

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

Thursday, September 19, 2024

9:00 a.m.

Room A, MAC

Little Rock, Arkansas

- A. Call to Order**
- B. Reports from the Executive Subcommittee Concerning Emergency Rules**
- C. Reports from ALC Subcommittees Concerning the Review of Rules**
- D. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309**
 - 1. DEPARTMENT OF COMMERCE, ARKANSAS ECONOMIC DEVELOPMENT COMMISSION (Jake Windley, items a, b; Becca Caldwell, item b)**
 - a. SUBJECT: Arkansas Business and Technology Accelerator Grant Program**

DESCRIPTION: The purpose of the proposed changes is to amend the Arkansas Business and Technology Accelerator Grant Program rule to include changes enacted by Act 834 of 2023. The amended rule will allow a new category of businesses to be eligible to apply for program funds administered by the Arkansas Economic Development Commission.

Background

The Arkansas Business and Technology Accelerator Grant Program was created in 2017 to stimulate innovation and growth in the state's technology business sector. It allows for a discretionary grant of up to \$250,000 to eligible applicants for eligible activities.

A business and technology accelerator in this rule means a full-time, immersive program administered by an eligible applicant to invest in, mentor, and accelerate commercial development of start-up businesses.

The Division of Science and Technology of the AEDC administers this program. The Commercialization Committee of the Board of Directors of the Division of Science and Technology reviews each application and

makes funding recommendations to the executive director of the commission.

Act 834 of 2023 amended state statute to allow a business classified by the NAICS 562213 to be eligible for program funding.

Key Points of the Amended Rule

- Amends the definition of “eligible applicant” of a grant to include a business primarily engaged in operation under NAICS code 562213 of the 2022 NAICS.
- This sector consists of businesses who are engaged in operating combustors and incinerators for the disposal of nonhazardous solid waste.
- The grant awards are made on a reimbursable basis after invoices and financial reports are submitted and approved by the commission.
- Various technical changes and corrections have been made throughout the document.

PUBLIC COMMENT: A public hearing was held on July 30, 2024, and the public comment period expired on August 11, 2024. The agency received no public comments.

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

(1) Section 105(a)(1) – Is there a reason for the removal of the language “pending availability of funds” that precedes “at the discretion of the Director of the [AEDC]” in the rule, where Ark. Code § 15-3-606(a)(2) provides that a business and technology accelerator grant may be offered “[s]ubject to funding and the discretion of the director [of the AEDC]”?

RESPONSE: The language in the rule was slightly pared down from the full list of requirements in the statute for simplicity’s sake, and as such, notifying grant recipients that the decision was subject to the Director’s discretion was the most important item, particularly in the context of grant agreements.

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 § 15-3-608, the Division of Science and Technology of the Arkansas Economic Development Commission shall promulgate rules to implement and administer the Arkansas Business and Technology Accelerator Act, Ark. Code Ann. §§ 15-3-601 to -608.

The proposed rule changes include those made in light of Act 834 of 2023, which was sponsored by Representative Robin Lundstrum and amended the law concerning economic development incentives; amended the Arkansas Business and Technology Accelerator Act to provide that certain solid waste disposal businesses are eligible for incentives under the Act; and amended the Consolidated Incentive Act of 2003 to provide that certain solid waste disposal businesses are eligible for incentives under the Act.

b. SUBJECT: Rural Services Block Grant Program

DESCRIPTION: The Arkansas Economic Development Commission of the Department of Commerce proposes to amend its existing Rural Services Block Grant Program rule, increasing the maximum grant award from \$75,000 to \$100,000. As background, the Program helps fund vital community development projects in rural communities with populations under 3,000 that are majority low to moderate income. The Program itself is funded through the U.S. Department of Housing and Urban Development's Small Cities Community Development Block Grant Program.

The proposed amended rule incorporates two changes to the existing Program. First, as stated above, the amended rule increases the maximum grant award from \$75,000 to \$100,000. The increase is necessary to account for the effects of inflation and rising material costs for grant recipients. It should be noted that this does not increase the total amount that will be disbursed under the program. While this may ultimately result in fewer grants being issued, AEDC believes that increasing the maximum grant award will encourage more communities to apply for funding on impactful development projects. Second, the amended rule formally codifies the Program in a format that complies with the Code of Arkansas Rules' style requirements, as the existing rule consists of the grant application form.

The deadline for the next cycle of grant funding is in September.

PUBLIC COMMENT: A public hearing was held on July 24, 2024, and the public comment period expired on August 11, 2024. The agency received no public comments.

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

(1) Section 4(a)(3) – The current rule includes as project types “[p]urchase of fire trucks, specialized life saving equipment such as ‘jaws of life’ and

protective clothing worn by fire fighters.” (p.2 following Table of Contents). The proposed rule omits the description of “life saving” preceding equipment. Was this intended? If so, why? **RESPONSE:** The concern was that limiting funding solely to “specialized life saving equipment such as ‘jaws of life’”, the clause would be too restrictive and potentially not include specialized support equipment that did not directly save lives but assisted firefighters in their operations.

(2) Section 5(b)(1) – The current rule provides that the grant award must be matched with “cash, in-kind labor, in-kind materials, or land”. The proposed rule omits “in-kind labor”. (p.3 following Table of Contents). Was this intended? If so, why? **RESPONSE:** Current state law does not allow matching for in-kind labor; however, the federal program that provides the funding for this grant does allow for an in-kind labor match. We will correct that at the end of the public comment period.

(3) Section 5(b)(2) – Along the same lines as question (2), the current rule provides that the value of all matching must be documented by “bank statements for cash, official cost estimates for in-kind materials and labor, or official appraisals for land”. (p.3 following Table of Contents). The proposed rule omits “and labor”. Was this intended? If so, why? **RESPONSE:** Same answer as above. That omission will be corrected at the end of the public comment period.

(4) Section 8(a) – The proposed rule references an Administrative Procedures Manual for the Arkansas Community and Economic Development Grant Program. Is this manual currently promulgated as a rule?

(a) If it is not currently promulgated, will it be promulgated as a rule in the future? If yes, when?

(b) If it will not be promulgated as a rule in the future, why not?

RESPONSE: Since the grant is based off federal funding, the grant must be overseen by a paid administrator. The administrative procedures manual is a guide for those administrators. Link for reference: <https://www.arkansasedc.com/community-resources/community-development-block-grant/detail/administrative-procedures-manual>.

(5) Section 8(c)(2) – The proposed rule provides that a failure to provide the requested documentation may result in “sanctions”. What “sanctions” are contemplated by the Commission? Is there a reason that these are not outlined in the proposed rule? **RESPONSE:** The sanctions referenced there refer to when AEDC internally sanctions a grantee from receiving additional grants due to noncompliance such as a failure to submit reports or conducting a required audit. Those grantees are placed on an internal list and will not receive additional CDBG funds. According to the grant team, we have rarely needed to implement this.

FOLLOW-UP QUESTIONS

(1) To follow-up on Question (4):

Is the administrative procedures manual currently promulgated as a rule?

RESPONSE: No.

(a) If it is not currently promulgated, will it be promulgated as a rule in the future? If yes, when?

(b) If it will not be promulgated as a rule in the future, is there a reason?

