

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

DEPARTMENT/AGENCY Arkansas Department of Education- Division of Elementary and Secondary Education
DIVISION Fiscal and Administrative Services
DIVISION DIRECTOR Greg Rogers
CONTACT PERSON Courtney Salas-Ford
ADDRESS Four Capitol Mall, Room 301-A, Little Rock, AR 72201
PHONE NO. 501-682-4752 FAX NO. 501-682-4249 E-MAIL Courtney.Salas-Ford@arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Courtney Salas-Ford
PRESENTER E-MAIL Courtney.Salas-Ford@arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule? ADE-DESE EMERGENCY Rules Governing the School District Educational Excellence Trust Fund

2. What is the subject of the proposed rule? Calculation of Educational Excellence Trust Funds

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
If yes, please provide the federal rule, regulation, and/or statute citation. _____

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes No

If yes, what is the effective date of the emergency rule? July 1, 2019

When does the emergency rule expire? October 28, 2019

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes No

5. Is this a new rule? Yes No

If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule? Yes No

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes No

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Ark. Code Ann. §§ 6-11-105 and 25-15-201 et seq. and Act 170 of 2019.

7. What is the purpose of this proposed rule? Why is it necessary?
The proposed amendments incorporate changes from Act 170 of 2019 to the method for calculating Educational Excellence Trust Fund funds for school districts.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). <http://www.arkansased.gov/divisions/legal/rules/pending>

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

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

N/A

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

July 1, 2019

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. See attached.

13. Please provide proof of filing the rule with the Secretary of State ~~and the Arkansas State Library~~ as required pursuant to Ark. Code Ann. § 25-15-204(e). See attached.

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Education

DIVISION Fiscal and Administrative Services

PERSON COMPLETING THIS STATEMENT Courtney Salas-Ford

TELEPHONE 501-682-4752 **FAX** 501-682-4249 **EMAIL:** Courtney.Salas-Ford@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE ADE-DESE EMERGENCY Rules Governing the School District Educational Excellence Trust Fund

- 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 an agency is proposing a more costly rule, please state the following:

- (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 more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

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) _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Total _____

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

Current Fiscal Year

Next Fiscal Year

General Revenue 0
Federal Funds 0
Cash Funds 0
Special Revenue 0
Other (Identify) 0

Total 0

General Revenue 0
Federal Funds 0
Cash Funds 0
Special Revenue 0
Other (Identify) 0

Total 0

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

Current Fiscal Year

Next Fiscal Year

\$ 0

\$ 0

6. What is the total estimated cost by fiscal year to state, county, and 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

\$ 0

\$ 0

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: [Courtney Salas-Ford \(ADE\)](#)
To: ["register@sos.arkansas.gov"](mailto:register@sos.arkansas.gov)
Subject: Notice of Filing - Emergency ADE-DESE Rules Governing the School District Educational Excellence Trust Fund
Date: Friday, June 14, 2019 11:41:00 AM
Attachments: [MARK-UP DRAFT EMERGENCY EETF Rules.pdf](#)
[Summary of Rule - EETF.docx](#)
[BLR- Financial Impact - EMERGENCY EETF Rule.pdf](#)

Please find attached the following Emergency rules approved by the Arkansas State Board of Education on June 13, 2019:

- ADE-DESE Emergency Rules Governing the School District Educational Excellence Trust Fund

A financial impact statement and summary of these rules are also attached.

Please confirm receipt of these rules.

Thank you,
Courtney Salas-Ford
Deputy General Counsel
Ark. Dep't of Education
Four Capitol Mall, Rm. 301-A
Little Rock, AR 72201
(501) 682-4752



Arkansas Department of Education

Transforming Arkansas to lead the nation in student-focused education

June 14, 2019

Johnny Key
Commissioner

Via Email: garritym@blr.arkansas.gov

State Board
of Education

Ms. Marty Garrity, Director
Bureau of Legislative Research

Dr. Jay Barth
Little Rock
Chair

Re: Administrative Rules for Emergency Promulgation

- **ADE Rules Governing the School District Educational Excellence Trust Fund**

Charisse Dean
Little Rock
Vice Chair

Dear Ms. Garrity:

Susan Chambers
Bella Vista

The Arkansas Department of Education respectfully requests that your office place the subject proposed emergency rules on the agenda of the ALC Executive Subcommittee. Included in this email is a BLR Questionnaire, Financial Impact Statement, summary of rule, and copy of the proposed emergency rule. On June 14, 2019, ADE will also file with BLR the permanent promulgation version of these rules approved by the State Board of Education for public comment. The State Board approved these rules for emergency promulgation on June 13, 2019.

