



## Arkansas Department of Education

Four Capitol Mall • Little Rock, Arkansas • 72201-1030 • (501) 682-4475 • Fax (501) 682-1079

Sarah Huckabee Sanders  
Governor

Jacob Oliva  
Secretary

July 13, 2023

Rebecca Miller-Rice  
Rules Administrator  
Bureau of Legislative Research  
One Capitol Mall, Fifth Floor  
Little Rock, AR 72201

**Re: Proposed Emergency Rule**

Dear Ms. Miller-Rice:

Please find enclosed the Arkansas Department of Education's Proposed Emergency Rules Governing the Educational Freedom Account Program (the "EFA Program"). On Thursday, July 13, 2023, the Arkansas State Board of Education approved this emergency rule in a public hearing held at the Department's offices, at 4 Capitol Mall, Little Rock, AR 72201. The Governor's Office has also approved the enclosed emergency rule. The following supporting documents regarding the foregoing emergency rule are enclosed:

- Proposed Emergency Rule (Mark-Up);
- Emergency Rule (Clean);
- BLR Questionnaire and Financial Impact Statement; and
- Executive Summary of the Proposed Emergency Rule;
- Written Findings pursuant to Ark. Code Ann. § 25-15-204(e)(4); and
- Arkansas Register Proof of Filing.

The Department seeks to promulgate the foregoing emergency rule to comply with the mandate set by Act 237 of 2023. The Department cannot implement the EFA Program for the 2023-2024 school year without promulgating the foregoing emergency rule, effective August 1, 2023. More specifically, the foregoing emergency rule is necessary to allow the Department to ensure adequate procedures are in place to determine student eligibility, select service providers, implement account and program audits, and enroll participating students after August 1, 2023, but before the 2023-2024 school year begins.

Thank you for your attention to this matter. Please do not hesitate to contact me at (501) 682-4234 should you have any questions or require additional information.

Respectfully,

Andrés Rhodes  
Chief Legal Counsel  
Arkansas Department of Education

Enclosures

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH  
THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT \_\_\_\_\_  
BOARD/COMMISSION \_\_\_\_\_  
BOARD/COMMISSION DIRECTOR \_\_\_\_\_  
CONTACT PERSON \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
PHONE NO. \_\_\_\_\_ EMAIL \_\_\_\_\_  
NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING \_\_\_\_\_  
PRESENTER EMAIL(S) \_\_\_\_\_

**INSTRUCTIONS**

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, [miller-ricer@blr.arkansas.gov](mailto:miller-ricer@blr.arkansas.gov), for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, [garritym@blr.arkansas.gov](mailto:garritym@blr.arkansas.gov), for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

\*\*\*\*\*

1. What is the official title of this rule?  
\_\_\_\_\_
2. What is the subject of the proposed rule? \_\_\_\_\_
3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes      No

*If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).*

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes      No

4. Is this rule being filed for permanent promulgation? Yes No

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, what was the effective date of the emergency rule? \_\_\_\_\_

On what date does the emergency rule expire? \_\_\_\_\_

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes No

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes No

If yes, please provide the state statute and/or rule citation.

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes No

If yes, please list the rules being repealed.

If no, please explain.

8. Is this a new rule? Yes No

Does this repeal an existing rule? Yes No

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes No

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?  
Yes      No

If yes, please provide the year of the act(s) and act number(s).

11. What is the reason for this proposed rule? Why is it necessary?

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

13. Will a public hearing be held on this proposed rule? Yes      No

If yes, please complete the following:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: \_\_\_\_\_

*Please be sure to advise Bureau Staff if this information changes for any reason.*

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. \_\_\_\_\_

15. What is the proposed effective date for this rule? \_\_\_\_\_

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

19. Is the rule expected to be controversial? Yes      No

If yes, please explain.

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY.**

**DEPARTMENT** \_\_\_\_\_  
**BOARD/COMMISSION** \_\_\_\_\_  
**PERSON COMPLETING THIS STATEMENT** \_\_\_\_\_  
**TELEPHONE NO.** \_\_\_\_\_ **EMAIL** \_\_\_\_\_

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

**TITLE OF THIS RULE** \_\_\_\_\_

1. Does this proposed, amended, or repealed rule have a financial impact?  
Yes                      No
  
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?  
Yes                      No
  
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes                      No

If no, please explain:

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

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

(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; and

(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.

4. If the purpose of this rule is to implement a *federal* rule or regulation, please state the following:  
(a) What is the cost to implement the federal rule or regulation?

**Current Fiscal Year**

General Revenue \_\_\_\_\_  
 Federal Funds \_\_\_\_\_  
 Cash Funds \_\_\_\_\_  
 Special Revenue \_\_\_\_\_  
 Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
 Federal Funds \_\_\_\_\_  
 Cash Funds \_\_\_\_\_  
 Special Revenue \_\_\_\_\_  
 Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

(b) What is the additional cost of the state rule?

**Current Fiscal Year**

General Revenue \_\_\_\_\_  
 Federal Funds \_\_\_\_\_  
 Cash Funds \_\_\_\_\_  
 Special Revenue \_\_\_\_\_  
 Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
 Federal Funds \_\_\_\_\_  
 Cash Funds \_\_\_\_\_  
 Special Revenue \_\_\_\_\_  
 Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

5. What is the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

**Current Fiscal Year**

\$ \_\_\_\_\_

**Next Fiscal Year**

\$ \_\_\_\_\_

6. What is the total estimated cost by fiscal year to a state, county, or municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

**Current Fiscal Year**

\$ \_\_\_\_\_

**Next Fiscal Year**

\$ \_\_\_\_\_

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes      No

If yes, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
  - (a) justifies the agency's need for the proposed rule; and
  - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
  - (a) the rule is achieving the statutory objectives;
  - (b) the benefits of the rule continue to justify its costs; and
  - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.



**From:** [Andres Rhodes \(ADE\)](#)  
**To:** [register@sos.arkansas.gov](mailto:register@sos.arkansas.gov)  
**Cc:** [Shastady Wagner \(ADE\)](#); [Stephen Reynolds \(ADE\)](#); [Courtney Salas-Ford \(ADE\)](#)  
**Subject:** Emergency Rules - Education Freedom Accounts  
**Date:** Thursday, July 13, 2023 3:10:00 PM  
**Attachments:** [image001.png](#)  
[Educational Freedom Accounts \(Clean Emergency\).pdf](#)  
[BLR Questionnaire and Financial Impact Statement \(Emergency\).pdf](#)  
[Executive Summary \(Emergency\).pdf](#)

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Dear Secretary of State staff,

The Governor and the State Board of Education have approved the attached emergency rule for promulgation. I have attached a clean copy of the new rule, the Financial Impact Statement form from the Bureau of Legislative Research, and an executive summary of the rule on letterhead.

Please let me know if you need anything further.

With best regards,



**ARKANSAS  
DEPARTMENT OF EDUCATION**

**Andrés Rhodes**

Chief Legal Counsel  
Arkansas Department of Education  
4 Capitol Mall, Suite 302  
Little Rock, Arkansas 72201  
Office: (501) 682-4234  
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Email: [andres.rhodes@ade.arkansas.gov](mailto:andres.rhodes@ade.arkansas.gov)

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# Division of Elementary and Secondary Education

*Transforming Arkansas to lead the nation in student-focused education*

**Jacob Oliva**  
Secretary

July 7, 2023

**Stacy Smith**  
Deputy  
Commissioner

## **Proposed Rules Governing The Educational Freedom Account Program**

**State Board of  
Education**

### **PURPOSE**

The Division of Elementary and Secondary Education is seeking the Governor's review of proposed Rules Governing the Educational Freedom Account Program.

**Dr. Sarah Moore**  
*Stuttgart*  
Chair

### **BACKGROUND**

Pursuant to Act 237 of 2023, the Division is charged with promulgating rules regarding the Educational Freedom Account Program, which is codified at Ark. Code Ann. § 6-18-2501, et seq.