RESPONSE: The Administrative Procedures Manual does not contain any new policies or grant requirements. The manual simply collects and summarizes existing state and federal regulations relevant to AEDC's grant operations in a single source and summarizes them in a concise format to make them more accessible for grant applicants. As such, the manual does not need to be promulgated as a rule and we have no intent of doing so.

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 § 15-6-106(b), the Director of the Arkansas Economic Development Commission may prescribe and issue, pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., such reasonable rules as may be necessary to carry out the provisions of the Arkansas Rural Development Program Act, Ark. Code Ann. §§ 15-6-101 to -107.

2. DEPARTMENT OF COMMERCE, ARKANSAS WATERWAYS COMMISSION (Jake Windley)

a. SUBJECT: Arkansas Port, Intermodal, and Waterway Development Program

DESCRIPTION: The Arkansas Department of Commerce, Arkansas Waterways Commission seeks legislative review and approval of its amended Arkansas Port, Intermodal, and Waterway Development Program Rules. Act 881 of 2023 enacted amendments to the Arkansas Port, Intermodal, and Waterway Development Grant Program, which is administered by the Arkansas Waterways Commission. Among other provisions, the Act extends the boundaries of the program to include public port and intermodal facilities along the Arkansas River. The proposed amendments are necessary to incorporate these changes to the grant program.

PUBLIC COMMENT: A public hearing was held on July 25, 2024. The public comment period expired on August 11, 2024. The agency has indicated that it received no public comments.

These rules were previously 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 expired on August 23, 2024. The proposed effective date for the permanent rule 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 § 15-23-205(f), the Arkansas Waterways Commission shall promulgate rules to implement the Arkansas Port, Intermodal, and Waterway Development Grant Program, codified in Ark. Code Ann. § 15-23-205.

The proposed amendments include those made in light of Act 881 of 2023, sponsored by Senator Jonathan Dismang, which concerned funding and incentives for certain waterways systems, programs and investments; amended the Arkansas Port, Intermodal, and Waterway Development Grant Program; provided additional funding for the Arkansas Port, Intermodal, and Waterway Development Grant Program Fund; and created an investment tax credit for capital improvements relating to water transportation in the state.

3. **DEPARTMENT OF COMMERCE, OFFICE OF SKILLS DEVELOPMENT** (Jake Windley, Stephanie Isaacs)

a. **SUBJECT:** Rules for Secondary Technical Centers

DESCRIPTION: The Department of Commerce, Office of Skills Development seeks to amend its Rules for Secondary Technical Centers. The previous version of this rule prohibited secondary technical centers from using vocational aid funding for the maintenance and operation of facilities. Act 507 of 2021 created an exception to this rule if the secondary technical center is physically detached from a local public school district or state-supported institution of higher education. The Department began promulgating this amendment in 2022, but it was determined that the amendment drafted created an exception that was broader than Act 507 intended. Therefore, the Department drafted a narrower amendment and began the promulgation process again.

PUBLIC COMMENT: A public hearing was held on July 23, 2024. The public comment period expired on August 11, 2024. The agency has indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the amended rule does not have a financial impact.

LEGAL AUTHORIZATION: Vocational centers shall be financed by distributing vocational center aid from the Public School Fund according to rules promulgated by the Career Education and Workforce Development Board. *See* Arkansas Code Annotated § 6-51-305(a)(1). The Office of Skills Development and the Career Education and Workforce Development Board, in coordination with the Division of Higher Education, the Chief Workforce Officer, and the Department of Education, shall adopt rules to administer the office and the Career Education and Workforce Development Board and the programs developed by the office and the Career Education and Workforce Development Board, including without limitation the creation and election of officers subsequent to the initial chairs. *See* Ark. Code Ann. § 25-25-30-102(a)(9).

The proposed amendments include those made in light of Act 507 of 2021, sponsored by Representative Lanny Fite, which amended the source of funding that may be used to manage, maintain, and operate a multidistrict vocational center under certain circumstances.

4. **DEPARTMENT OF COMMERCE, STATE INSURANCE DEPARTMENT, STATE BOARD OF EMBALMERS, FUNERAL DIRECTORS, CEMETERIES, AND BURIAL SERVICES** (Tasha Tidwell)

a. **SUBJECT:** Rule 6: Rule Pertaining to Burial Associations

DESCRIPTION: The proposed amendments are needed to implement 2023 legislation and to make other miscellaneous changes.

Background

- Act 81 of 2023 clarifies the terms of benefits of membership and minimum percentage payables to substitute service-providing funeral homes based on membership data and proximity to the contract funeral home.
- Act 82 of 2023 changes the requirements for semi-annual financial reporting for the burial associations to annual reporting for the burial associations.

Key Points

- The language implementing Act 81 begins on the markup page 7, Section 12.
- The language implementing Act 82 begins on the markup page 5, Section 10.
- Sections 41 and 43, Medical Guidelines and the Chamberlain Table, respectively, will appear with Rule 6 as exhibits.
- The sections addressing board meetings and new business forms are deleted as those sections are no longer needed.
- The first subsection of Section 38 New Business Guaranty Fund is deleted as it pertains to a one-time assessment that was completed pursuant to Act 443 of 1987 for the establishment of the fund and is no longer applicable.
- On markup page 28, Section 39 Use of New Business Surplus Funds has been amended to extend the time to submit a request for the use of surplus funds from new business funds to old business funds from thirty (30) days to sixty (60) days to allow ample time for the Board to consider the requests and any alternative remedial measures.
- On markup page 30, Section 46 Annual License Fees, membership fees have been reduced from twenty-five cents (\$0.25) to twenty cents (\$0.20) per member.
- Sections 47 and 48 have been added to the rule to set deadlines for burial associations to submit plans for mergers, acquisitions, and dissolutions to the Board.

PUBLIC COMMENT: A public hearing was held on this rule on July 16, 2024. The public comment period expired on July 16, 2024. The agency provided the following public comment summary:

The Board received one public comment during the public hearing held on July 16, 2024. The commenter's name is Sylvester Lee Smith, Jr., and the substance of the comment dealt with the diminished usefulness of burial associations as the \$500 to \$2,500 limits for certificates of benefits are insufficient to cover funeral costs in current Arkansas markets which are better addressed by prepaid funeral contracts. **RESPONSE:** Because the certificate limits are set by statute and would require legislative changes to be increased, the public comment is not responsive to the proposed rule amendments. No revisions were made to the rule as a result of the comment.

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

1. Act 81 states, "For memberships issued on or after July 19, 1987, if other than the contract funeral home performs the funeral service, the

benefit shall be paid to that licensed, servicing funeral home on the basis of one hundred percent (100%) of the face amount of the certificate, in cash.” I see most of this provision reflected in Section 12(a) of the proposed rules, but I do not see any reference to “cash” in this subsection. Why was this language omitted? **RESPONSE:** The “in cash” was not included in 12(a) because the Board’s subcommittee thought it was understood and to include it would be inconsistent with the other subsections (b), (c), and (d).

2. Act 81, § 1 references memberships issued “on or after” July 19, 1987. However, § 12(a) of the proposed rules only applies to memberships issued “after” July 19, 1987. Why was this change made? **RESPONSE:** The “on” omission had to be made in § 12(a) to not cause conflict with the timeline referenced in “For memberships issued between August 5, 1976, through July 19, 1987...” in § 12(d).