Dr. Fitz Hill
Little Rock

Kathy McPetridge
Springdale

Dr. Sarah Moore
Stuttgart

The emergency clause in the rule more fully explains the need for the emergency promulgation. However, in short, these rules are necessary to implement Act 170 of 2019, which changes the method for calculating Educational Excellence Trust Fund funds. It is necessary to promulgate these rules as an emergency rule in order to adequately implement the disbursement of funding for the 2019-2020 school year.

Ouida Newton
Poyen

R. Brett Williamson
El Dorado

If you have any questions, please do not hesitate to call me at (501) 682-4752.

Diane Zook
Melbourne

Respectfully submitted,

Courtney Salas-Ford
Deputy General Counsel
Arkansas Department of Education

Four Capitol Mall
Little Rock, AR
72201-1019
(501) 682-4475
ArkansasEd.gov

cc: Ms. Rebecca Miller-Rice (miller-ricer@blr.arkansas.gov)

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SUMMARY OF RULES:
ARKANSAS DEPARTMENT OF EDUCATION
DIVISION OF ELEMENTARY AND SECONDARY EDUCATION
RULES GOVERNING THE EDUCATIONAL EXCELLENCE TRUST FUND

Proposed amendments to these rules incorporate changes to the process and procedures for calculating school district Educational Excellence Trust Fund (EETF) funds required by Act 170 of 2019. The calculation requires the total EETF funds available to be divided by the total foundation funding for all school districts and then multiplied by each district's foundation funding amount. The Trust Fund amount on the final State Aid Notice for the current school year must be expended in the form of salaries, social security, and retirement matching for current licensed personnel positions, beginning with the 2020-2021 school year.

ARKANSAS DEPARTMENT OF EDUCATION
DIVISION OF ELEMENTARY AND SECONDARY EDUCATION
RULES GOVERNING THE SCHOOL DISTRICT
EDUCATIONAL EXCELLENCE TRUST FUND

January 2014-EMERGENCY RULE - Effective July 20, 2019

1.00 PURPOSE

- 1.01 These rules shall be known as the Arkansas Department of Education Division of Elementary and Secondary Education Rules Governing the School District Educational Excellence Trust Fund.
- 1.02 The purpose of these rules is to provide the process and procedures necessary to calculate and allocate the Educational Excellence Trust Fund available to school districts.

2.00 AUTHORITY

- 2.01 The Arkansas State Board of Education promulgated these rules pursuant to the authority granted to it by Ark. Code Ann. §§ 6-11-105, 6-5-301 et seq., 6-20-2301 et seq., 19-5-942, and 25-15-201 et seq., and ~~Acts 1138 and 1278 of 2013~~ Act 170 of 2019.

3.00 DEFINITIONS

As used in these rules:

- 3.01 “Educational Excellence Trust Fund” (Trust Fund) means a fund for the Arkansas Department of Education made available to school districts for teacher salaries as provided for by Ark. Code Ann. § 6-5-301 et seq.
- 3.02 ~~“State Foundation Funding” means the same as the definition set forth in Ark. Code Ann. § 6-20-2303(24) (7) and is the amount of state financial aid provided to a school district under~~ set forth in Ark. Code Ann. § 6-20-2305(a)(2).
- 3.03 “Licensed personnel” means a person holding a valid Arkansas standard teaching license, an ancillary license, a provisional license, or a technical permit issued by the State Board.
 - 3.03.1 “Licensed personnel” also includes a licensed or nonlicensed classroom teacher employed in a position under a waiver from licensure.

4.00 CALCULATION

- 4.01 Divide the Arkansas Department of Education total educational excellence
ADE 326-1

trust fund available for distribution by the state total ~~distribution of state~~ foundation funding for all school districts to determine the percentage of state foundation funding that is the educational excellence trust fund.