**Kathy Rollins**  
*Springdale*  
Vice-Chair

### **KEY POINTS**

- Definition of terms related to the program.
- Program implementation and requirements for eligible students.
- Comprehensive school counseling plan components.
- Requirements for qualifying schools and the Division regarding monitoring and accountability.

**Steve Sutton**  
*Marion*

**Adrienne Woods**  
*Rogers*

### **DISCUSSION**

These rules were created per Act 237 of 2023, codified at Ark. Code Ann. § 6-18-2501 et seq. for the Department to prepare for the implementation of the newly-created Educational Freedom Account Program before the 2023-2024 school year begins; without which the State cannot efficiently administer the program, empower parents, or hold participating schools accountable. The rules allow the Department to ensure processes for determining the eligibility of students and service providers, conducting account and program audits, and enrolling participating students before the 2023-2024 school year begins. These are emergency rules, and the estimated effective date is August 1, 2023.

**Lisa Hunter**  
*White Hall*

**Jeff Wood**  
*Little Rock*

### **RECOMMENDATION**

The Division of Elementary and Secondary Education recommends Governor's Office approval of these rules.



# Division of Elementary and Secondary Education

*Transforming Arkansas to lead the nation in student-focused education*

Department of Education written findings pursuant to Ark. Code Ann. 25-15-204(e)(4)

**Jacob Oliva**  
Secretary

**Stacy Smith**  
Deputy  
Commissioner

**State Board of  
Education**

**Dr. Sarah Moore**  
Stuttgart  
Chair

**Kathy Rollins**  
Springdale  
Vice-Chair

**Steve Sutton**  
Marion

**Adrienne Woods**  
Rogers

**Randy Henderson**  
Blytheville

**Lisa Hunter**  
White Hall

**Jeff Wood**  
Little Rock

1. Rule's basis and purpose – This rule is required by Act 237 of 2023 and seeks to prepare the agency for the implementation of the Educational Freedom Account Program before the 2023-2024 school year begins. Without this rule, the State cannot efficiently administer the program, empower parents, or hold participating schools accountable. The rule is specifically necessary so that the Department of Education can ensure processes for determining the eligibility of students and service providers, conducting account and program audits, and enrolling participating students before the 2023-2024 school year begins.

2. Problem that the rule seeks to address – This rule is required by statute and addresses the directive in the law for the Department to administer the Arkansas Children's Educational Freedom Account Program. This rule establishes a process:

- for determining the eligibility of students and service providers, including the awarding of accounts to eligible students and removal of unnecessary barriers or disincentives to participation by potential participating service providers;
- for conducting account and program audits, including establishing the authority for the division to conduct or contract for the auditing of accounts;
- enrolling participating students before the beginning of the 2023-2024 school year.

3. Description of the factual evidence that justifies the agency's need for the proposed rule and describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs – This rule is required by Arkansas law and the rule will allow the Department to prepare for the implementation of the program after August 1.

4. There are no less costly alternatives to the rule – this rule is required by Arkansas law.

5. No existing rules have created or contributed to the problem the agency seeks to address with the proposed rule.

6. The Department is required by statute to annually provide a report to Arkansas Legislative Council or Joint Budget Committee and the House and Senate Committees on Education. This required report must include: the total number of students currently participating in the program, a list of all participating schools and participating service providers, the total student enrollment of each participating school and the percentage of the total enrollment of each school represented by participating students, aggregated test result data for participating students from the most recent year available, the percentage of funds used for each type of qualifying expense, an analysis of the program's fiscal impact, the retention rates for participating students enrolled in participating schools, the results of a parental satisfaction survey administered by the Department.

**DIVISION OF ELEMENTARY AND SECONDARY EDUCATION**  
**RULES GOVERNING THE EDUCATIONAL FREEDOM ACCOUNT**  
**PROGRAM**  
**August 1, 2023**

**1.00 Purpose**

- 1.01 The purpose of these rules is to establish guidelines for the initial implementation and operation of the Educational Freedom Account (EFA), established to provide children in the State of Arkansas with educational options to achieve success in their education.

**2.00 Definitions**

- 2.01 “Account holder” means the parent of a participating student, or a participating student who has attained the age of majority, who signs the EFA agreement and is responsible for complying with all of the requirements of the EFA.
- 2.02 “Agreement” means a contract signed by an applicant outlining their contractual obligations as the account holder of an EFA and the acceptable uses of EFA funds.
- 2.03 “Applicant” means a prospective participating student or the prospective participating student’s parent, when he or she is applying to the EFA Program on behalf of the student.
- 2.04 “Department” means the Arkansas Department of Education.
- 2.05 “Division” means the Division of Elementary and Secondary Education.
- 2.06 “Education Service Provider” means a business, nonprofit organization, or other entity, not to include a nonpublic or public school, which offers educational materials or services that are qualifying expenses reimbursable by EFA funds pursuant to Ark. Code Ann. § 6-18- 2503(11)(A).
- 2.07 “EFA” means an individual funding account that is managed by the Department of Education for the care of and in the name of a participating student.
- 2.08 “EFA funds” means money from one or more EFAs.
- 2.09 “EFA Program” means the Educational Freedom Account Program established pursuant to Arkansas Code Annotated § 6-18-2501, et seq.

- 2.10 “Foster care” means the placement of a child by the Department of Human Services into custodial care by a group home, group facility, or a relative or nonrelated caregiver on a twenty-four-hour-a-day basis.
- 2.11 “Nationally Norm-Referenced Test” means a standardized test designed to compare and rank test takers in relation to one another as determined by comparing scores against the performance results of a statistically selected group of test takers, typically of the same age or grade level, who have already taken the exam.
- 2.12 “Norming studies” means a series of statistical methods applied to the raw data collected from standardized tests to determine the reliability and validity of the data in calculating the norm-referenced scores.
- 2.13 “Office” means the Office of School Choice, as established within the Department.
- 2.14 “Parent” means either:
- 2.08.1 A biological or adoptive parent;
  - 2.08.2 A legal guardian or custodian;
  - 2.08.3 A person standing in loco parentis to a participating student; or
  - 2.08.4 Another person with legal authority to act on behalf of a Participating Student
- 2.15 “Participating school or service provider” means a school or other service provider that is approved by the Department to receive EFA funds.
- 2.16 “Participating student” means an eligible student for whom an EFA has been approved and established.
- 2.17 “Standard Application Form” means the form created by the Department to be used by applicants seeking to establish an EFA on behalf of a Participating Student.
- 2.18 “State Board” means the Arkansas State Board of Education.
- 2.19 “Student with a disability” means a student who has been:
- 2.19.1 Identified as having a disability consistent with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401 et seq. as it existed on January 1, 2023.

### **3.00 Student Eligibility**

3.01 An individual who is a resident of the State of Arkansas and the parent of a student who is eligible to enroll in a public elementary or secondary school may apply on behalf of a prospective participating student, to participate in the EFA Program for the 2023-2024 school year if the prospective participating student is:

3.01.1 A student with a disability as defined by Section 2.19 of these Rules.

3.01.2 Considered homeless under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11431 et seq., as it existed on January 1, 2023;

3.01.3 A student in foster care, as defined in Section 2.10 of these Rules, or has been in foster care and subsequently achieved permanency through adoption, reunification, or permanent guardianship;

3.01.4 The student participated in the Succeed Scholarship Program, Ark. Code Ann. § 6-41-901 et seq., during the 2022-2023 school year;

3.01.5 A child of active-duty military personnel, as identified by Title 10 or Title 32 of the United States Code;

3.01.6 Is enrolling in kindergarten for the first time; or

3.01.7 A student who was enrolled in the previous school year in a:

3.01.7.a Public school that has a rating of “F” under Ark. Code Ann. §§ 6-15-2105 and 6-15-2106 and State Board of Education rules; or

3.01.7.b Public school district classified as in need of Level 5 — Intensive support under Ark. Code Ann. §§ 6-15-2913 or 6-15-2915.

### **4.00 Student Application**

4.01 To apply to participate in the EFA Program, a parent shall fully complete the Standard Application Form available at the Department’s website and the Department’s offices at (4 Capitol Mall, Little Rock, AR 72201), beginning June 20, 2023, and ending August 1, 2023.

