

# Adequacy Study 2024

History

Prepared for the  
House and Senate  
Committees  
on Education



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# Introduction

The Adequacy Study statute requires the House and Senate Education Committees to evaluate the entire spectrum of public education to determine whether students receive equal opportunity for an adequate education. This adequacy history report is presented as part of that evaluation.

This report will summarize the history of various K-12 education programs and funding streams. Because each of the programs and funding streams will be discussed in greater detail in a later report, this report does not attempt to get into the specifics of programs or funding streams. The purpose of this report is to ensure that readers of later reports will have a common understanding of the broad history of adequacy in Arkansas, as well as a more specific understanding of the history of each program or funding stream.

## Background

In the Arkansas Supreme Court's 1983 ruling in *DuPree v. Alma School District*<sup>1</sup>, the court found that the state's education funding system was unconstitutional because it was inequitable. The plaintiffs in the case argued that the school funding system, based on the local tax base, varied by location, and the state had not done enough to remedy the inequalities. The Court also established that the state has the ultimate responsibility for education; if the state turns over responsibility for education to local districts and the local districts do not meet the constitutional requirements, the state must step in to remedy the deficiencies.

The General Assembly's efforts to define and fund an adequate education were driven by a lawsuit filed in August 1992 by the Lake View School District in Phillips County. The lawsuit claimed the disparity between public school funding for wealthy districts and for low-income districts was unconstitutional.

In 2002, the Arkansas Supreme Court declared the state's public school funding system unconstitutional, stating that **the funding system was both inequitable and inadequate**. The court ordered the state to define educational adequacy, examine the entire spectrum of the state's public education system, and monitor how state education funding is spent.

To comply with the Court's ruling, the General Assembly created the Joint Committee on Educational Adequacy during the 2003 regular legislative session and charged it with conducting an adequacy study. The committee hired school funding experts Lawrence O. Picus and Associates<sup>2</sup>, who spent four months reviewing Arkansas's school finance and adequacy issues and presented their final recommendations on September 1, 2003,<sup>3</sup> which included a funding formula based on the staffing and resources necessary to

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<sup>1</sup> 279 Ark. 340, 651 S.W.2d 90.

<sup>2</sup> Lawrence O. Picus and Associates has been known by multiples names, including Picus Odden and Associates. This report refers to the consultants as Picus and Associates throughout for consistency.

<sup>3</sup> Odden, A., Picus, L. O., Fermanich, M. (2003). *An Evidence-based Approach to School Finance Adequacy in Arkansas*. Report prepared for the Arkansas Joint Committee on Education Adequacy.

operate an elementary, middle, and high school of 500 students each. Based on the recommendations and other information, the General Assembly enacted 73 education bills into law during the Second Extraordinary Session of 2003.

The General Assembly's new funding formula made a key change from the consultants' recommendations. Picus and Associates, based on research concerning school size, recommended a funding formula using the resources needed to operate an elementary, middle, and high school of 500 students each. The General Assembly took the consultants' school-based figures and converted the formula to a per-pupil formula, with funding based on a school district of 500 students with one K-12 school, based on a memo known as the "Bisbee memo" for its author, then-Senator David Bisbee. Senator Bisbee believed (and stated in later testimony) that the model recommended by the consultants, which was based on resources, would reward inefficiency and ensure that the State was not receiving the maximum benefit for the money it expended.<sup>4</sup> The Bisbee memo outlined how to convert the school-based method the consultants recommended to a per-pupil method. Act 59 of the Second Extraordinary Session of 2003 contained the new per-pupil funding mechanism.<sup>5</sup>

The Supreme Court released the state from court supervision in 2004 under *Lake View*, praising much of the General Assembly's work while noting that deficiencies still existed. The Court noted that Arkansas Department of Education Division of Elementary and Secondary Education (DESE)<sup>6</sup> had not adopted Standards for Accreditation, DESE could not identify the state's average teacher salary, and unattached equipment (media, laboratory, fine arts, and computer equipment) were not included in the facilities study.

