may be present in the restroom or changing area.

3.02 The provision of Section **3.01** does not apply to an individual who enters a multiple occupancy restroom or changing area designated for use by the opposite sex when he or she enters for at least one (1) of the following circumstances:

3.02.1 For custodial, maintenance, or inspection purposes;

3.02.2 To render emergency medical assistance; or

3.02.3 To address an ongoing emergency, including without limitation a physical altercation.

3.03 A public school district or open-enrollment public charter school may adopt a policy that is necessary to accommodate individuals protected under the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, as it existed on January 1, 2023, or young children who are in need of physical assistance when using a restroom or changing facility that is located in a public school district or open-enrollment public charter school.

3.03.1 However, a public school district or open-enrollment public charter school that serves students in prekindergarten through grade twelve (preK-12) in this state shall not adopt a policy under this rule that is contrary to Arkansas Code § 6-21-120.

4.00 OVERNIGHT TRIPS

- 4.01 Except as provided in Arkansas Code § 6-21-120, a public school district or open-enrollment public charter school that sponsors or supervises an overnight trip involving a public school student shall ensure that a public school student attending the overnight trip either:
- 4.01.1 Shares sleeping quarters with a member or, if necessary, multiple members, of the same sex, as defined in Arkansas Code § 6-21-120; or
 - 4.01.2 Is provided single-occupancy sleeping quarters.
- 4.02 A public school student attending an overnight trip may share sleeping quarters with a member of the opposite sex, as defined in Arkansas Code § 6-21-120, if the member of the opposite sex is a member of the public school student's immediate family.
- 4.03 A public school shall not allow a student who is under the age of eighteen (18) to participate in an overnight trip unless the student's parent, legal guardian or a person standing in loco parentis to the student provides written authorization to the school prior to the trip.
- 4.03.1 A student who is under the age of eighteen (18) may only share sleeping quarters with a member of the opposite sex pursuant to Section 4.02 if specifically stated in the written authorization required under Section 4.03.

5.00 ENFORCEMENT

- 5.01 An allegation of noncompliance with this rule shall be referred to the Professional Licensure Standards Board by filing a formal complaint.
- 5.01.1 Upon the board finding noncompliance with this rule, the following individuals, as applicable, shall be subject to a minimum fine of one thousand dollars (\$1,000), and may receive additional sanctions as determined by the board:
 - 5.01.1.1 The superintendent of a public school district where the noncompliance occurred, if the superintendent is found specifically to be noncompliant with this rule;
 - 5.01.1.2 The principal of a public school where the noncompliance occurred, if the principal is found specifically to be noncompliant with this rule;

5.01.1.3 The director or administrative head of an open enrollment public charter school where the noncompliance occurred, if the director or administrative head is found specifically to be noncompliant with this rule; or

5.01.1.4 A teacher or supervisor of a classroom or school-sponsored activity, if the teacher or supervisor is found specifically to be noncompliant with this rule.

5.02 A parent, legal guardian, or person standing in loco parentis of a public school student shall have a cause of action against a public school district or an open-enrollment public charter school if:

5.02.1 His or her public school student:

5.02.1.1 Encounters a member of the opposite sex in a public school district or open-enrollment public charter school multiple occupancy restroom or changing area that is designated for the public school student's sex if the member of the opposite sex received permission from the public school district or open-enrollment public charter school superintendent or the public school or open-enrollment public charter school building principal to use the multiple occupancy restroom or changing area; or

5.02.1.2 Is required by a public school district or open-enrollment public charter school superintendent or the public school or open enrollment public charter school building principal to share sleeping quarters with a member of the opposite sex who is not an immediate family member of the public school student; or

5.02.2 The public school district or open-enrollment public charter school is found to be noncompliant under Section 3.00 of this rule.

6.00 EXCLUSIONS

6.01 The provisions of this rule shall not apply to nurses, paraprofessionals, or other personnel providing services required by a student's Individualized Education Program (IEP).

6.02 The provisions of this rule shall not apply to coaches or athletic personnel, when addressing student athletes participating in athletic activities a reasonable time before, during, or immediately after, an athletic event so long as:

6.02.1 The coach or athletic personnel is addressing student athletes either in preparation of an athletic event or during the athletic event;

6.02.2 No person is in a state of undress at any time, and

6.02.3 A school employee of the same sex as the student athletes is present.

MARKUP DRAFT

1 State of Arkansas As Engrossed: H1/24/23 H1/30/23 S3/9/23

2 94th General Assembly

A Bill

3 Regular Session, 2023

HOUSE BILL 1156

4

5 By: Representatives Bentley, K. Brown, Crawford, D. Hodges, Ladyman, Long, Lundstrum, McAlindon,

6 Miller, Rose, Tosh, *Barker*

7 By: Senator D. Sullivan

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For An Act To Be Entitled

10 AN ACT CONCERNING A PUBLIC SCHOOL DISTRICT OR OPEN-
11 ENROLLMENT PUBLIC CHARTER SCHOOL POLICY RELATING TO
12 THE SEX OF A PUBLIC SCHOOL STUDENT WHO ATTENDS A
13 PUBLIC SCHOOL SPONSORED OR SUPERVISED OVERNIGHT TRIP;
14 CONCERNING THE DESIGNATION OF A MULTIPLE OCCUPANCY
15 RESTROOM OR CHANGING AREA BASED ON AN INDIVIDUAL'S
16 SEX; AND FOR OTHER PURPOSES.

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19

Subtitle

20 CONCERNING A PUBLIC SCHOOL DISTRICT OR
21 OPEN-ENROLLMENT PUBLIC CHARTER SCHOOL
22 POLICY RELATING TO A PUBLIC SCHOOL
23 STUDENT'S SEX.