4.01.1 The Standard Application Form may be submitted by mailing the application via the United States Postal Service to the Department, submitting the application to the Department via email or submitting the application online at the Department’s website

- 4.01.2 The Standard Application Form may only require the collection of such information and documentation as is necessary to establish the applicant's residency in the State of Arkansas and the applicant's eligibility pursuant to the criteria set in Section 3.01 of these Rules.
- 4.01.3 The Department may assist an applicant in completing the Standard Application Form as needed.
- 4.01.4 The Office of School Choice may determine eligibility of applications received after August 1, 2023, provided Program funds remain available. In such cases, account funding may be prorated to cover qualifying expenses for less than the full duration of the 2023-2024 school year.
- 4.02 The Office shall determine an applicant's eligibility to participate in the Program under Section 3.01 and notify the Applicant on a rolling basis as applications are received. The notification shall inform applicants how they may activate the account and the amount of EFA funding the Participating Student will receive. Priority for accepting student applications shall be made in the following manner:
- 4.02.1 The Office shall approve all student qualifying applications pursuant to Section 3.01.4 of these Rules.
- 4.02.2 The Office shall approve all other applications that meet one or more of the qualifying criteria in Section 3.01 of these Rules on a first-come, first-served basis.
- 4.02.3 The Office shall continue to approve student applications that meet the qualifying criteria set by Section 3.01 of these Rules for the 2023-2024 school year and successive school years, as funding remains available and the conditions for eligibility are met by the applicant pursuant to Section 6 of these Rules.
- 4.03 Once a completed Standard Application Form has been approved by the Office, the applicant shall complete the enrollment procedures set by the Department to become enrolled in the EFA Program, including execution of an Agreement to participate in the Program as outlined in Section 5 of these Rules.

## **5.00 Agreement and Funds Transfer**

- 5.01 Upon notification by the Department that an EFA may be established, the applicant shall sign an Agreement outlining the applicant's contractual obligations as the account holder upon enrolling in the EFA Program, including the acceptable uses of EFA funds and expense reporting requirements. The Agreement may be executed with a wet or electronic signature. The Agreement shall remain

in effect until one or more of the conditions for terminating eligibility are met under Section 6 of these Rules.

5.02 In the Agreement, the Department shall provide account holders with the following:

5.02.1 A written explanation of qualifying expenditures for EFA funds, as outlined in Ark. Code Ann. § 6-18-2503(11)(A);

5.02.2 A written explanation of the responsibilities of account holders, as outlined in Section 5.03 of these Rules;

5.02.3 The following written explanation: “Participation in the EFA is a parental placement under 20 U.S.C. § 1412, Individuals with Disabilities Education Act (IDEA) if a child with a disability is enrolled in a non-public school. Parental placement of children with disabilities in a private school constitutes a waiver of procedural rights to a Free and Appropriate Public Education (FAPE) in connection with their private school enrollment, in accordance with 34 C.F.R. 300.148(a) and pursuant to 34 C.F.R. 300.137(a), while participating in the EFA program”; and

5.02.4 A written explanation of the respective duties of the Department and, if applicable, of any vendor or other supplier the Department has contracted with to administer all or part of the Program.

5.03 In the Agreement, the account holder shall:

5.03.1 Agree not to enroll the participating student full-time in a public school while the student is participating in the EFA Program;

5.03.2 Acknowledge that upon enrolling in the EFA Program, the parent waives the participating student’s entitlement to a free appropriate public education, including special education and related services, from their public school district of residence, so long as the child remains in the EFA Program; and

5.03.3 Agree to use EFA Funds on behalf of the Participating Student strictly for qualifying expenditures, as outlined in Ark. Code Ann. § 6-18-2503(11)(A) during the 2023-2024 school year.

5.04 The Agreement shall:

5.04.1 Be submitted to the Department, along with all required information, before the first EFA payment is disbursed, pursuant to Section 5.05 of these Rules; and



- 5.04.2 Be signed by the account holder and a designee of the Department prior to becoming effective.
- 5.05 After the Agreement is fully executed by the account holder and the Department, the Department shall make four (4) equal payments in quarterly installments from the participating student's EFA to the participating school or service provider. Payments shall only be suspended at such time as one or more criteria to terminate the Agreement are met under Section 6 of these Rules.
- 5.06 The total allocation to each participating student's EFA for the 2023-2024 school year shall be \$6,672, unless either:
- 5.06.1 The total qualifying expenditures, as outlined in Ark. Code Ann. § 6-18-2503(11)(A), published by the participating school or service provider where a participating student is enrolled equal an amount less than \$6,672. Any excess funds allocated to the private school shall be refunded to the Department.
- 5.06.2 The participating student is eligible under Section 3.01.4; in which case the allocation shall total the same amount awarded to the student as a Succeed Scholarship during the 2022-2023 school year.
- 5.07 The Department may withhold up to five percent (5%) of the funds allocated to each EFA for the purpose of the EFA Program administration.

## **6.00 Term of EFA Eligibility**

- 6.01 For purposes of continuity of educational choice, a student who enrolls in the EFA Program shall remain eligible until the participating student meets one of the following criteria, whichever occurs first:
- 6.01.1 Enrolls full-time in a public school.
- 6.01.2 Graduates from high school. The student may continue in the EFA Program until such time as he or she receives a high school diploma or receives a passing score on all subtests of the General Educational Development (GED) test.
- 6.01.3 Reaches twenty-one (21) years of age. The student may complete the school year in which he or she reaches the age of twenty-one (21), provided the student shall not be enrolled in the EFA Program past June 30 after reaching twenty-one (21) years of age.
- 6.02 Regardless of meeting one or more of the criteria listed in the previous subsection, the Department may immediately and permanently remove any participating student from eligibility for a EFA if the account holder fails to comply with the

terms of the Agreement in Section 5 of these Rules or any other applicable laws, rules or procedures, or if the account holder is found to have substantially misspent EFA Funds. The account holder may appeal the Department's decision pursuant to the procedures outlined in Section 9 of these Rules.

6.03 The account holder may remove the participating student from enrollment in a participating school or service provider and place the student in a public school. The account holder shall complete the procedures for withdrawal from the EFA Program set by the Department.

## **7.00 Participating Schools and Service Providers**

7.01 A private school shall notify the Department of its intent to participate as a participating school or service provider in the EFA Program. Pursuant to Ark. Code Ann. § 6-18-2507, the Office shall certify a private school as a Participating School or Service Provider if the private school is located in the State of Arkansas and:

7.01.1 Complies with one of the following:

7.01.1.a Meets accreditation requirements established by the State Board of Education, the Arkansas Nonpublic School Accrediting Association, Inc., or its successor, or another accrediting association recognized by the State Board; or

7.01.1.b Is an associate member of, or has applied for accreditation from, the Arkansas Nonpublic School Accrediting Association, Inc., or its successor, or another accrediting association recognized by the State Board. A private school that is not fully accredited while participating in the EFA Program shall report annually to the State Board, or its designee, the school's progress towards accreditation.

7.01.2 Meets one or more of the following criteria:

7.01.2.a Has been in operation for at least one (1) school year:

7.01.2.b Provides a statement by a certified public accountant confirming that the school is insured and has sufficient capital or credit to operate in the upcoming school year; or

7.01.2.c Files with the Department a surety bond or letter of credit for the amount equal to the account funds needed by the school for any quarter.