A year later, after the 2005 regular legislative session, the Supreme Court reopened the *Lake View* case at the request of 50 school districts. The districts, led by the Rogers School District, argued that despite inflation and new state mandates placed on schools, the General Assembly failed to increase the foundation funding rate for 2005-06. The districts claimed the money schools received was not enough to provide an adequate education.

In December 2005, the Arkansas Supreme Court again declared the public school funding to be unconstitutionally inequitable and inadequate. Among other findings, the Court said the state had failed to comply with two laws: its doomsday provision requiring that education needs be funded first and Act 57 of the Second Extraordinary Session of 2003, which required the state to study the cost of providing an adequate education.

In 2006, the Adequacy Study Oversight Subcommittee began another interim study on education and rehired Picus and Associates to reassess the foundation funding levels. Based on the consultants' recommendations and other information, the Subcommittee refined the funding levels established in the matrix (the tool used to determine funding amounts, discussed further below). In a special session in April 2006, the General Assembly increased the foundation funding rate.

In their 2006 report, Picus and Associates used the per-pupil system that the General Assembly adopted under Act 59 of the Second Extraordinary Session of 2003, rather than the school-based figures Picus

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<sup>4</sup> Prepared Testimony of Sen. David Bisbee. *Lake View Sch. Dist. No. 25. V. Huckabee, et al.*, Feb. 26, 2004.

<sup>5</sup> Odden, A., Picus, L. O., & Goetz, M. (2006). *Recalibrating the Arkansas School Funding Structure*. Report prepared for Arkansas Joint Committee on Education.

<sup>6</sup> Act 910 of 2019 merged several departments into the already existing Department of Education and created the Division of Elementary and Secondary Education. This report refers to the Department of Education as the Division of Elementary and Secondary Education (DESE) throughout for consistency.

and Associates originally recommended in their 2003 report. The consultants' report noted that Act 59 of the Second Extraordinary Session of 2003 used a 500-student district and a 500-student K-12 school as the basis for determining the per-pupil amount for foundation funding. The report stated that using the number 500 made sense since the school-based recommendations in the consultants' original report were all made on the basis of 500-student prototypical schools.

However, the report raised the issue that 500 students might not be the most appropriate number to use to determine per-pupil foundation funding, given the size of Arkansas districts and schools. The report used the example of a principal as a single resource—a resource that is required for every school but that does not change based on the number of students. The report noted that librarians and secretaries are other examples of single resources; teachers are an example of a resource that naturally changes based on the number of students in the school. The report pointed out that for a school of 350 students, the foundation funds would provide less money for a principal salary and benefits than the amount specified in the matrix; however, the state standards required that schools with 300 or more students employ a full-time principal. The consultants eventually decided to use 500 students as the basis for determining expenditures per pupil in their recommendations, with the understanding that principal salaries are generally lower in smaller schools and would likely align with the smaller amounts of funds that smaller schools would receive, as well as the understanding that schools with fewer than 300 students only needed to provide a half-time principal under the state standards.<sup>7</sup>

A year later, in May 2007, the Supreme Court, in a historic decision signed by all seven of the participating justices, declared the Arkansas public school funding system constitutional. Since that time, the House and Senate Education Committees have undertaken biennial studies of the state's entire education system and have adjusted the matrix and foundation funding levels as they determined were needed.

In 2014, Picus and Associates returned to conduct a desk audit of the funding matrix and provide an overview of the costs of providing broadband services to all districts in the state. In 2019, the Arkansas Bureau of Legislative Research issued a Request for Proposal requesting education adequacy consulting services for the House and Senate Education Committees. The committees chose to hire Augenblick, Palaich and Associates (APA), who began work in February 2020. The Committees approved APA's final report on December 14, 2020.

In the 2023 Regular Session, the General Assembly passed Act 237, also known as the LEARNS Act. The Act contained a number of provisions concerning K-12 public education. Some of the LEARNS provisions related to required adequacy topics, including teacher salary.

This report is organized to match the upcoming resource allocation report. This report goes through each part of the matrix, laying out the history of each line in the matrix. Following the matrix, this report details the history of each type of categorical funding, the additional funding streams provided for matrix items and categorical funding items, and other types of funding. Finally, the report provides historical information for the state's accountability systems and other topics that are part of adequacy.