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated this rule has no financial impact.

LEGAL AUTHORIZATION: The State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services may promulgate rules to administer and carry out the intent of Title 23, Chapter 78 of the Arkansas Code, regarding burial associations. Ark. Code Ann. § 23-78-121(a).

This rule implements Acts 81 and 82 of 2023. Act 81, sponsored by Senator David Wallace, amended the certificate for benefits for burial associations and clarified the percentage payable to substitute service-providing funeral homes based on membership data and proximity to the contract funeral home. Act 82, also sponsored by Senator Wallace, amended the reporting requirements for burial associations.

5. **DEPARTMENT OF CORRECTIONS, ARKANSAS SENTENCING COMMISSION** (Tawnie Rowell)

a. **SUBJECT:** Eligibility for Transfer to Post-Release Supervision

DESCRIPTION: The Arkansas Sentencing Commission is proposing a new rule concerning eligibility for transfer to post-release supervision. The proposed rule sets the offenses for which an offender is required to serve 25% of his or her sentence or 50% of his or her sentence pursuant to the Protect Arkansas Act.

Following the public comment period, the agency indicated the following changes: The three words that were highlighted were corrected and approved by the commission.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on May 20, 2024. The agency provided the following summary of comments it received and its responses thereto:

Commenter's Name: Russ Carter

COMMENT: The comment addresses two typographical errors in III A.1.

RESPONSE: The agency corrected the two typographical errors.

Suba Desikan, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses thereto:

1. Is this rule revising voluntary sentencing standards pursuant to Ark. Code Ann. § 16-90-802(d)(2)(A)? **RESPONSE:** It is.

2. If so, has the agency requested review by the House & Senate Committees on Judiciary pursuant to Ark. Code Ann. § 16-90-802(d)(2)(E)? **RESPONSE:** We will be requesting review by the House & Senate Judiciary during the public notice period.

The proposed effective date is January 1, 2025.

FINANCIAL IMPACT: The agency estimated a financial impact of \$498.00 for the current fiscal year and \$28,393.00 for the next fiscal year. The agency provided the following explanation: The additional length of stay will create additional cost of care for inmates in state facilities. Currently, release eligibility begins at 1/6 of the sentence imposed by the court for most offenses. The increase to 25% and 50% will result in longer stays and an increase in cost of care. Please note that most of the projected fiscal impact for this rule was already covered by the impact assessment prepared for Act 659. There is an estimated increase of \$28,891.00 to accommodate the increase of daily cost of care for state inmates.

In consideration of the alternatives to this rule, the agency did not determine that this was the least costly rule considered. The agency provided the following information concerning its determination:

(a) how the additional benefits of the more costly rule justify its additional cost;

By requiring those convicted of more serious offenses to serve a larger percentage of their sentence.

(b) the reason for adoption of the more costly rule;

To promote public safety by ensuring that more inmates with more serious offenses are required to serve a larger percentage of sentence.

(c) whether the reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how;

Yes- the reason for adoption was based on the interest of public safety.

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

Yes – Ark. Code Ann. § 16-93-1804 provides that the Sentencing Commission is responsible for making this determination for offenses not specifically set out in statute.

LEGAL AUTHORIZATION: The Arkansas Sentencing Commission is authorized to adopt an initial sentencing standards grid and an offense seriousness reference table based upon the statutory parameters and additional data and information gathered before January 1, 1994. *See* Ark. Code Ann. § 16-90-802(d)(1)(A). The Commission shall also set the percentage of time within parameters set by law to be served for offenses at each seriousness level before any type of transfer or release. *See* Ark. Code Ann. § 16-90-802(d)(2).

The proposed rule includes changes made in light of Act 659 of 2023, sponsored by Senator Ben Gilmore, which created the Protect Arkansas Act; amended Arkansas law concerning sentencing and parole; amended Arkansas law concerning certain criminal offenses; amended Arkansas law concerning the Parole Board; and created the Legislative Recidivism Reduction Task Force.

**6. DEPARTMENT OF CORRECTIONS, OFFICE OF THE SECRETARY
(Tawnie Rowell)**

a. SUBJECT: Prison Rape Elimination Act (P.R.E.A.)

DESCRIPTION: This rule is being promulgated to comply with the federal Prison Rape Elimination Act and to limit inspections by male correctional officers in areas where a female inmate is likely to be in a state of undress.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on July 16, 2024. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: “To the greatest extent practicable and consistent with safety and order of the correctional facility, the Secretary of the Department of Corrections shall adopt rules that limit inspections by male correctional officers where a female inmate is in a state of undress.” Ark. Code Ann. § 12-29-803, *as created by* Act 659 of 2023, § 112.

This rule implements Act 659 of 2023. The Act, sponsored by Senator Ben Gilmore, created the Protect Arkansas Act, amended Arkansas law concerning sentencing and parole, amended Arkansas law concerning certain criminal offenses, amended Arkansas law concerning the Parole Board, and created the Legislative Recidivism Reduction Task Force.

7. **DEPARTMENT OF EDUCATION, DIVISION OF ELEMENTARY AND SECONDARY EDUCATION** (Courtney Salas-Ford)

a. **SUBJECT:** Rules Governing Community Service and Diploma Requirements

DESCRIPTION: The Department of Education, Division of Elementary and Secondary Education proposes its Rules Governing Community Service. These rules were promulgated per Act 237 of 2023, codified at Ark. Code Ann. § 6-16-1901 et seq. for the Department to implement community service requirements. The rules in their current form require that each public-school student complete seventy-five (75) clock hours of community service to graduate from high school, create a waiver system from community service for extenuating circumstances, and establish reporting.

After the initial public comment period, there were many substantive changes made. These changes include amending pertinent definitions, expanding what constituted community service organizations, expanding local and parental control, expanding extenuating circumstance waivers including allowing a public school board to consider paid employment and work-based service as community service, and removing section four (4) which ended the academic credit for community service.

After the second public comment period, no changes were made.

PUBLIC COMMENT: A public hearing was held on April 19, 2024. The public comment period expired April 24, 2024. A second public hearing was held June 28, 2024. That public comment period expired July 14, 2024. The agency provided a 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 was provided with the following agency responses:

1) Section 3.05 of the proposed rule permits a public school district board of directors or the governing body of an open enrollment public charter school to grant a waiver of the community service requirement to individual students for extenuating circumstances. Should request for such a waiver be denied, will this determination be appealable and, if so, will the agency outline steps for seeking an appeal? **RESPONSE:** This decision is not appealable.

2) Section 3.08 of the proposed rules requires a public school district to report to the Division of Elementary and Secondary Education annually if a student was granted a waiver and the reason for the waiver. Per this provision, is this the only notice a public school district must provide to either the Division or the State Board of Education with respect to granting a waiver of the community service requirement? **RESPONSE:** Yes.

The proposed effective date is October 1, 2024.

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

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 6-16-1902(b), the State Board of Education may promulgate rules necessary for the implementation of Ark. Code Ann. §§ 6-16-1901 through 1902, which concern the community service diploma requirement. Further authority for the rulemaking can be found in Ark. Code Ann. § 6-16-120(d), which provides that the state board may promulgate rules necessary for the implementation of Ark. Code Ann. § 6-16-120, which concerns academic credit for community service.