7.01.3 Attests in writing to the following:

- 7.01.3.a The private school does not discriminate on any basis prohibited by the Civil Rights Act of 1964, 42 U.S.C. § 2000d, as it existed on January 1, 2023;
- 7.01.3.b All private school personnel who are allowed direct contact with participating students have cleared a background check and fingerprinting process;
- 7.01.3.b.1. Participating schools have until May 30, 2024, to comply with the fingerprinting requirement for all school employees.
- 7.01.3.c The private school does not employ any individual who may reasonably pose a risk to the appropriate use of EFA Program funds if disbursed;
- 7.01.3.d The private school only employs or contracts teachers who hold at least baccalaureate degrees or have equivalent documented experience, as determined by the Department;
- 7.01.3.e The private school holds valid occupancy of buildings as required by the relevant municipality in which the private school is located; and
- 7.01.3.f The private school operates according to its published disciplinary procedures that, at a minimum, outline the terms and conditions when a student may be expelled.
- 7.02 A private school will be ineligible to participate in the EFA Program if:
- 7.02.1 When approved under Section 7.01.1 of these Rules, the private school loses its accreditation status;
- 7.02.2 When approved under Section 7.01.2 of these Rules, the private school is ineligible or unable to continue the accreditation process, as determined by the accrediting association;
- 7.02.3 The private school violates the terms of Section 7.01.3 of these Rules;
- 7.02.4 The private school fails to adhere to the tenets of its published disciplinary procedures before expelling a Participating Student; or

- 7.02.5 The private school fails to comply with all applicable state laws and rules governing private schools, and with all applicable health and safety laws and rules.
- 7.03 A participating private school shall notify the Department within thirty (30) days after losing accreditation or taking any action rendering the school ineligible to participate in the EFA Program pursuant to Section 7.02 of these Rules. A private school may apply for reinstatement if it returns to compliance with Section 7.01 of these Rules.
- 7.03.1. The Department shall determine whether the private school is not in compliance with Section 7.01 of these rules. The Department shall issue a formal notice of its determination to the private school.
- 7.03.2 A private school applying for reinstatement under this section shall provide documentation to the Department of the private school's efforts to come back into compliance with Section 7.01 of these rules. The private school may request a hearing before the state board or may elect to waive its hearing and submit evidence to the Department.
- 7.03.3 Upon receipt of the evidence, the Department shall issue a decision on the private school's reinstatement in writing to the private school.
- 7.04 The Office's approval of a Participating School or Service Provider shall serve as statewide approval of such provider for purposes of the EFA Program. A listing of each participating school and service provider's name, the qualifying materials, services offered, and any relevant credentials shall be available on the Department's website, in a format easily accessible to the public.
- 7.04.1 Private schools who were approved under the Succeed Scholarship program outside of the State of Arkansas may continue to receive funds for participating Succeed Scholarship students for the remainder of the Participating Students' remaining eligibility.
- 7.05 Participating schools and service providers shall not refund, rebate, or share EFA funds directly with account holders. Funds shall only be refunded to the EFA of a participating student from which the expenditure was made.
- 7.06 The Department may suspend or terminate a participating school or service provider from participating in the EFA Program if the Department determines the school has failed to comply with the requirements of the Act or these Rules.
- 7.07 Nothing shall be construed to expand the regulatory authority of the Department to impose additional regulations on participating schools and

service providers beyond those expressly set out in these Rules to enforce the requirements of the EFA Program.

7.07.1 A participating school or service provider shall not be required to alter its creed, practices, admissions policy, or curriculum to receive approval from the Department or to accept payments from an EFA.

## **8.00 Monitoring and Compliance**

8.01 During the 2023-2024 school year, the Department shall:

8.01.1 Conduct or contract with an unaffiliated auditor to conduct a random audit of EFAs to ensure monies were used only for expenses that were approved or allowed at the time the expense was made.

8.01.2 Maintain a copy of the audit plan and all associated audit reports.

8.02 During the 2023-2024 school year, the Department shall conduct or contract with an unaffiliated auditor to conduct a random financial audit of participating schools and service providers. If selected, to satisfy the requirements of this subsection, a participating school or service provider shall submit to an auditor chosen by the Department, a financial audit of the entity conducted by a certified public accountant within six (6) months of the most recently completed fiscal year. The audit shall include a statement that the report is free of material misstatements and fairly represents the Participating School's or Service Provider's maximum total tuition and fees.

8.03 The Department shall establish or contract for the establishment of an anonymous online fraud reporting service and an anonymous telephone hotline for reporting fraud. Individuals may notify the Department of any alleged violation by an account holder or participating school or service provider of state laws, rules, or procedures relating to the EFA Program. The Department shall conduct an inquiry into any report of fraud or make a referral for an investigation to the Arkansas Attorney General or the Secretary of the Arkansas Department of the Inspector General.

8.04 The Department shall forward to Arkansas Legislative Audit:

8.04.1 All audits conducted under this section that identify a potential misuse of EFA funds; and

8.04.2 Referrals of all cases involving fraud and/or substantial misuse of account funds for investigation to the Arkansas Attorney General or the Secretary of the Arkansas Department of the Inspector General.

## **9.00 Appeals Process**

9.01 The following determinations can be appealed:

- 9.01.1 An applicant may appeal the Office's determination that the student is not eligible for the EFA Program.
- 9.01.2 An account holder may appeal an official determination that the account holder has misspent EFA funds or the removal of the participating student from the EFA Program.
- 9.01.3 An applicant school may appeal the Office's determination that a private school is not qualified to be a participating school or service provider.
- 9.01.4 A participating school or service provider may appeal the Department's suspension or termination of the Participating School or Service Provider from the EFA Program.
- 9.02 All appeals shall be submitted on the appeal forms provided on the Department's website. If an appeal is not submitted on the appropriate appeal form, the appeal shall be denied.
- 9.03 Appeals shall follow the following two-step process:
- 9.03.1 Step one appeals shall be reviewed by the Department. Step one appeals must be submitted to the Department within fourteen (14) calendar days of the Department electronically sending the determination that is being appealed. The day that the Department sends the determination will not count as part of the foregoing fourteen (14) calendar days. The Secretary of Education or the Secretary's designee shall make a determination and issue an electronic notification to the appealing party within forty-five (45) calendar days of receiving the step one appeal.
- 9.03.2 If the Secretary of Education or the Secretary's designee denies the step one appeal, the appealing party may file a step two appeal. Step two appeals shall be reviewed by the State Board. Step two appeals must be submitted to the Department within thirty (30) calendar days of the Department electronically sending the step one determination. The day that the Department sends the step one determination will not count as part of the foregoing thirty (30) calendar days.
- 9.04 If the deadline to submit an appeal falls on a weekend or state holiday, the appeal shall be considered timely submitted if it is received by the next business day after the weekend or state holiday.
- 9.05 If an appeal is not timely submitted, the appeal shall be denied.
- 9.06 The State Board shall hear the appeal at its next scheduled meeting, so long as the appeal is received seven (7) calendar days before the meeting date.

9.07. Any appeal shall be held in an open hearing, and the decision of the State Board shall be in an open session.

9.08 The following procedures shall apply to State Board hearings for a step two appeal:

9.08.1 All persons wishing to testify before the State Board shall first be placed under oath by the Chairperson of the State Board.

9.08.2 The Department, and when appropriate, the Office, shall have up to twenty (20) minutes to present its case to the State Board. The Chairperson of the State Board may allow additional time if necessary.

9.08.3 The appealing applicant, account holder, Participating School, or Service Provider shall have up to twenty (20) minutes to present its case to the State Board. The Chairperson of the State Board may allow additional time if necessary.

9.08.4 The State Board may pose questions to any party at any time during the hearing.

9.08.5 The State Board shall then discuss, deliberate, and vote upon the matter.

9.08.6 The State Board will grant or deny the appeal based upon the totality of evidence presented.

9.08.7 The State Board may announce its decision immediately after hearing all arguments and evidence or it may take the matter under advisement and announce its decision at a later date, provided that all discussions, deliberations, and votes upon the matter take place at a public hearing. The State Board shall provide a written decision to the applicant, account holder, Participating School, or Service Provider within fourteen (14) days of announcing its decision under this section.

## **10.00 Procurement and Contracting**

10.01 In compliance with all state procurement laws and procedures, the Department retains the authority to contract with a vendor or other supplier for the purpose of administering all or parts of the Program, including but not limited to:

10.01.1 Implementing a system to collect and compile response data from the Standard Application Form.

10.01.2 Compiling the legislative report regarding the implementation of the Educational Freedom Account, to be submitted no later than September 30, 2024, pursuant to Ark. Code Ann. § 6-18-2510.