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<sup>7</sup> Odden, A., Picus, L. O., & Goetz, M. (2006). *Recalibrating the Arkansas School Funding Structure*. Report prepared for Arkansas Joint Committee on Education.

# Funding

## Matrix

Arkansas uses a specific formula, known as the matrix, to arrive at the per-student funding amount. The matrix calculates the per-student funding based on the cost of personnel and other resources needed to operate a prototypical school of 500 students. Legislators involved in the biennial Adequacy Study recommend the dollar amount needed to fund each line item of the matrix, based on the money needed to adequately fund school districts' educational needs. Unlike the foundation funding rate, the matrix is not established in statute; it is used as a tool to set the foundation funding rate. The matrix is divided into two sections: 1) the number of people needed for the prototypical school of 500 students, and 2) the cost of all needed resources. The matrix is divided into three cost categories, each of which is discussed in a section below: 1) school-level staffing; 2) school-level resources; and 3) district-level resources.

Additional funding for matrix items provided outside the matrix will be covered in a later section of this report.

## School-Level Staffing

In the matrix, school-level salaries include teacher and other pupil support staff, a principal and a secretary.

### *Components of Teacher Salary in the Matrix*

For school-level staff, the matrix specifies not only the numbers of needed employees, but how much those employees typically cost, including benefits (health insurance contribution, retirement, Social Security, Medicare, unemployment, and workers' compensation). Several other positions in the matrix are funded at the same amounts as classroom teacher salary, including special education teachers, instructional facilitators, library/media specialists, guidance counselors, and nurses.

### *Teacher Salary*

During the *Lake View* lawsuit, the courts cited Arkansas's comparatively low teacher salaries and wide wage disparities among districts in the state. In 2003, the Arkansas General Assembly addressed these concerns by passing new taxes to generate additional funding for a variety of educational reforms, including a raise for teachers. Act 59 of the Second Extraordinary Session of 2003 raised the statutory minimum salary nearly 26% and increased the other steps of the salary schedule by 20%-25%. For the 2004-05 school year, the minimum salary for a teacher with a Bachelor's degree and zero years of experience was \$27,500. For the same year, the average salary used in the matrix formula was set at \$48,750 (base salary of \$39,000), and each subsequent year, a cost-of-living adjustment has been applied.

In 2019, the General Assembly passed Act 170, the Teacher Salary Enhancement Act. The act increased minimum teacher salary schedules for the school years 2019-20 through 2022-23. For the 2023 school year, the minimum salary for a teacher with a Bachelor's degree and zero years of experience was \$36,000.

The LEARNS Act of 2023 repealed the previous salary schedules and requires that in the 2023-24 school year, each teacher must be paid a salary at least \$2,000 greater than the teacher's salary as of September 1, 2022. In addition, the LEARNS Act requires that classroom teachers must be paid a minimum base salary of \$50,000 a year.

## Classroom Teachers

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The matrix provides districts and charter schools with funding for 24.94 classroom teachers per 500 students. This staffing level was originally based on the average class sizes established in the Accreditation Standards and the recommendations of the state's education consultants.

Classroom teachers are divided into two categories in the matrix: core teachers and non-core teachers. Core teachers are lower grade teachers serving as the primary classroom teacher; higher grade teachers are teachers teaching in one or more of four academic areas: language arts, math, science, and social studies.

The second group, non-core teachers, includes educators who teach physical education, art, music, or other electives. These teachers have also been called "specialist teachers."

In 2003, Picus and Associates recommended developing the matrix based on class sizes of 15 students per class for grades K-3, or an average of 18 students per class for grades K-5. They also recommended a matrix that supported class sizes of 25 students for middle and high school classes. The Arkansas Joint Legislative Committee on Educational Adequacy, however, opted to base the matrix on the state's existing class size standards, which use both a maximum and an average class size standard.