The proposed rule implements the following Acts of the 2023 Regular Session:

Act 237 of 2023, §§ 15 and 20, 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 720 of 2023, sponsored by Representative Denise Garner, which amended the law concerning programs and activities approved for academic credit for community service.

b. SUBJECT: Rule Governing Arkansas Governor’s School

DESCRIPTION: The Department of Education, Division of Elementary and Secondary Education seeks to amend its Division of Elementary and Secondary Education Rules Governing Arkansas Governor’s School. This amendment overhauls the entire rule, putting into rule what had been practice. The rule also expands several key areas of the program that needed expansion, including selection processes for the host institution, faculty, and students. The rule also creates a transition procedure from host institution to host institution if the program is relocated at the end of the 5-year cycle or before. Additionally, the rule adds an evaluation procedure to ensure that the program is meeting its goals, is accountable to the division and is effective for gifted student learning. Finally, the rule makes several technical changes throughout in advance of the Code of Arkansas Rules.

After the close of the public comment period, the agency indicated the following changes: All changes made following the public comment period were technical in nature and made no substantive change to the rule.

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, Policy Services Director, 5/24/2024

COMMENT: 3.04: - I would recommend changing this to read “based on one or more of the following, without limitation:”.

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

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director, 5/24/2024

COMMENT: 3.05.1 - The longhand and the parentheses are missing for “15”. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director, 5/24/2024

COMMENT: 3.06.1.1 - The longhand and parentheses are missing for “5” and “ten”. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director, 5/24/2024

COMMENT: 5.02 - The longhand and parentheses are missing for “28” and “38”. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director, 5/24/2024

COMMENT: 5.02.3 - The longhand and parentheses are missing for “4”. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director, 5/24/2024

COMMENT: 5.02.4 - The parenthetical Arabic numerals are missing for “six” and “seven”. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director, 5/24/2024

COMMENT: 5.04 - This paragraph should end with a colon instead of a semicolon. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director, 5/24/2024

COMMENT: 6.04 - The longhand and parentheses for “18” are missing. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director, 5/24/2024

COMMENT: 6.05 - The parenthetical Arabic numerals for “three” are missing. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director, 5/24/2024

COMMENT: 7.01.1 - The longhand and parentheses are missing for “10%”. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director, 5/24/2024

COMMENT: 8.01 - The parenthetical Arabic numerals for “one” are missing. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director, 5/24/2024

COMMENT: 10.03.1: I believe that “volunteer” should be “voluntary” instead. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director, 5/24/2024

COMMENT: 12.01.9 - I’m not sure if this is supposed to be a “12.01.2.8” or a “12.01.3” but it definitely is not supposed to be “12.01.9”.

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

Commenter Name: Peter Dykema, Arkansas Tech University, Professor of History, 5/30/2024

COMMENT: 5.02 - This new rule provides much needed flexibility to the length of the program. The old rule that defined the 4-week program as 28 calendar days without a break gave no flexibility. The new rule gives a range of length from 28 days to 38 days and provides the option of a multi-day break (5.02.3). This allows AGS to start before July 4th, offer a break around the 4th, and then finish up earlier in the summer. Currently, the demand to go 28 days without a break forces AGS to start immediately after the 4th and run into very early August, coming up fast to the start of the new academic year. The new rule offers more flexibility and is an improvement.

Suggestion: I suggest you extend the range still further, from 21 days to 38 days. This is not to promote a shorter program. This is to offer the possibility of a shorter program, if necessary. Budgetary shortcomings may demand a shorter program. Inflation may demand a shorter program. A stomach virus may demand a shorter program (sorry, Girls State). The continuous rise in other opportunities (Boys State, Girls State, athletic camps, band and choir camps, prep for fall team sports) creates competition with AGS. Many students might prefer a shorter AGS program. Extending the range down to 21 days does not mean the program would have to be 21 days. It merely means a shorter program could be an option. A program of 24 days, or 26 days, could also be options. In 2024, we are facing some budget difficulties hosting a 28-day session with the allocation of \$640,000. If we were allowed to offer even a 27-day session, that would allow budgetary breathing room.

The point is this: the length of the program will always be linked to the available funding. The more flexibility, the better. The numbering on rule 5 may have an error. The rules jump from 5.04.1.1 to 5.09.1.2 (PDF screen 10) : then they continue with 5.09.2, etc. I'm thinking the rules need to be re-numbered from 5.04.1.1 to the end of rule 5. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Peter Dykema, Arkansas Tech University, Professor of History, 5/30/2024

COMMENT: 6.05.3 Area II - If you read the text of the next several lines, you'll see the repeated word "thinking." That's fine. That is indeed the focus of Area II: how to think. But when more specific applications are mentioned, I only see one example: Logic. For years, Area II has stressed "thinking about thinking" or "the nature of knowledge" and logic has always been part of the discussion. So far, so good. But I only see Logic. For years, Area II has also stressed Ethics. We currently spend about half the time in Area II on "ethical thinking" or "how do we think ethically?" I think there is still enough wiggle room in the language to allow an application of thinking ethically. But I would suggest an explicit addition of the word "Ethics" to line 6.05.3.5. **RESPONSE:** Comment considered. No changes made; the suggested language is already allowed within the rule as written.

Commenter Name: Peter Dykema, Arkansas Tech University, Professor of History, 5/30/2024

COMMENT: 6.05.4 Area III - Here the new rules focus explicitly on personal development, communication skills, and how to apply personal and communication skills "in their own lives and communities." Currently, Area III focuses on personal development as well as social development and social change. Beyond the words "and communities," I don't see much room for social concerns and social change. If this is intended, so be it. If not, I suggest the inclusion of a few words beyond "get along with others," "civil manner," and "and communities" to expand Area III to include where and how the individual fits into society more broadly. Some words/phrases that come to mind: citizenship, informed citizenry, social issues, social impact, social change, active citizenship, or even just something like "the individual in society." **RESPONSE:** Comment considered. No changes made; the suggested language is already allowed within the rule as written.

Commenter Name: Peter Dykema, Arkansas Tech University, Professor of History, 5/30/2024

COMMENT: 13.01.1 Grant cycles are every five (5) years.
Commentary:

Pros: For years, the grant cycles have been 3 years. Extending them to five years will bring more stability. The host institution will be able to do more

long-term planning and can effectively make improvements knowing they will host AGS for several more years.

Cons: A five-year cycle raises questions about budgetary uncertainty. Five years is a big commitment for a host university to make when the amount of available grant funds won't be known five years into the future. Do any of us know how much the General Assembly will appropriate for AGS for the year 2028? Do we even know how much they will appropriate for 2025? The budget is unpredictable. Inflation is unpredictable. This is why more flexibility is better. AGS can only adapt in a few ways if the budget becomes a problem: cut costs, invite fewer students, invite them for a shorter session. Cutting costs works until no more can be cut without losing quality. I already proposed above a wider range for the length of the program: 21 days to 38 days. That would allow the host institution to look at the funding available, look at the budget, and decide whether to offer a 28-day program, or perhaps 26, or perhaps 24. The only other alternative is to invite fewer students. The goal is to invite 400. What if the budget can only allow 340 or 360?