## **11.00 Program Evaluation**

11.01 Pursuant to Ark. Code Ann. § 6-18-2509(a)(1), participating schools and service providers shall administer the following to all participating students who are enrolled on a full- time basis during the 2023-2024 school year:

11.01.1 An examination identified by the State Board that is required for students attending public schools; or

11.01.2 A nationally norm-referenced test that measures, at minimum, achievement in literacy and mathematics and provides information that compares the performance of students against the performance of a sample of students from across the country. The Department shall provisionally approve a test for use in the 2023-2024 school year if the participating school or service provider administered the test to students during one or more of the previous three (3) school years.

11.02 A participating student who is determined by a participating school or service provider to need an exemption to standardized testing due to the nature of the student's disability, pursuant to Ark. Code Ann. § 6-18-2509(a)(2), is not subject to the requirement of Section 11.01.

11.02.1 The participating school or service provider in which a student is enrolled full-time, or otherwise the parent of a participating student, shall allow an exempt participating student to take an alternate assessment approved by the State Board or prepare a portfolio that provides information on the participating student's progress to his or her parent.

11.03 Each participating school or service provider that enrolls one (1) or more participating students shall provide the following information to the Department no later than June 30, 2024, and each June 30 thereafter on an annual basis:

11.03.1 A list of participating students who have taken an examination or norm-referenced test pursuant to Section 11.01 of these Rules, and the achievement results for each student; and

11.03.2 A list of participating students who are exempt from standardized testing due to the nature of the student's disability, pursuant to Section 11.02 of these Rules, and the alternate assessment results or summary of portfolio information provided for each student.



- 11.03.3 If the school is a high school, the number of Participating Students who graduated from high school in a given year and the number of AP tests taken by Participating Students.
- 11.04 The Department shall approve the use of a nationally norm-referenced test for participating students, if it meets the following criteria:
- 11.04.1. The assessment has norming studies that show dates of the studies, definition of the populations sampled, the procedure used to draw the samples, sample sizes, participation rates, and any weighting or smoothing procedure used to make the sample data better represent the population. Norming studies must have been conducted within the last ten (10) years, with five (5) years being preferable;
- 11.04.2. The assessment is internally consistent and reliable and must be reported for content sub-domains (e.g., mathematics, reading) at a minimum score of 0.80, and that reliability data be reported for each grade level;
- 11.04.3. For any open-ended, constructed-response items, rater agreement information (e.g., exact rater agreement rates, intraclass correlations, or kappa coefficients) is reported;
- 11.04.4. The standard error of measurement and conditional standard error of measurement (at various test score levels) are reported;
- 11.04.5. The test developer includes a clear description of the construct to be measured, the purpose of the test, intended interpretation of the scores/other test results, and intended test-taking population;
- 11.04.6. Documentation includes conceptual, empirical, and theoretical evidence that the test meets its intended purposes and support the intended interpretations of test results for the intended populations; and
- 11.04.7. Documentation includes evidence that each test is aligned with rigorous content standards and serves as an adequate measure of K-12 student achievement in core academic areas.
- 11.05 The Department shall administer a survey to account holders to assess their satisfaction with the Department's administration of the EFA Program and their experience with participating schools and service providers. The survey shall collect no more than one (1) response from each account holder, beginning no later than February 1, 2024, and ending no sooner than March 31, 2024.

Emergency Clause

Whereas Act 237 of 2023 requires that the State of Arkansas through the Department of Education to administer the Educational Freedom Account program through rules promulgated by the State Board of Education no later than the beginning of the 2023-2024 school year; and

Whereas, the emergency promulgation of the Rules Governing The Educational Freedom Account Program is necessary for the Department to prepare for the implementation of the program before the 2023-2024 school year begins; without which the State cannot efficiently administer the program, empower parents, or hold participating schools accountable. The rules are specifically necessary to ensure processes for determining the eligibility of students and service providers, conducting account and program audits, and enrolling participating students before the 2023-2024 school year begins.

THEREFORE, the State Board of Education hereby determines pursuant to Ark. Code Ann. § 25-15-204 that immediate peril to the welfare of the State, specifically students and parents, will result without emergency promulgation of these Rules.

**DIVISION OF ELEMENTARY AND SECONDARY EDUCATION**  
**RULES GOVERNING THE EDUCATIONAL FREEDOM ACCOUNT**  
**PROGRAM**  
**August 1, 2023**

**1.00 Purpose**

- 1.01 The purpose of these rules is to establish guidelines for the initial implementation and operation of the Educational Freedom Account (EFA), established to provide children in the State of Arkansas with educational options to achieve success in their education.

**2.00 Definitions**

- 2.01 “Account holder” means the parent of a participating student, or a participating student who has attained the age of majority, who signs the EFA agreement and is responsible for complying with all of the requirements of the EFA.
- 2.02 “Agreement” means a contract signed by an applicant outlining their contractual obligations as the account holder of an EFA and the acceptable uses of EFA funds.
- 2.03 “Applicant” means a prospective participating student or the prospective participating student’s parent, when he or she is applying to the EFA Program on behalf of the student.
- 2.04 “Department” means the Arkansas Department of Education.
- 2.05 “Division” means the Division of Elementary and Secondary Education.
- 2.06 “Education Service Provider” means a business, nonprofit organization, or other entity, not to include a nonpublic or public school, which offers educational materials or services that are qualifying expenses reimbursable by EFA funds pursuant to Ark. Code Ann. § 6-18- 2503(11)(A).
- 2.07 “EFA” means an individual funding account that is managed by the Department of Education for the care of and in the name of a participating student.
- 2.08 “EFA funds” means money from one or more EFAs.
- 2.09 “EFA Program” means the Educational Freedom Account Program established pursuant to Arkansas Code Annotated § 6-18-2501, et seq.

- 2.10 “Foster care” means the placement of a child by the Department of Human Services into custodial care by a group home, group facility, or a relative or nonrelated caregiver on a twenty-four-hour-a-day basis.
- 2.11 “Nationally Norm-Referenced Test” means a standardized test designed to compare and rank test takers in relation to one another as determined by comparing scores against the performance results of a statistically selected group of test takers, typically of the same age or grade level, who have already taken the exam.
- 2.12 “Norming studies” means a series of statistical methods applied to the raw data collected from standardized tests to determine the reliability and validity of the data in calculating the norm-referenced scores.
- 2.13 “Office” means the Office of School Choice, as established within the Department.
- 2.14 “Parent” means either:
- 2.08.1 A biological or adoptive parent;
  - 2.08.2 A legal guardian or custodian;
  - 2.08.3 A person standing in loco parentis to a participating student; or
  - 2.08.4 Another person with legal authority to act on behalf of a Participating Student
- 2.15 “Participating school or service provider” means a school or other service provider that is approved by the Department to receive EFA funds.
- 2.16 “Participating student” means an eligible student for whom an EFA has been approved and established.
- 2.17 “Standard Application Form” means the form created by the Department to be used by applicants seeking to establish an EFA on behalf of a Participating Student.
- 2.18 “State Board” means the Arkansas State Board of Education.
- 2.19 “Student with a disability” means a student who has been:
- 2.19.1 Identified as having a disability consistent with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401 et seq. as it existed on January 1, 2023; or

### **3.00 Student Eligibility**

- 3.01 An individual who is a resident of the State of Arkansas and the parent of a student who is eligible to enroll in a public elementary or secondary school may apply on behalf of a prospective participating student, to participate in the EFA Program for the 2023-2024 school year if the prospective participating student is:
  - 3.01.1 A student with a disability as defined by Section 2.19 of these Rules.
  - 3.01.2 Considered homeless under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11431 et seq., as it existed on January 1, 2023;
  - 3.01.3 A student in foster care, as defined in Section 2.10 of these Rules, or has been in foster care and subsequently achieved permanency through adoption, reunification, or permanent guardianship;
  - 3.01.4 The student participated in the Succeed Scholarship Program, Ark. Code Ann. § 6-41-901 et seq., during the 2022-2023 school year;
  - 3.01.5 A child of active-duty military personnel, as identified by Title 10 or Title 32 of the United States Code;
  - 3.01.6 Is enrolling in kindergarten for the first time; or
  - 3.01.7 A student who was enrolled in the previous school year in a:
    - 3.01.7.a Public school that has a rating of “F” under Ark. Code Ann. §§ 6-15-2105 and 6-15-2106 and State Board of Education rules; or
    - 3.01.7.b Public school district classified as in need of Level 5 — Intensive support under Ark. Code Ann. §§ 6-15-2913 or 6-15-2915.