- 4.02 Calculate each district's educational excellence trust fund amount by multiplying the result of Section 4.01 by each district's ~~state~~ foundation funding amount.
- 4.03 Changes to the total educational excellence trust fund available for distribution or changes to the ~~state~~ foundation funding amount ~~in one or more school districts~~ may result in revised educational excellence trust fund amounts.

5.00 ALLOCATION

- 5.01 ~~To determine if a "salary increase" is required: The Trust Fund amount on the final State Aid Notice for the current school year must be expended in the form of salaries, social security, and retirement matching for current licensed personnel positions.~~

~~5.01.1 Compare the Trust Fund amount shown on the final State Aid Notice for the current school year with the highest Trust Fund amount since the establishment of the Trust Fund (1991-1992 school year).~~

~~5.01.2 If the current school year Trust Fund amount is the highest amount on record since the 1991-1992 school year, subtract the previous highest amount from the current school year amount. The district is obligated to pay this increase in Trust Fund amount in the form of salaries, social security and retirement matching for current licensed personnel positions.~~

~~5.01.3 To determine the amount of the increase in Section 5.01.2 to allocate to salaries, social security (FICA), and retirement matching, first determine the current year percentage of social security (FICA) and retirement matching.~~

~~5.01.3.1 Using for example, 2012-2013 school year, the social security rate of 7.65% and the retirement matching of 14.00%, the amount of Trust Fund increase to be paid in salaries is the Trust Fund increase less the 7.65% social security and the 14.00% retirement matching. Divide the Trust Fund increase by 1.2165 (1+.0765+.14) to determine the salary obligation.~~

~~Example: If Trust Fund increase to be paid in salaries is: \$12,000~~

$$12,000 / 1.2165 = \$9,864$$

~~FICA 7.65% = 755
RET 14.00% = 1,381
Total obligation: 12,000~~

~~5.01.3.2 The difference between the trust fund increase and the calculated salary obligation should be exactly enough to cover the Social Security (FICA) and the retirement obligations.~~

~~5.02 If the amount obligated to be paid in salaries is less than the annual increase provided by the district for experience or advanced hours or degrees, there is no obligation to provide an additional salary increase or to change the salary schedule as a result of the Trust Fund increase. School districts are not required to increase salaries as a result of its Trust Fund allocation for the 2019-2020 school year. This exemption applies only to the 2019-2020 school year.~~

~~5.03 Open-enrollment charter schools shall not have a Trust Fund allocation and are exempt from the statutory requirements of the Trust Fund.~~

Emergency Clause

Whereas, Act 170 of 2019, to be codified at Ark. Code Ann. § 6-5-307, changes the method by which Educational Excellence Trust Fund funds are calculated;

Whereas, Act 170 of 2019 contains an emergency clause requiring the changes to the Educational Excellence Trust Fund calculation be implemented for the 2019-2020 school year;

Whereas, the Educational Excellence Trust Fund calculation must be completed by the Department prior to the beginning of the 2019-2020 school year;

Whereas, Act 170 of 2019, to be codified at Ark. Code Ann. § 6-5-307, authorizes the Arkansas State Board of Education to promulgate rules to administer disbursement of the Educational Excellence Trust Fund funds, and the State Board has done so in these rules;

THEREFORE, the State Board of Education hereby determines pursuant to Ark. Code Ann. § 25-15-204 that immediate peril to the welfare of Arkansas public schools will result without the immediate promulgation of these rules to become effective July 1, 2019.

Arkansas Department of Education
Rules Governing the School District Educational Excellence Trust Fund
January 2014

1.00 PURPOSE

- 1.01 These rules shall be known as Arkansas Department of Education Rules Governing the School District Educational Excellence Trust Fund.
- 1.02 The purpose of these rules is to provide the process and procedures necessary to calculate and allocate the Educational Excellence Trust Fund available to school districts.

2.00 AUTHORITY

- 2.01 The Arkansas State Board of Education promulgated these rules pursuant to the authority granted to it by Ark. Code Ann. §§ 6-11-105, 6-5-301 et seq., 6-20-2301 et seq., 19-5-942, and 25-15-201 et seq., and Acts 1138 and 1278 of 2013.