Summary: Five years is a long commitment. I would expect that all university applicants for Arkansas Governor's School would hesitate making a 5-year commitment without some funding promises up-front or with flexible options to shorten the program or limit the number of students in the case of a looming budgetary shortfall.

RESPONSE: Comment considered. No changes made. Budget estimates are included in the request for proposals and budget variations are accounted for annually based on funding appropriations.

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

1) Section 3.04 – This section of the proposed rules defines both “diverse” and “diversity”. Aside from the definition itself, are these two terms otherwise used in the rule? **RESPONSE:** No, those terms are not used throughout the rule; however, there are internal references to Section 3.04 in the rule.

2) Did the Advisory Council for the Education of Gifted and Talented Children have an opportunity to comment on these proposed rules proposed, per Ark. Code Ann. § 6-42-104(h)(1)?

RESPONSE: Yes, agency staff specifically notified members of the Council that the rule was being promulgated and the members were given multiple opportunities to comment on the rule.

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: The Division of Elementary and Secondary Education is authorized to establish annual summer residential and day programs to provide enriched educational offerings for junior high and high school students who have demonstrated exceptional abilities in a specific subject area. *See* Arkansas Code Annotated § 6-42-108(a). Pursuant to Ark. Code Ann. § 6-42-106(a), appropriations made by the General Assembly to the Public School Fund for the purposes of Ark. Code Ann. § 6-42-106, which concerns gifted and talented children, shall be disbursed by the division in accordance with rules promulgated by the State Board of Education. The State Board shall have the authority to promulgate such rules and require such reports as it deems advisable. *See* Ark. Code Ann. § 6-42-102. The Advisory Council for the Education of Gifted and Talented Children shall have an opportunity to comment on rules proposed for issuance pursuant to Ark. Code Ann. § 6-42-101 through 6-42-109, which concern special education programs for gifted and talented children. *See* Ark. Code Ann. 6-42-104(h)(1). Finally, the State Board may promulgate rules to implement Ark. Code Ann. § 6-16-156, which concerns indoctrination. *See* Ark. Code Ann. § 6-16-156(f).

c. **SUBJECT: Rule Governing the Arkansas Fiscal Assessment and Accountability Program**

DESCRIPTION: The Department of Education, Division of Elementary and Secondary Education proposes amendments to its Rules Governing the Arkansas Fiscal Assessment Accountability Program. The purpose of this rule is to provide guidelines and procedures by which public school districts and open-enrollment public charter schools can be provided support or be classified as in fiscal distress. The rules remove references to repealed law and make minor technical corrections in advance of the Code of Arkansas Rules. Per the agency, Act 237 of 2023 repealed the Teacher Fair Dismissal Act and the Public School Employee Fair Hearing Act, and this amendment removes references to those acts.

After the close of the public comment period, the agency indicated the following: All changes made following the public comment period were technical in nature and made no substantive change to the rules.

PUBLIC COMMENT: A public hearing was held on May 20, 2024. The public comment period expired June 6, 2024. The agency provided the following public comment summary:

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director, 5/24/24

COMMENT: 1.01 - The second and third inclusions of “Ark. Code Ann.” can be removed as they are redundant. “Act 929 of 2019” could be removed as it was incorporated into the previous changes of the Rules.

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

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director, 5/24/24

COMMENT: 3.08 - I would recommend changing “balance resulting” to “a balance that results”. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director, 5/24/24

COMMENT: 5.02.1 - The longhand and parentheses for “30” are missing. **RESPONSE:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director, 5/24/24

COMMENT: 7.01 - I would recommend changing “Those school districts” to “School districts” as the “Those” is unnecessary.

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

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 6-20-1911(a), the Division of Elementary and Secondary Education shall promulgate rules as necessary to identify, evaluate, assist, and address school districts in fiscal distress. The division may promulgate rules as necessary to administer the Arkansas Fiscal Assessment and Accountability Program, codified at Ark. Code Ann. §§ 6-20-1901 through 6-20-1914. *See* Ark. Code Ann. § 6-20-1911(b).

The proposed rule 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.

d. **SUBJECT: Rules Governing Math Intervention**

DESCRIPTION: The Department of Education, Division of Elementary and Secondary Education proposes its Rules Governing Math Intervention. Section 30 of Act 237 of 2023 created Arkansas Code § 6-

17-431 which requires public school districts and open-enrollment public charter schools to develop a math intervention plan for each student in grades three through eight (3-8) who is not performing at or above grade level on the state assessment. The new statute also includes provisions that may be included in the math intervention plan and requires schools to provide written notification to parents of their student's math intervention plan and progress on their math intervention plan throughout the school year. Finally, the statute requires schools to report to the Division the types of math intervention used and the number of students receiving each type of math intervention. The Division's Rules Governing Math Intervention set out these statutory requirements for math intervention plans.

PUBLIC COMMENT: A public hearing was held on June 28, 2024. The public comment period closed on July 14, 2024. The agency provided the following public comment summary:

Commenter Name: APSRC

COMMENT: Section 3.02.2, Page 2: 1) Wouldn't a teacher with highly-effective rates have a qualifying value-added model score? If not, the assessor is rating the teachers too high.; 2) Can this highly-effective teacher be from any subject? It needs to be a teacher that can teach Math.; 3) Wouldn't a teacher with a Master designation have a qualifying value-added model score?, and 4) What about some of these small districts that do not have any of teachers listed in Section 3.02.2.1 a and b?

RESPONSE: 1:1: Not necessarily. There could be a teacher that has a value-added model score in the top quartile, but not for the previous three (3) years. A highly effective rating is a separate measure for teacher effectiveness that has different qualifying criteria separate from the value-added model score criteria. 1:2: Yes, the teacher can be from any subject. Best practice would be for the teacher assigned to math intervention plans to provide evidence based high quality instruction that meets the needs of the student noted in the student's math intervention plan, but that decision is at the school district or charter school's discretion. 1:3: Not necessarily. There could be a teacher that has a value-added model score in the top quartile, but not for the previous three (3) years. Master designation is a separate measure for teacher effectiveness that has different qualifying criteria separate from the value-added model score criteria. 1:4: Assigning math intervention plans to a teacher that meets the designations in Sections 3.02.2.1.a and 3.02.2.1.b is not required. These sections are suggestions for school districts and open-enrollment charter schools when creating math intervention plans. Best practice would be for the teacher assigned to math intervention plans to provide evidence based high quality instruction that meets the needs of the student noted in the student's math intervention plan, but that decision is at the school district or charter school's discretion. No changes made.

Commenter Name: APSRC

COMMENTS: Section 3.02, Page 2: Are items listed under 3.02.1, 3.02.2, and 3.02.3 just opinions, given that the language says “may”?

RESPONSE: Correct. The options listed at sections 3.02.1, 3.02.2, and 3.02.3 are recommendations from Arkansas Code § 6-17-431(a)(1)(B)(i), (ii), and (iii) that school districts and open-enrollment charter schools can choose to include in math intervention plans, but they are not required to do so. No changes made.