### **4.00 Student Application**

- 4.01 To apply to participate in the EFA Program, a parent shall fully complete the Standard Application Form available at the Department’s website and the Department’s offices at (4 Capitol Mall, Little Rock, AR 72201), beginning June 20, 2023, and ending August 1, 2023.
  - 4.01.1 The Standard Application Form may be submitted by mailing the application via the United States Postal Service to the Department, submitting the application to the Department via email or submitting the application online at the Department’s website

- 4.01.2 The Standard Application Form may only require the collection of such information and documentation as is necessary to establish the applicant's residency in the State of Arkansas and the applicant's eligibility pursuant to the criteria set in Section 3.01 of these Rules.
- 4.01.3 The Department may assist an applicant in completing the Standard Application Form as needed.
- 4.01.4 The Office of School Choice may determine eligibility of applications received after August 1, 2023, provided Program funds remain available. In such cases, account funding may be prorated to cover qualifying expenses for less than the full duration of the 2023-2024 school year.
- 4.02 The Office shall determine an applicant's eligibility to participate in the Program under Section 3.01 and notify the Applicant on a rolling basis as applications are received. The notification shall inform applicants how they may activate the account and the amount of EFA funding the Participating Student will receive. Priority for accepting student applications shall be made in the following manner:
  - 4.02.1 The Office shall approve all student qualifying applications pursuant to Section 3.01.4 of these Rules.
  - 4.02.2 The Office shall approve all other applications that meet one or more of the qualifying criteria in Section 3.01 of these Rules on a first-come, first-served basis.
  - 4.02.3 The Office shall continue to approve student applications that meet the qualifying criteria set by Section 3.01 of these Rules for the 2023-2024 school year and successive school years, as funding remains available and the conditions for eligibility are met by the applicant pursuant to Section 6 of these Rules.
- 4.03 Once a completed Standard Application Form has been approved by the Office, the applicant shall complete the enrollment procedures set by the Department to become enrolled in the EFA Program, including execution of an Agreement to participate in the Program as outlined in Section 5 of these Rules.

## **5.00 Agreement and Funds Transfer**

- 5.01 Upon notification by the Department that an EFA may be established, the applicant shall sign an Agreement outlining the applicant's contractual obligations as the account holder upon enrolling in the EFA Program, including the acceptable uses of EFA funds and expense reporting requirements. The Agreement may be executed with a wet or electronic signature. The Agreement shall remain

in effect until one or more of the conditions for terminating eligibility are met under Section 6 of these Rules.

5.02 In the Agreement, the Department shall provide account holders with the following:

5.02.1 A written explanation of qualifying expenditures for EFA funds, as outlined in Ark. Code Ann. § 6-18-2503(11)(A);

5.02.2 A written explanation of the responsibilities of account holders, as outlined in Section 5.03 of these Rules;

5.02.3 The following written explanation: “Participation in the EFA is a parental placement under 20 U.S.C. § 1412, Individuals with Disabilities Education Act (IDEA) if a child with a disability is enrolled in a non-public school. Parental placement of children with disabilities in a private school constitutes a waiver of procedural rights to a Free and Appropriate Public Education (FAPE) in connection with their private school enrollment, in accordance with 34 C.F.R. 300.148(a) and pursuant to 34 C.F.R. 300.137(a), while participating in the EFA program”; and

5.02.4 A written explanation of the respective duties of the Department and, if applicable, of any vendor or other supplier the Department has contracted with to administer all or part of the Program.

5.03 In the Agreement, the account holder shall:

5.03.1 Agree not to enroll the participating student full-time in a public school while the student is participating in the EFA Program;

5.03.2 Acknowledge that upon enrolling in the EFA Program, the parent waives the participating student’s entitlement to a free appropriate public education, including special education and related services, from their public school district of residence, so long as the child remains in the EFA Program; and

5.03.3 Agree to use EFA Funds on behalf of the Participating Student strictly for qualifying expenditures, as outlined in Ark. Code Ann. § 6-18-2503(11)(A) during the 2023-2024 school year.

5.04 The Agreement shall:

5.04.1 Be submitted to the Department, along with all required information, before the first EFA payment is disbursed, pursuant to Section 5.05 of these Rules; and

- 5.04.2 Be signed by the account holder and a designee of the Department prior to becoming effective.
- 5.05 After the Agreement is fully executed by the account holder and the Department, the Department shall make four (4) equal payments in quarterly installments from the participating student's EFA to the participating school or service provider. Payments shall only be suspended at such time as one or more criteria to terminate the Agreement are met under Section 6 of these Rules.
- 5.06 The total allocation to each participating student's EFA for the 2023-2024 school year shall be \$6,672, unless either:
- 5.06.1 The total qualifying expenditures, as outlined in Ark. Code Ann. § 6-18-2503(11)(A), published by the participating school or service provider where a participating student is enrolled equal an amount less than \$6,672. Any excess funds allocated to the private school shall be refunded to the Department.
- 5.06.2 The participating student is eligible under Section 3.01.4; in which case the allocation shall total the same amount awarded to the student as a Succeed Scholarship during the 2022-2023 school year.
- 5.07 The Department may withhold up to five percent (5%) of the funds allocated to each EFA for the purpose of the EFA Program administration.

## **6.00 Term of EFA Eligibility**

- 6.01 For purposes of continuity of educational choice, a student who enrolls in the EFA Program shall remain eligible until the participating student meets one of the following criteria, whichever occurs first:
- 6.01.1 Enrolls full-time in a public school.
- 6.01.2 Graduates from high school. The student may continue in the EFA Program until such time as he or she receives a high school diploma or receives a passing score on all subtests of the General Educational Development (GED) test.
- 6.01.3 Reaches twenty-one (21) years of age. The student may complete the school year in which he or she reaches the age of twenty-one (21), provided the student shall not be enrolled in the EFA Program past June 30 after reaching twenty-one (21) years of age.
- 6.02 Regardless of meeting one or more of the criteria listed in the previous subsection, the Department may immediately and permanently remove any participating student from eligibility for a EFA if the account holder fails to comply with the



terms of the Agreement in Section 5 of these Rules or any other applicable laws, rules or procedures, or if the account holder is found to have substantially misspent EFA Funds. The account holder may appeal the Department's decision pursuant to the procedures outlined in Section 9 of these Rules.

- 6.03 The account holder may remove the participating student from enrollment in a participating school or service provider and place the student in a public school. The account holder shall complete the procedures for withdrawal from the EFA Program set by the Department.

## **7.00 Participating Schools and Service Providers**

- 7.01 A private school shall notify the Department of its intent to participate as a participating school or service provider in the EFA Program. Pursuant to Ark. Code Ann. § 6-18-2507, the Office shall certify a private school as a Participating School or Service Provider if the private school is located in the State of Arkansas and:

7.01.1 Complies with one of the following:

7.01.1.a Meets accreditation requirements established by the State Board of Education, the Arkansas Nonpublic School Accrediting Association, Inc., or its successor, or another accrediting association recognized by the State Board; or

7.01.1.b Is an associate member of, or has applied for accreditation from, the Arkansas Nonpublic School Accrediting Association, Inc., or its successor, or another accrediting association recognized by the State Board. A private school that is not fully accredited while participating in the EFA Program shall report annually to the State Board, or its designee, the school's progress towards accreditation.

7.01.2 Meets one or more of the following criteria:

7.01.2.a Has been in operation for at least one (1) school year:

7.01.2.b Provides a statement by a certified public accountant confirming that the school is insured and has sufficient capital or credit to operate in the upcoming school year; or

7.01.2.c Files with the Department a surety bond or letter of credit for the amount equal to the account funds needed by the school for any quarter.