The 2003 and 2006 Picus and Associates studies recommended that the state calculate the number of non-core teachers needed at 20% of the total core academic teachers. The consultants reasoned that core teachers need one period per day for collaborative planning and professional development, which they could receive when students are in elective classes. The 20% calculation was based on a regular five-hour teacher instructional day at the elementary level and a five-period day at the high school level. Twenty percent of 20.8 core teachers is 4.16 non-core teachers per 500 students (4.14 is the number in the matrix as a result of rounding adjustments).

Since 2006, in addition to cost-of-living increases to the teacher salary funding amounts in the matrix, the General Assembly has also passed legislation regarding the health insurance contribution. Act 995 of 2015 called for the district contribution for employees participating in the state school employees' health insurance plan to increase annually "by the same percentage that the legislature increases the per-student foundation funding amount."

Act 1446 of 2013 gave the Arkansas Teacher Retirement System (ATRS) the authority to increase the employer contribution percentage to 15%, and in November 2017, the ATRS Board of Trustees voted to increase the percentage beginning in 2019-20. The employer contribution was to increase a quarter of a percentage point each year over a four-year period.

The Education Committees, in their 2018 final Adequacy Report, did not specifically address this change to the employer contribution for retirement. However, the chairs of the House and Senate Education Committees opted to add \$16 per student to the matrix amount the Committees recommended to help

districts pay this increased cost in 2019-20.<sup>8</sup> They also added \$33 to the recommended matrix amount in 2020-21 for the same purpose. The General Assembly then adopted the per-student foundation amounts with the additional funds for retirement by passing Act 667 of 2019.

In the 2022 fiscal session, the General Assembly passed legislation requiring that each school district's contribution rate for health insurance be based on the amount established by the House and Senate Education Committees during the adequacy process.<sup>9</sup> In addition, the amounts that DESE must pay the Employee Benefits Division for each eligible public-school employee participating in the public-school employee insurance program must be based on the amount that the House and Senate Education Committees set during the adequacy process.<sup>10</sup> The General Assembly also created a mandatory reserve balance for the State and Public School Life and Health Insurance Program under Act 108 of 2022. The Act also requires a minimum percentage of reserve balance before action may be taken by the General Assembly, as well as a maximum percentage of reserve balance before the Employee Benefits Division is required to add additional plan benefits, reduce premiums, or report to the General Assembly the reasons additional benefits are not added or premiums are not reduced.

## Special Education Teachers

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The matrix provides funding for 2.9 special education teachers. These teachers are in addition to the 24.94 classroom teachers provided in the matrix.

Because the specific needs of special education students dictate the level of staffing required, the state could not simply calculate the number of special education teachers needed based on the maximum student-to-teacher staffing standard for special education classes. Picus and Associates originally proposed funding 2.0 special education teachers, but after receiving input from panels of Arkansas educators and DESE officials, the Joint Adequacy Committee opted to increase the number to 2.9 teachers.

Hired again in 2006, Picus and Associates affirmed the state's methodology of funding special education using a "census" approach, meaning the funding is based on total enrollment rather than on the number of special education students. They affirmed the state's funding level for 2.9 special education teachers for "high-incidence, lower cost students with disabilities." Since 2006, the matrix has continued to fund 2.9 special education teachers for every 500 students. The state has also historically supplemented foundation funding with Catastrophic Occurrences funding (now known as High-Cost Occurrences funding) for low incidence, high-cost students with disabilities. High-Cost Occurrences funding is discussed later in this report.

## *Instructional Facilitators*

The instructional facilitator line of the matrix funds 2.5 employees for each school of 500 students. However, the 2.5 positions are intended to pay for more than just instructional facilitators. The 2.5 positions allow for a half-time assistant principal (.5 full-time equivalent (FTE)) and a half-time

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<sup>8</sup> English, J. and Cozart, B., March 5, 2019 Addendum, [http://www.arkleg.state.ar.us/education/K12/AdequacyReportYears/2018EducationalAdequacyReportVolume1\\_11-1-2018withAddendum.pdf](http://www.arkleg.state.ar.us/education/K12/AdequacyReportYears/2018EducationalAdequacyReportVolume1_11-1-2018withAddendum.pdf).

<sup>9</sup> See Acts 2022, No. 111.