Commenter Name: APSRC

COMMENTS: Section 3.02.2.1.a, Page 2: 1) Is the highly-effective rating based upon any one (1) component of any observation, or on a summative? It is very rare for a teacher to get an overall rating of highly-effective if you go by the rubric.; 2) As the math intervention plan is required for students in Grades 3-8 who are performing below grade level on the state assessment, is the K-2 assessment the one that will be considered for third-graders?; and 3) Why is there nothing on progress monitoring or when to exit the student? **RESPONSE:** 3:1: A highly-effective rating is based upon a summative evaluation score. This is set out in the Rules Governing Educator Support and Development, Section 6.0, and Arkansas Code §6-17-2805. 3:2: Yes, any of the four (4) state approved assessments for K-2 students will be used to measure 3rd graders performance levels. 3:3: Progress monitoring and when a student has achieved the goals set out in the math intervention plan will be at the discretion of the school district or open-enrollment charter school because such measurements are based on each individual student’s needs. No changes made.

Commenter Name: APSRC

COMMENT: Section 3.02.3, Page 3: The language should state “Provision of each student with extended time on math instruction during or after school.” To comply with Ark. Code Ann. § 6-17-431(a)(1)(B)(iii).

RESPONSE: The language in section 3.02.3 was changed to “a provision” to better conform to law.

Commenter Name: Lucas Harder, ARSBA

COMMENT: 3.01.2: A parenthetical Arabic numeral “two” is missing.

RESPONSE: The numbering appears to be correct and in line with the two sections above. Sections 3.01.1 and 3.01.2 are subsections of section 3.01. No changes made.

The proposed effective date is October 1, 2024.

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

LEGAL AUTHORIZATION: The State Board of Education may promulgate rules to implement Arkansas Code Annotated § 6-17-431, which concerns numeracy. *See* Ark. Code Ann. § 6-17-431(c).

The proposed rules implement Act 237 of 2023, §30, 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 the Arkansas Educational Support and Accountability Act (AESAA)**

DESCRIPTION: The Department of Education, Division of Elementary and Secondary Education (DESE) proposes amendment to its Rules Governing the Arkansas Educational Support and Accountability Act. This rule is an implementation of A.C.A. § 6-15-2901 et. seq. which is titled the Arkansas Educational Support and Accountability Act. This subchapter provides the legal mechanism to assess whether schools are satisfying their obligation to effectively educate students and for DESE to provide support or take corrective action to address schools which fail to satisfy these obligations. The proposed amendments update the rules to reflect changes in statutory language as of the 94th General Assembly, and require DESE to provide a student success plan template and corresponding guidance.

The statutory changes in LEARNS that are reflected in this rule include literacy screeners in the statewide assessment process and new requirements for student success plans to ensure student achievement in and after high school. Act 744 of 2021 added language allowing the State Board of Education to require a community school plan when a school is placed in Level 5 intensive support. Act 242 of 2023 added language requiring the academic standards to allow for comparable elective coursework pertaining to career and technical education to be substituted for core academic classes required for graduation. Act 633 of 2023 adds language governing the process by which a school district is released from state control under this rule. Act 654 of 2023 added specificity regarding what qualifies as a career readiness assessment. Act 793 modified the definition of “English learner” to clarify that an English learner is someone considered not proficient by the English language proficiency assessment.

Changes made following the public comment period were technical in nature and made no substantive change to the rule.

PUBLIC COMMENT: A public hearing was held on June 28, 2024. The public comment period closed on July 14, 2024. The agency provided the following public comment summary:

Commenter Name: Lucas Harder, Arkansas School Board Association, Legal Counsel, June 21, 2024

COMMENT: [1.02] There appears to be a “and” missing from between 6-15-2901 et seq. and 25-15-201 et seq. **RESPONSE:** Comment considered; a non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Board Association, Legal Counsel, June 21, 2024

COMMENT: [4.06.1] For consistency with other sections of the Rules, the “of this section” is unnecessary. **RESPONSE:** Comment considered; a non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Board Association, Legal Counsel, June 21, 2024

COMMENT: [4.06.2.1] For consistency with other sections of the Rules, the “of this section” is unnecessary. **RESPONSE:** Comment considered; a non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Board Association, Legal Counsel, June 21, 2024

COMMENT: [4.06.2.4.2] There is a “to” missing from between “provided” and “the”. **RESPONSE:** Comment considered; a non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Board Association, Legal Counsel, June 21, 2024

COMMENT: [5.02.2] There is an “r” missing in “through”. **RESPONSE:** Comment considered; a non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Board Association, Legal Counsel, June 21, 2024

COMMENT: [5.08] There is a comma missing from between “materials” and “and”. **RESPONSE:** Comment considered; a non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Board Association, Legal Counsel, June 21, 2024

COMMENT: [5.08.1] There is a comma missing from between “materials” and “and”. **RESPONSE:** Comment considered; a non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Board Association, Legal Counsel, June 21, 2024

COMMENT: [5.12.3] There are commas missing following “include” and “limitation”. **RESPONSE:** Comment considered; a non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Board Association, Legal Counsel, June 21, 2024

COMMENT: [5.15-5.29] Due to the addition of an earlier 5.15 in the Rules, these should all be one number higher. **RESPONSE:** Comment considered; a non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Board Association, Legal Counsel, June 21, 2024

COMMENT: [5.26] The longhand and parenthesis are missing for “10”. **RESPONSE:** Comment considered; a non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Board Association, Legal Counsel, June 21, 2024

COMMENT: [5.27] “Commissioner of Education” should be “Commissioner of Elementary and Secondary Education”. **RESPONSE:** Comment considered; a non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Board Association, Legal Counsel, June 21, 2024

COMMENT: [5.29.1] The “r” is missing in “through”. **RESPONSE:** Comment considered; a non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Board Association, Legal Counsel, June 21, 2024

COMMENT: [6.06.2] For consistency with other areas of the Rules, the phrase “this Section” is unnecessary. **RESPONSE:** Comment considered; a non-substantive change was made.

Commenter Name: Trip Walter, the Arkansas Public School Resource Center, Legal Counsel, July 15, 2024

COMMENT: [6.06.4.2] Amend the current language to read “student’s parent, legal guardian, or person standing in loco parentis to the student.”, to comply with Ark. Code Ann. §6-15-2911(b)(3)(C)(ii)(b). **RESPONSE:** Comment considered; a non-substantive change was made.

Jason Kearney, at attorney with the Bureau of Legislative Research, asked the following question and was provided with the following agency response:

1) Section 4.06.2.4.3 appears to be duplicative of Section 4.06.2.4.1 of the amended rules. Was this intentional? **RESPONSE:** This was a drafting error. The duplicated language will be deleted from the final rule and replaced with the correct statutory language.

The proposed effective date is October 1, 2024.

FINANCIAL IMPACT: The agency has indicated that the amended rule does not have a financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-15-2905(2), the State Board of Education shall promulgate rules to implement the comprehensive accountability system for Arkansas public schools and school districts and the Arkansas Educational Support and Accountability Act. *See* Ark. Code Ann. §§ 6-15-2901 through 6-15-2918. Further, the state board shall promulgate rules governing the classification of public school districts as in need of Level 5 — Intensive support and the support to be provided. *See* Ark. Code Ann. § 6-15-2915(a). A public school district recommended for classification as in need of Level 5 — Intensive support may appeal to the state board by filing a written appeal with the Commissioner of Elementary and Secondary Education in accordance with the procedure established in the rules of the state board. *See* Ark. Code Ann. § 6-15-2915(c)(1). The state board shall also promulgate rules to establish the process for determining the differentiated levels of support that the Division of Elementary and Secondary Education will provide to school districts, and the process for guiding, monitoring, or directing: school-level improvement plans; supports; resources; interventions; and reporting requirements. *See* Ark. Code Ann. § 6-15-2913(a)(1). Finally, the state board may promulgate rules to implement Ark. Code Ann. § 6-15-2911, which concerns the student-focused learning system, that include without limitation requirements for the development and review of a student success plan if a student is enrolled for the first time in or transfers to a public school district in the state during or after the student completes grade eight (8). *See* Ark. Code Ann. § 6-15-2911(b)(5).