3.00 DEFINITIONS

As used in these rules:

- 3.01 “Educational Excellence Trust Fund” (Trust Fund) means a fund for the Arkansas Department of Education made available to school districts for teacher salaries as provided for by Ark. Code Ann. § 6-5-301 et seq.
- 3.02 “State Foundation Funding” means the same as the definition set forth in Ark. Code Ann. §6-20-2303(21) and is the amount of state financial aid provided to a school district under Ark. Code Ann. § 6-20-2305 (a).

4.00 CALCULATION

- 4.01 Divide the Arkansas Department of Education total educational excellence trust fund available for distribution by the state total distribution of state foundation funding to determine the percentage of state foundation funding that is the educational excellence trust fund.
- 4.02 Calculate each district's educational excellence trust fund amount by multiplying the result of Section 4.01 by each district's state foundation funding amount.

- 4.03 Changes to the total educational excellence trust fund available for distribution or changes to the state foundation funding amount in one or more school districts may result in revised educational excellence trust fund amounts.

5.00 ALLOCATION

- 5.01 To determine if a “salary increase” is required:

- 5.01.1 Compare the Trust Fund amount shown on the final State Aid Notice for the current school year with the highest Trust Fund amount since the establishment of the Trust Fund (1991-1992 school year).
- 5.01.2 If the current school year Trust Fund amount is the highest amount on record since the 1991-1992 school year, subtract the previous highest amount from the current school year amount. The district is obligated to pay this increase in Trust Fund amount in the form of salaries, social security and retirement matching for current licensed personnel positions.
- 5.01.3 To determine the amount of the increase in Section 5.01.2 to allocate to salaries, social security (FICA), and retirement matching, first determine the current year percentage of social security (FICA) and retirement matching.

- 5.01.3.1 Using for example, 2012-2013 school year, the social security rate of 7.65% and the retirement matching of 14.00%, the amount of Trust Fund increase to be paid in salaries is the Trust Fund increase less the 7.65% social security and the 14.00% retirement matching. Divide the Trust Fund increase by 1.2165 (1+.0765+.14) to determine the salary obligation.

Example: If Trust Fund increase to be paid in salaries is: \$12,000

12,000 /1.2165 = \$9,864
 FICA 7.65% = 755
 RET 14.00% = 1,381
 Total obligation: 12,000

- 5.01.3.2 The difference between the trust fund increase and the calculated salary obligation should be exactly enough to cover the Social Security (FICA) and the retirement obligations.

- 5.02 If the amount obligated to be paid in salaries is less than the annual increase provided by the district for experience or advanced hours or degrees, there is no obligation to provide an additional salary increase or to change the salary schedule as a result of the Trust Fund increase.



STATE OF ARKANSAS
BUREAU OF
LEGISLATIVE RESEARCH

Marty Garrity, Director
Kevin Anderson, Assistant Director
for Fiscal Services
Tim Carlock, Assistant Director
for Information Technology
Matthew Miller, Assistant Director
for Legal Services
Richard Wilson, Assistant Director
for Research Services

Memorandum

TO: Members, ALC – Executive Subcommittee

CC: Marty Garrity, Director, Bureau of Legislative Research;
Jessica Sutton, Administrator, Administrative Rules Review Section, Legal Services
Division

FROM: Rebecca Miller-Rice, Legislative Attorney, Administrative Rules Review Section,
Legal Services Division

DATE: June 18, 2019

SUBJECT: Legal Authorization for the Emergency Promulgation of the *Arkansas Department of
Education Division of Elementary and Secondary Education Rules Governing the School
District Educational Excellence Trust Fund*

The Department of Education (“Department”), Division of Elementary and Secondary Education, seeks legislative review and approval for the emergency promulgation of its rules governing the process and procedures for calculating school district Educational Excellence Trust Fund (“EETF”) funds. Pursuant to Arkansas Code Annotated § 6-5-307(e), as amended by Act 170 of 2019, § 1, the Department may promulgate rules to administer the statute, concerning an increase in EETF funds allocated for teacher salaries.¹

¹ Act 170 contained an emergency clause and becomes effective July 1, 2019. See Act 170, § 3.