7.01.3 Attests in writing to the following:

- 7.01.3.a The private school does not discriminate on any basis prohibited by the Civil Rights Act of 1964, 42 U.S.C. § 2000d, as it existed on January 1, 2023;
  - 7.01.3.b All private school personnel who are allowed direct contact with participating students have cleared a background check and fingerprinting process;
    - 7.01.3.b.1. Participating schools have until May 30, 2024, to comply with the fingerprinting requirement for all school employees.
  - 7.01.3.c The private school does not employ any individual who may reasonably pose a risk to the appropriate use of EFA Program funds if disbursed;
  - 7.01.3.d The private school only employs or contracts teachers who hold at least baccalaureate degrees or have equivalent documented experience, as determined by the Department;
  - 7.01.3.e The private school holds valid occupancy of buildings as required by the relevant municipality in which the private school is located; and
  - 7.01.3.f The private school operates according to its published disciplinary procedures that, at a minimum, outline the terms and conditions when a student may be expelled.
- 7.02 A private school will be ineligible to participate in the EFA Program if:
- 7.02.1 When approved under Section 7.01.1 of these Rules, the private school loses its accreditation status;
  - 7.02.2 When approved under Section 7.01.2 of these Rules, the private school is ineligible or unable to continue the accreditation process, as determined by the accrediting association;
  - 7.02.3 The private school violates the terms of Section 7.01.3 of these Rules;
  - 7.02.4 The private school fails to adhere to the tenets of its published disciplinary procedures before expelling a Participating Student; or

- 7.02.5 The private school fails to comply with all applicable state laws and rules governing private schools, and with all applicable health and safety laws and rules.
- 7.03 A participating private school shall notify the Department within thirty (30) days after losing accreditation or taking any action rendering the school ineligible to participate in the EFA Program pursuant to Section 7.02 of these Rules. A private school may apply for reinstatement if it returns to compliance with Section 7.01 of these Rules.
- 7.03.1 The Department shall determine whether the private school is not in compliance with Section 7.01 of these rules. The Department shall issue a formal notice of its determination to the private school.
- 7.03.2 A private school applying for reinstatement under this section shall provide documentation to the Department of the private school's efforts to come back into compliance with Section 7.01 of these rules. The private school may request a hearing before the state board or may elect to waive its hearing and submit evidence to the Department.
- 7.03.3 Upon receipt of the evidence, the Department shall issue a decision on the private school's reinstatement in writing to the private school.
- 7.04 The Office's approval of a Participating School or Service Provider shall serve as statewide approval of such provider for purposes of the EFA Program. A listing of each participating school and service provider's name, the qualifying materials, services offered, and any relevant credentials shall be available on the Department's website, in a format easily accessible to the public.
- 7.04.1 Private schools who were approved under the Succeed Scholarship program outside of the State of Arkansas may continue to receive funds for participating Succeed Scholarship students for the remainder of the Participating Students' remaining eligibility.
- 7.05 Participating schools and service providers shall not refund, rebate, or share EFA funds directly with account holders. Funds shall only be refunded to the EFA of a participating student from which the expenditure was made.
- 7.06 The Department may suspend or terminate a participating school or service provider from participating in the EFA Program if the Department determines the school has failed to comply with the requirements of the Act or these Rules.
- 7.07 Nothing shall be construed to expand the regulatory authority of the Department to impose additional regulations on participating schools and

service providers beyond those expressly set out in these Rules to enforce the requirements of the EFA Program.

- 7.07.1 A participating school or service provider shall not be required to alter its creed, practices, admissions policy, or curriculum to receive approval from the Department or to accept payments from an EFA.

## **8.00 Monitoring and Compliance**

- 8.01 During the 2023-2024 school year, the Department shall:

8.01.1 Conduct or contract with an unaffiliated auditor to conduct a random audit of EFAs to ensure monies were used only for expenses that were approved or allowed at the time the expense was made.

8.01.2 Maintain a copy of the audit plan and all associated audit reports.

- 8.02 During the 2023-2024 school year, the Department shall conduct or contract with an unaffiliated auditor to conduct a random financial audit of participating schools and service providers. If selected, to satisfy the requirements of this subsection, a participating school or service provider shall submit to an auditor chosen by the Department, a financial audit of the entity conducted by a certified public accountant within six (6) months of the most recently completed fiscal year. The audit shall include a statement that the report is free of material misstatements and fairly represents the Participating School's or Service Provider's maximum total tuition and fees.

- 8.03 The Department shall establish or contract for the establishment of an anonymous online fraud reporting service and an anonymous telephone hotline for reporting fraud. Individuals may notify the Department of any alleged violation by an account holder or participating school or service provider of state laws, rules, or procedures relating to the EFA Program. The Department shall conduct an inquiry into any report of fraud or make a referral for an investigation to the Arkansas Attorney General or the Secretary of the Arkansas Department of the Inspector General.8.04 The Department shall forward to Arkansas Legislative Audit:

8.04.1 All audits conducted under this section that identify a potential misuse of EFA funds; and

8.04.2 Referrals of all cases involving fraud and/or substantial misuse of account funds for investigation to the Arkansas Attorney General or the Secretary of the Arkansas Department of the Inspector General.

## **9.00 Appeals Process**

- 9.01 The following determinations can be appealed:

- 9.01.1 An applicant may appeal the Office's determination that the student is not eligible for the EFA Program.
- 9.01.2 An account holder may appeal an official determination that the account holder has misspent EFA funds or the removal of the participating student from the EFA Program.
- 9.01.3 An applicant school may appeal the Office's determination that a private school is not qualified to be a participating school or service provider.
- 9.01.4 A participating school or service provider may appeal the Department's suspension or termination of the Participating School or Service Provider from the EFA Program.
- 9.02 All appeals shall be submitted on the appeal forms provided on the Department's website. If an appeal is not submitted on the appropriate appeal form, the appeal shall be denied.
- 9.03 Appeals shall follow the following two-step process:
  - 9.03.1 Step one appeals shall be reviewed by the Department. Step one appeals must be submitted to the Department within fourteen (14) calendar days of the Department electronically sending the determination that is being appealed. The day that the Department sends the determination will not count as part of the foregoing fourteen (14) calendar days. The Secretary of Education or the Secretary's designee shall make a determination and issue an electronic notification to the appealing party within forty-five (45) calendar days of receiving the step one appeal.
  - 9.03.2 If the Secretary of Education or the Secretary's designee denies the step one appeal, the appealing party may file a step two appeal. Step two appeals shall be reviewed by the State Board. Step two appeals must be submitted to the Department within thirty (30) calendar days of the Department electronically sending the step one determination. The day that the Department sends the step one determination will not count as part of the foregoing thirty (30) calendar days.
- 9.04 If the deadline to submit an appeal falls on a weekend or state holiday, the appeal shall be considered timely submitted if it is received by the next business day after the weekend or state holiday.
- 9.05 If an appeal is not timely submitted, the appeal shall be denied.
- 9.06 The State Board shall hear the appeal at its next scheduled meeting, so long as the appeal is received seven (7) calendar days before the meeting date.

- 9.07. Any appeal shall be held in an open hearing, and the decision of the State Board shall be in an open session.
- 9.08. The following procedures shall apply to State Board hearings for a step two appeal:
- 9.08.1 All persons wishing to testify before the State Board shall first be placed under oath by the Chairperson of the State Board.
- 9.08.2 The Department, and when appropriate, the Office, shall have up to twenty (20) minutes to present its case to the State Board. The Chairperson of the State Board may allow additional time if necessary.
- 9.08.3 The appealing applicant, account holder, Participating School, or Service Provider shall have up to twenty (20) minutes to present its case to the State Board. The Chairperson of the State Board may allow additional time if necessary.
- 9.08.4 The State Board may pose questions to any party at any time during the hearing.
- 9.08.5 The State Board shall then discuss, deliberate, and vote upon the matter.
- 9.08.6 The State Board will grant or deny the appeal based upon the totality of evidence presented.
- 9.08.7 The State Board may announce its decision immediately after hearing all arguments and evidence or it may take the matter under advisement and announce its decision at a later date, provided that all discussions, deliberations, and votes upon the matter take place at a public hearing. The State Board shall provide a written decision to the applicant, account holder, Participating School, or Service Provider within fourteen (14) days of announcing its decision under this section.