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

Act 744 of 2021, sponsored by Senator Missy Irvin, which supported the Arkansas public schools and public school districts in the implementation of a community school approach;

Act 237 of 2023, §§ 11 through 13, 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;

Act 242 of 2023, sponsored by Representative R. Scott Richardson, which concerned academic standards established by the Division of Elementary and Secondary Education; and required the Division to include in the academic standards a means by which public school students may substitute comparable elective coursework in career and technical education for required core academic classes;

Act 633 of 2023, sponsored by Senator Clark Tucker, which concerned a public school district under the authority of the State Board of Education; and required the State Board to establish within two years of its assumption of authority over a public school district classified as in need of Level 5 – Intensive support the conditions under which the public school district shall be returned to local control;

Act 654 of 2023, sponsored by Senator Jim Dotson, which concerned career and technical education; amended the law concerning weighted credit awarded for career and technical education courses; amended the law concerning statewide student assessment systems used to measure college and career readiness; and amended the Computer Science Education Advancement Act of 2021 to include computer science-related career and technical education courses as eligible for credit; and

Act 793 of 2023, sponsored by Senator Jane English, which amended various provisions of the Arkansas Code concerning public education.

**8. DEPARTMENT OF EDUCATION, DIVISION OF HIGHER EDUCATION
(Courtney Salas-Ford)**

**a. SUBJECT: Rules Governing the Governor’s Higher Education
Transition Scholarship Program**

DESCRIPTION: The Department of Education, Division of Higher Education seeks to amend its Rules Governing the Governor’s Higher Education Transition Scholarship Program. Act 413 of 2023 amended the Governor’s Higher Education Transition Scholarship Program by creating an additional section to allow scholarship recipient students to utilize scholarship funds for enrolling and attending courses offered during a summer term at the postsecondary institution in which the student is enrolled. Act 413 of 2023 establishes the rule shall include student eligibility and disbursement and administration of the funds utilized by a student to enroll in and attend courses offered during a summer term. Act 413 of 2023 also defines “scholarship” within this section to include a scholarship program that is funded with the state funds or lottery proceeds

and administered by the division. In addition, Act 413 defines “academic semester” pertaining to scholarships.

Post Public Comment:

This rule did not receive any public comments at the hearing held on May 20, 2024. No changes were made.

PUBLIC COMMENT: A public hearing was held on May 20, 2024. The public comment period expired June 6, 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 proposed rule has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Act 870 of 2023, § 47, the Department of Education’s Division of Higher Education shall provide for the administration of the “Governor’s Higher Education Transition Scholarship Program” as appropriated in the Student Assistance Grants and Various Scholarships Appropriation section of Act 870 to assist students accepted into transitional programs for students with intellectual and/or developmental disabilities at state institutions of higher education and shall promulgate rules for the implementation of the program and for the disbursement of scholarships to eligible students; the provisions of Act 870, § 47, shall be in effect only from July 1, 2023 through June 30, 2024. *See also* Act 169 of 2024, § 40 (providing the same to be in effect from July 1, 2024 through June 30, 2025). Further authority for the rulemaking can be found in Arkansas Code Annotated § 6-82-105(1), which provides that the Division of Higher Education shall administer all state college financial assistance programs provided by legislation or by law and in so doing shall have the authority and responsibility with respect to state college financial assistance programs provided by legislation or by law to adopt such rules as the division shall deem necessary or appropriate to carry out the purposes of Title 6, Chapter 82, Subchapter 1 of the Arkansas Code, which concerns scholarships generally. Finally, pursuant to Ark. Code Ann. § 6-80-109(a), the Division of Higher Education shall promulgate or update existing division rules to allow a student who is a recipient of a scholarship to utilize scholarship funds to enroll in and attend courses offered during a summer term at the postsecondary institution in which the student is enrolled. Rules promulgated under Ark. Code Ann. § 6-80-109, which concerns rulemaking authority for the Division, shall include without limitation requirements concerning student eligibility and the disbursement and administration of scholarship funds utilized by a student to enroll in and attend courses offered during a summer term. *See* Ark. Code Ann. § 6-80-109(b).

The proposed changes are made in light of the following Acts:

Act 413 of 2023, sponsored by Representative Julie Mayberry, which concerned rules promulgated by the Division of Higher Education, and required the Division of Higher Education to promulgate certain rules concerning the administration of scholarships funded with state funds and lottery proceeds; and

Act 870 of 2023, sponsored by the Joint Budget Committee, which made an appropriation for personal services and operating expenses for the Department of Education – Division of Higher Education for the fiscal year ending June 30, 2024.

b. SUBJECT: Rule Governing Productivity-Based Funding for State-Supported Institutions of Higher Education

DESCRIPTION: The Department of Education, Division of Higher Education seeks to amend its Rules Governing Productivity-Based Funding for State-Supported Institutions of Higher Education. The Division provided the following concerning the amendments:

This policy was originally developed pursuant to Act 148 of 2017, which required that the policy be reviewed “every five (5) years to ensure the productivity-based funding model continues to respond to the needs and priorities of the state.” The then-Department of Higher Education met with institutions of higher education and the institutions agreed that when an institution’s RSA general revenue funding declines by more than 5% of the 2018-2019 fiscal year level (the baseline) due to productivity declines, the DHE would not recommend further reductions in funding, essentially recommending a cap on losses. By FY2023, the end of the initial five-year cycle, three institutions of higher education had declined more than 5% below fiscal year 2018 baseline RSA funding, and there was no guidance in the law on how to address that issue. After that initial five-year cycle, the Division convened a work group to review the policy, which resulted in the proposed changes to the policy.

Currently, the distribution policy states that once an institution has reached a threshold of 5% loss below the initial FY2018 base funding level, then no further recommendations to reduce funding will be made. This amendment changes that section of the policy to allow for any institution to lose no more than 5% in any given consecutive five-year period. This will allow institutions time to correct negative trends, but also to continue to allow involvement from all institutions in the process. The language allows for a 5% reduction on a rolling basis, rather than tying the 5% to FY 2018 funding levels.

Post Public Comment:

This rule did not receive any public comments at the hearing held on May 20, 2024. No changes were made.

PUBLIC COMMENT: A public hearing was held on May 20, 2024. The public comment period expired June 6, 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 proposed rule has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 6-61-234(a)(1)(A), the Arkansas Higher Education Coordinating Board shall adopt policies developed by the Division of Higher Education necessary to implement a productivity-based funding model for state-supported institutions of higher education. The board shall adopt separate policies for two-year institutions of higher education and four-year institutions of higher education. *See* Ark. Code Ann. § 6-61-234(a)(1)(B).

c. **SUBJECT: Rules Governing the Arkansas Future Grant Program**

DESCRIPTION: The Department of Education, Division of Higher Education seeks to amend its Rules Governing the Arkansas Future Grant Program. Act 413 of 2023 amended the Rules Governing the Arkansas Future Grant Program, which is codified at Arkansas Code Annotated §§ 6-82-1801 through 1805. As part of the amendment, the Act creates an additional provision to allow scholarship recipient students to utilize scholarship funds for enrolling and attending courses offered during a summer term at the postsecondary institution in which the student is enrolled.