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

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28 SECTION 1. Arkansas Code Title 6, Chapter 10, Subchapter 1, is amended
29 to add an additional section to read as follows:

30 6-10-137. Overnight trips.

31 (a) Except as provided in subsection (b) of this section, a public
32 school district or open-enrollment public charter school that sponsors or
33 supervises an overnight trip involving a public school student shall ensure
34 that a public school student attending the overnight trip either:

35 (1) Shares sleeping quarters with a member or, if necessary,
36 multiple members, of the same sex; or



1 (2) Is provided single-occupancy sleeping quarters.

2 (b) A public school student attending an overnight trip may share
3 sleeping quarters with a member of the opposite sex if the member of the
4 opposite sex is a member of the public school student's immediate family.

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6 SECTION 2. Arkansas Code Title 6, Chapter 21, Subchapter 1, is amended
7 to add an additional section to read as follows:

8 6-21-120. Public school restrooms – Designation based on sex.

9 (a) As used in this section:

10 (1)(A) "Multiple occupancy restroom or changing area" means an
11 area in a public school district or open-enrollment public charter school
12 building that is designed or designated to be used by one (1) or more
13 individuals at the same time and in which one (1) or more individuals may be
14 in various stages of undress in the presence of other individuals.

15 (B) "Multiple occupancy restroom or changing area"
16 includes without limitation the following:

17 (i) A restroom;

18 (ii) A locker room;

19 (iii) A changing room; and

20 (iv) A shower room; and

21 (2)(A) "Sex" means the physical condition of being male or
22 female based on genetics and physiology.

23 (B) A public school district or open-enrollment public
24 charter school may rely upon a public school student's sex as identified on
25 his or her original birth certificate issued at or near the time of his or
26 her birth.

27 (b) To ensure privacy and safety, each public school district and
28 open-enrollment public charter school that serves students in prekindergarten
29 through grade twelve (preK-12) in this state shall:

30 (1) Require each multiple occupancy restroom or changing area to
31 be designated as follows:

32 (A) For the exclusive use by the male sex; or

33 (B) For the exclusive use by the female sex; and

34 (2)(A) Provide a reasonable accommodation to an individual who
35 is unwilling or unable to use a multiple occupancy restroom or changing area
36 designated for the individual's sex.

1 (B)(i) A reasonable accommodation under this subdivision
2 (b)(2)(A) may include without limitation access to a single-occupancy
3 restroom or changing area.

4 (ii) A reasonable accommodation shall not include
5 access to a restroom or changing area that is designated for use by members
6 of the opposite sex to an individual while members of the opposite sex of the
7 individual are present or may be present in the restroom or changing area.

8 (c) This section does not apply to an individual who enters a multiple
9 occupancy restroom or changing area designated for use by the opposite sex
10 when he or she enters for at least one (1) of the following circumstances:

11 (1) For custodial, maintenance, or inspection purposes;

12 (2) To render emergency medical assistance; or

13 (3) To address an ongoing emergency, including without
14 limitation a physical altercation.

15 (d)(1) Nothing in this section shall be construed to prohibit a public
16 school district or open-enrollment public charter school from adopting a
17 policy that is necessary to accommodate individuals protected under the
18 Americans with Disabilities Act of 1990, Pub. L. No. 101-336, as it existed
19 on January 1, 2023, or young children who are in need of physical assistance
20 when using a restroom or changing facility that is located in a public school
21 district or open-enrollment public charter school.

22 (2) However, a public school district or open-enrollment public
23 charter school that serves students in prekindergarten through grade twelve
24 (preK-12) in this state shall not adopt a policy under subdivision (d)(1) of
25 this section that is contrary to this section.

26 (e)(1) An allegation of noncompliance with this section shall be
27 referred to the Professional Licensure Standards Board by filing a formal
28 complaint.

29 (2) Upon the board finding noncompliance with this section, the
30 following individuals, as applicable, shall be subject to a minimum fine of
31 one thousand dollars (\$1,000), and may receive additional sanctions as
32 determined by the board:

33 (A) The superintendent of a public school district where
34 the noncompliance occurred, if the superintendent is found specifically to be
35 noncompliant with this section;

36 (B) The principal of a public school where the

1 noncompliance occurred, if the principal is found specifically to be
2 noncompliant with this section;

3 (C) The director or administrative head of an open-
4 enrollment public charter school where the noncompliance occurred, if the
5 director or administrative head is found specifically to be noncompliant with
6 this section; or

7 (D) A teacher or supervisor of a classroom or school-
8 sponsored activity, if the teacher or supervisor is found specifically to be
9 noncompliant with this section.

10 (f) A parent, legal guardian, or person standing in loco parentis of a
11 public school student shall have a cause of action against a public school
12 district or an open-enrollment public charter school if:

13 (1) His or her public school student:

14 (A) Encounters a member of the opposite sex in a public
15 school district or open-enrollment public charter school multiple occupancy
16 restroom or changing area that is designated for the public school student's
17 sex if the member of the opposite sex received permission from the public
18 school district or open-enrollment public charter school superintendent or
19 the public school or open-enrollment public charter school building principal
20 to use the multiple occupancy restroom or changing area; or

21 (B) Is required by a public school district or open-
22 enrollment public charter school superintendent or the public school or open-
23 enrollment public charter school building principal to share sleeping
24 quarters with a member of the opposite sex who is not a family member of the
25 public school student; or

26 (2) The public school district or open-enrollment public charter
27 school is found to be noncompliant under subsection (e) of this section.

28 (g) The Division of Elementary and Secondary Education shall
29 promulgate rules to implement this section.

30
31 /s/Bentley

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34 **APPROVED: 3/21/23**