## **10.00 Procurement and Contracting**

- 10.01 In compliance with all state procurement laws and procedures, the Department retains the authority to contract with a vendor or other supplier for the purpose of administering all or parts of the Program, including but not limited to:
- 10.01.1 Implementing a system to collect and compile response data from the Standard Application Form.

- 10.01.2 Compiling the legislative report regarding the implementation of the Educational Freedom Account, to be submitted no later than September 30, 2024, pursuant to Ark. Code Ann. § 6-18-2510.

## **11.00 Program Evaluation**

- 11.01 Pursuant to Ark. Code Ann. § 6-18-2509(a)(1), participating schools and service providers shall administer the following to all participating students who are enrolled on a full- time basis during the 2023-2024 school year:
  - 11.01.1 An examination identified by the State Board that is required for students attending public schools; or
  - 11.01.2 A nationally norm-referenced test that measures, at minimum, achievement in literacy and mathematics and provides information that compares the performance of students against the performance of a sample of students from across the country. The Department shall provisionally approve a test for use in the 2023-2024 school year if the participating school or service provider administered the test to students during one or more of the previous three (3) school years.
- 11.02 A participating student who is determined by a participating school or service provider to need an exemption to standardized testing due to the nature of the student's disability, pursuant to Ark. Code Ann. § 6-18-2509(a)(2), is not subject to the requirement of Section 11.01.
  - 11.02.1 The participating school or service provider in which a student is enrolled full-time, or otherwise the parent of a participating student, shall allow an exempt participating student to take an alternate assessment approved by the State Board or prepare a portfolio that provides information on the participating student's progress to his or her parent.
- 11.03 Each participating school or service provider that enrolls one (1) or more participating students shall provide the following information to the Department no later than June 30, 2024, and each June 30 thereafter on an annual basis:
  - 11.03.1 A list of participating students who have taken an examination or norm-referenced test pursuant to Section 11.01 of these Rules, and the achievement results for each student; and
  - 11.03.2 A list of participating students who are exempt from standardized testing due to the nature of the student's disability, pursuant to Section 11.02 of these Rules, and the alternate assessment results or summary of portfolio information provided for each student.

- 11.03.3 If the school is a high school, the number of Participating Students who graduated from high school in a given year and the number of AP tests taken by Participating Students.
- 11.04 The Department shall approve the use of a nationally norm-referenced test for participating students, if it meets the following criteria:
- 11.04.1. The assessment has norming studies that show dates of the studies, definition of the populations sampled, the procedure used to draw the samples, sample sizes, participation rates, and any weighting or smoothing procedure used to make the sample data better represent the population. Norming studies must have been conducted within the last ten (10) years, with five (5) years being preferable;
  - 11.04.2. The assessment is internally consistent and reliable and must be reported for content sub-domains (e.g., mathematics, reading) at a minimum score of 0.80, and that reliability data be reported for each grade level;
  - 11.04.3. For any open-ended, constructed-response items, rater agreement information (e.g., exact rater agreement rates, intraclass correlations, or kappa coefficients) is reported;
  - 11.04.4. The standard error of measurement and conditional standard error of measurement (at various test score levels) are reported;
  - 11.04.5. The test developer includes a clear description of the construct to be measured, the purpose of the test, intended interpretation of the scores/other test results, and intended test-taking population;
  - 11.04.6. Documentation includes conceptual, empirical, and theoretical evidence that the test meets its intended purposes and support the intended interpretations of test results for the intended populations; and
  - 11.04.7. Documentation includes evidence that each test is aligned with rigorous content standards and serves as an adequate measure of K-12 student achievement in core academic areas.
- 11.05 The Department shall administer a survey to account holders to assess their satisfaction with the Department's administration of the EFA Program and their experience with participating schools and service providers. The survey shall collect no more than one (1) response from each account holder, beginning no later than February 1, 2024, and ending no sooner than March 31, 2024.

Emergency Clause



Whereas Act 237 of 2023 requires that the State of Arkansas through the Department of Education to administer the Educational Freedom Account program through rules promulgated by the State Board of Education no later than the beginning of the 2023-2024 school year; and

Whereas, the emergency promulgation of the Rules Governing The Educational Freedom Account Program is necessary for the Department to prepare for the implementation of the program before the 2023-2024 school year begins; without which the State cannot efficiently administer the program, empower parents, or hold participating schools accountable. The rules are specifically necessary to ensure processes for determining the eligibility of students and service providers, conducting account and program audits, and enrolling participating students before the 2023-2024 school year begins.

THEREFORE, the State Board of Education hereby determines pursuant to Ark. Code Ann. § 25-15-204 that immediate peril to the welfare of the State, specifically students and parents, will result without emergency promulgation of these Rules.



**STATE OF ARKANSAS  
BUREAU OF  
LEGISLATIVE RESEARCH**

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for Legal Services  
Jessica Whittaker, Assistant Director  
for Research Services  
Eric Sanders, Assistant Director  
for Information Technology Services

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**Memorandum**

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**TO:** Members, ALC – Executive Subcommittee

**CC:** Marty Garrity, Director, Bureau of Legislative Research;  
Rebecca Miller-Rice, Administrator, Administrative Rules Review Section,  
Legal Services Division

**FROM:** Jason Kearney, Legislative Attorney, Administrative Rules Review Section,  
Legal Services Division

**DATE:** July 14, 2023

**SUBJECT:** Legal Authorization for the Emergency Promulgation of Proposed Division of  
Elementary and Secondary Education Rules Governing the Educational  
Freedom Account Program

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The Arkansas Department of Education's Division of Elementary and Secondary Education seeks legislative review and approval of the emergency promulgation of its Rules Governing the Educational Freedom Account Program. Pursuant to Arkansas Code Annotated § 6-18-2504(a), as amended by Act 237 of 2023, § 42, the division shall administer the Arkansas Children's Educational Freedom Account Program, which shall be subject to the rules adopted by the State Board of Education. The rules adopted by the state board under the subchapter shall include without limitation the: (1) process for determining the eligibility of students and service providers, including the awarding of accounts to eligible students and removal of unnecessary barriers or disincentives to participation by potential participating service providers; (2) process for conducting account and program audits, including establishing the authority for the division to conduct or contract for the auditing of accounts; (3) authority of the division to deem any participating student ineligible for the program, and refer a case involving the misuse of account funds for investigation to the Attorney General or the Secretary of the Department of the Inspector General; (4) authority of the division to contract with a

vendor or other supplier for the administration of the program or parts of the program; (5) requirement that the program shall begin enrolling participating students no later than the beginning of the 2023-2024 school year and be fully implemented to serve all Arkansas children eligible to enroll in a public school by the beginning of the 2025-2026 school year; (6) establishment or creation of a contract for the establishment of an online anonymous fraud reporting service, including without limitation a telephone hotline; (7) requirement for a surety bond for a participating service provider that receives more than one hundred thousand dollars (\$100,000) in account funds; (8) mechanism for the refunding of payments from service providers back to the account from which they were paid; (9) required compliance with all state procurement laws and procedures; and (10) means for preventing unreasonable inflation or fraud in participating school tuition and fees. *See Ark. Code Ann. § 6-18-2504(b)*, as amended by Act 237, § 42.

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

Additionally, the state board shall promulgate rules: (1) for the implementation of the Arkansas Children's Educational Freedom Account Program; and (2) to effectively and efficiently administer the Arkansas Children's Educational Freedom Account Program, including without limitation the awarding of funds to participating students, the oversight of the Arkansas Children's Educational Freedom Account Program, and any other necessary aspects for the operation of the Arkansas Children's Educational Freedom Account Program. *See Ark. Code Ann. § 6-18-2506(d)*, as amended by Act 237, § 42. *See also Ark. Code Ann. § 6-18-2505(h) and § 6-18-2507(j)*, both as amended by Act 237, § 42 (providing that the state board may promulgate rules to implement the Arkansas Children's Educational Freedom Account Program).

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

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