Post Public Comment:

This rule did not receive any public comments at the hearing held on May 20, 2024. No changes made.

PUBLIC COMMENT: A public hearing was held on May 20, 2024. The public comment period expired June 6, 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 proposed rule has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 6-82-1805, the Division of Higher Education shall promulgate rules to implement the Arkansas Future Grant Program. *See* Ark. Code Ann. §§ 6-82-1801 through 6-82-1805. Further authority for the rulemaking can be found in Ark. Code Ann. § 6-80-109(a), which provides that the Division shall promulgate or update existing division rules to allow a student who is a recipient of a scholarship to utilize scholarship funds to enroll in and attend courses offered during a summer term at the postsecondary institution in which the student is enrolled. Rules promulgated under Ark. Code Ann. § 6-80-109, which concerns rulemaking authority for the Division, shall include without limitation requirements concerning student eligibility and the disbursement and administration of scholarship funds utilized by a student to enroll in and attend courses offered during a summer term. *See* Ark. Code Ann. § 6-80-109(b).

The proposed amendments include those made in light of Act 413 of 2023, sponsored by Representative Julie Mayberry, which concerned rules promulgated by the Division of Higher Education, and required the Division of Higher Education to promulgate certain rules concerning the administration of scholarships funded with state funds and lottery proceeds.

9. **DEPARTMENT OF HEALTH, STATE BOARD OF HEALTH** (Laura Shue, Rachel Sizemore)

a. **SUBJECT:** Rules Pertaining to Dental Hygienists Serving Underserved Areas

DESCRIPTION:

Purpose

The Arkansas Department of Health (Department) is seeking review and approval of proposed amendments to the Rules Pertaining to Dental Hygienists Serving Underserved Areas. These proposed amendments remove barriers to using Dental Hygiene Collaborative Care permits in public settings, specifically public schools, and allow the use of a broad range of oral and public health data to assess a community's need priority in relation to the provider's service area. Proposed rule changes also protect and preserve any existing provider/patient relationships by eliminating a rule that required yearly patient assessment by the DHCC provider.

Background

The Department of Health is tasked with prioritizing the communities in which a dental hygienist may practice under a Dental Hygiene

Collaborative Care permit. Existing rules specify the Arkansas Department of Health, Office of Oral Health shall develop and maintain a list of communities and/or rural areas prioritized as to need for dental services and will endeavor to direct collaborative services to these communities and rural areas. Schools shall be prioritized utilizing the following criteria: (1) Low full-time dentist-to-population ratio; and (2) Percentage of students participating in free and reduced lunches of the school or school district. Schools are currently stratified across six (6) tiers categorized by percentage of the student population participating in Free and Reduced Meals (FARM). The school tier stratification has created an unforeseen barrier to providing care in public school communities that may not meet school or district level FARM criteria but still have high need for dental care. Basic Screening Survey data indicates key oral health indicators, such as decay experience and untreated decay, are consistent across tier levels. This finding suggests that a wider range of oral and public health data should be assessed when determining a community's need for oral health services.

Proposed Rules

The proposed rule removes the school tier system and the provision for annual referral to the collaborative dentist. The proposed rule incorporates prioritization of communities based on provider availability and service area, relevant oral health surveillance data, and other applicable public health datasets deemed appropriate by the Office of Oral Health.

The proposed rule establishes prioritization, pursuant to Ark. Code Ann. § 17-82-706.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on June 30, 2024. The agency received no public comments.

Suba Desikan, an attorney with the Bureau of Legislative Research, asked the following questions:

1. The definition of “public settings” in the rule does not appear to mirror the definition as set out in Ark. Code Ann. 17-82-701(5). Specifically, the word “patients” appears to be omitted on Section III(D)(2) of the markup.

RESPONSE: This was not new language. This appears to be a typo from when the Rule was promulgated in 2014. Apparently, it was never caught until now. [Bureau Staff Note: The agency made the change.]

2. In addition, Section III(D)(5) does not mirror Ark. Code Ann. 17-82-701(5)(D). Could you please look over these and explain why the language in the rule does not mirror the language used in the statute?

RESPONSE: After further review this was the original language in the

statute and the Rules in 2014. It appears this section was updated by Act 1035 of 2019 which updated the language concerning individuals with developmental disabilities throughout the Arkansas Code. Unfortunately, this slipped passed us in the current proposed amendments. [Bureau Staff Note: The agency made the change.]

3. The rule provides that the agency “shall determine prioritization of communities in which collaborative services are permitted based upon provider availability, relevant oral surveillance data, and *other applicable public health datasets deemed appropriate* by the Department of Health.” (Emphasis added.) What other datasets does the agency anticipate utilizing in determining prioritization? **RESPONSE:** While no specific datasets have been identified at this time, the revision is to allow the program to utilize various datasets that may be useful in prioritization; for example: smoking rates; chronic disease rates [e.g. diabetes prevalence], free and reduced meal (FARM)/Community Eligibility Provision; and/or average household income.

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: The Department of Health shall develop a system of prioritization of services permitted under Title 17, Chapter 82, Subchapter 7 of the Arkansas Code, concerning the Dental Hygienist Collaborative Care Program, to communities in the state, including rural areas, based on the relative population of people at need for services permitted under the subchapter and endeavor to direct services permitted under the subchapter to such communities, including rural areas. *See* Ark. Code Ann. § 17-82-705(b). Pursuant to Ark. Code Ann. § 17-82-706(b), the State Board of Health shall adopt rules to implement § 17-82-705.

E. Agency Updates on the Status of Outstanding Rulemaking from the 2023 Regular Session Pursuant to Act 595 of 2021

1. Department of Agriculture (Secretary Wes Ward, Corey Seats)
2. Department of Commerce, Arkansas Economic Development Commission (Jake Windley)
3. Department of Commerce, State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services (Tasha Tidwell)
4. Department of Commerce, State Insurance Department (Booth Rand)

- 5. Department of Corrections (Tawnie Rowell)**
 - 6. Department of Education (Courtney Salas-Ford)**
 - 7. Department of Energy and Environment (Kesia Morrison)**
 - 8. Department of Finance and Administration, Regulatory Division (Trent Minner, Christy Bjornson)**
 - 9. Department of Finance and Administration, Revenue Division (Paul Gehring, Alicia Austin Smith)**
 - 10. Department of Health (Laura Shue)**
 - 11. Department of Inspector General, Tax Appeals Commission (Matt Boch, Samantha Blassingame)**
 - 12. Department of Labor and Licensing (Lacie Kirchner)**
 - 13. Department of Public Safety (Hugh Finkelstein)**
 - 14. Secretary of State (Mat Pitsch)**
- F. Agency Monthly Written Updates Pursuant to Act 595 of 2021 Concerning Rulemaking from the 2024 Fiscal Session**
- G. Adjournment**