<sup>10</sup> *Id.* at Ark. Code Ann. § 6-17-111(b)(1).

technology assistant (.5 FTE), though not all schools or school districts employ those staff. Like all school-level pupil support staff, the cost of each FTE in the instructional facilitator line is calculated using the teacher salary.

## Instructional Facilitators and Curriculum Supervisors/Administrators

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In 2003, Picus and Associates recommended providing funding for 2.5 instructional facilitators per 500 students. They noted that instructional facilitators “coordinate the instructional program, and provide the important ongoing coaching and mentoring that the professional development literature shows is so critically necessary for teachers to change and improve their instructional practice.” They also noted that “[c]urriculum and instructional adaptation requires the support of a specially trained coach at the building level.”<sup>11</sup> Act 59 of the Second Extraordinary Session of 2003 provided for 2.5 instructional facilitators for every 500 students.

When the consultants were rehired in 2006, they reiterated their recommendation that Arkansas provide funding to support 2.5 instructional facilitators but noted that a number of school districts were not actually spending foundation funding on instructional facilitators. The consultants recommended pulling the instructional facilitator funding out of the matrix and creating a separate line of categorical funding where districts’ use of the money would be restricted to that purpose.

The General Assembly adopted the consultants’ recommendation to designate funding for 2.5 instructional facilitators. The Legislature also opted to leave the instructional facilitator funding in the matrix, rather than breaking it out as a categorical. The instructional facilitator line has included 2.5 FTEs since that time.

In addition to instructional facilitators, Picus and Associates noted in 2003 that the recommended 2.5 employees in the instructional facilitator line could include two other staff positions: a technology assistant and an assistant principal.

## Technology Assistant

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The technology assistant’s role is to “provide the technological expertise to fix small problems with the computer system, install all software, connect computer equipment so it can be used for both instruction and management issues and provide professional development to embed computer technologies into the curriculum.”<sup>12</sup>

## Assistant Principal

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Assistant principals are also addressed in the instructional facilitator line of the matrix because the state accreditation standards treat them as interchangeable with curriculum specialists or instructional supervisors. Arkansas accreditation standards require districts to employ a half-time (.5 FTE) assistant principal, instructional supervisor, or curriculum specialist for schools exceeding 500 students.<sup>13</sup>

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<sup>11</sup> Odden, A., Picus, L. O., Fermanich (2003). *An Evidence-based Approach to School Finance Adequacy in Arkansas*. Report prepared for the Arkansas Joint Committee on Education Adequacy, p. 23 and 30.

<sup>12</sup> Odden, A., Picus, L. O., Fermanich (2003). *An Evidence-based Approach to School Finance Adequacy in Arkansas*. Report prepared for the Arkansas Joint Committee on Education Adequacy, p. 23.

<sup>13</sup> Arkansas Standards for Accreditation, 4-C.1.

In 2003, the consultants discouraged Arkansas from including assistant principals within the matrix. “[F]ew if any comprehensive school designs include assistant principal positions,” they wrote. In passing Act 59 of the Second Extraordinary Session of 2003, the General Assembly adopted the consultants’ recommendation and funded a total of 2.5 employees in the instructional facilitators line of the matrix.

Hired again in 2014, the consultants changed their position on assistant principals and recommended adding funding for an assistant principal in the principal line of the matrix. They recommended adding 1 assistant principal for every 600 high school students, “largely for discipline and athletics.”<sup>14</sup> This would equate to 0.26 FTEs for the prototypical district. However, the Education Committees did not recommend this change in their final 2014 Adequacy Report.

APA’s 2020 Arkansas School Finance Study recommended that the Education Committees consider providing a separate line for assistant principals for greater transparency and also to allow the funding for assistant principals to be considered separately from the other positions included in the instructional facilitator line.

### *Librarian/Media Specialist*

The matrix provides 0.85 FTE library media specialists for every 500 students. This staffing level is based on the recommendation of the General Assembly’s consultants in 2003, with adjustments in 2006 and 2014 to ensure districts could comply with the state’s accreditation standards.

In 2003, Picus and Associates recommended the state provide funding for library media specialists for middle schools and high schools. At the elementary level, the consultants recommended considering library media specialists as part of the 20% non-core teachers provided in the matrix. They recommended funding 1.0 FTE library media specialist for middle schools, 1.5 FTE library media specialists for high schools and no additional positions for library media specialists at the elementary level. Based on these figures, the total amount of library media specialists for the prototypical school of 500 students was set at 0.7 FTEs. The General Assembly adopted this recommendation and established the library media specialist staffing level at 0.7 FTEs.

In 2006, when the state rehired Picus and Associates, the consultants noted that the staffing level of 0.7 library media specialists per 500 students would not be an adequate level for districts to comply with the state accreditation standards. The consultants recommended funding 1.0 FTE library media specialist in the matrix. The General Assembly, however, opted to set the staffing level at 0.825. That staffing level is the result of an analysis that examined the number of schools in 2006 at each enrollment size: under 300 students, 300-1,500 and more than 1,500. Based on the number of schools at each level, 912.5 library media specialists were needed statewide, and the average number of library media specialists needed was calculated to be .825 per school.

During the 2014 Adequacy Study, the same analysis was applied to the number of schools operating in 2012-13. That analysis showed that an average of 0.85 FTE library media specialists would be needed to comply with state standards. (This analysis included charter schools, some of which had waivers from the library media specialist-to-student ratio.) In their 2014 recommendations, the Education Committees voted to increase the number of library media specialists from 0.825 to 0.85 FTEs beginning in 2015-16.

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<sup>14</sup> Picus Odden & Associates, Desk Audit of the Arkansas School Funding Matrix and Developing an Understanding of the Potential Costs of Broadband Access for All Schools, September 5, 2014, p. 42.

## *Guidance Counselor, Nurse, and Other Pupil Support*

The matrix contains one line (noted on the matrix as guidance counselor and nurse) that includes funding for guidance counselors, nurses, and other pupil support personnel.

### Guidance Counselor

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The matrix provides funding for 1.11 FTE guidance counselors for every 500 students. This staffing level is based on the recommendation of the General Assembly’s consultants in 2003, with an adjustment based on the state’s accreditation standards. In 2003, Picus and Associates recommended one pupil support staff for every 100 students eligible for free or reduced-price lunch (FRL students). They proposed that pupil support should increase or decrease with the level of poverty in the population. The consultants also recommended one counselor for every 500 middle school students and two counselors for every 500 high school students. For elementary schools, the consultants did not recommend any additional counselors beyond the pupil support staff based on FRL students.

The General Assembly elected to create a separate source of funding based on the number of FRL students. The funding, then known as National School Lunch funding, is now known as Enhanced Student Achievement, or ESA funding. The General Assembly also opted to provide student support services through the matrix. They established a matrix staffing level for counselors based on the state accreditation standards, which require districts to have at least one counselor for every 450 students, or approximately 1.11 FTEs per 500 students.<sup>15</sup>

In 2006, when Picus and Associates were rehired, they endorsed the staffing levels set for pupil support in the matrix, which included 1.11 counselors, but they also recommended enhancing ESA funding with an additional 1.0 FTE for additional pupil support services staff for every 100 FRL students. The General Assembly decided against implementing this recommendation because the Adequacy Study Oversight Subcommittee found that “funds received by school districts through state foundation funding aid and categorical funding for [FRL] students is adequate, when school districts spend those funds efficiently.”<sup>16</sup> The staffing level for guidance counselors has remained at 1.11 since it was originally established.

### Nurse

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The matrix provides funding for a .67 FTE nurse for every 500 students. Picus and Associates’ 2003 report made no specific mention of school nurses, but their 2006 report noted that nurses had been included in their earlier recommendation for 1.0 FTE pupil support staff for every 100 FRL students. As mentioned previously, the General Assembly passed Act 59 of the Second Extraordinary Session of 2003, which adopted a foundation funding rate calculated to include a staffing level of 2.5 FTE pupil support services staff, including school nurses. That same session, the General Assembly also passed Act 67, which increased the number of required school nurses from 1 per 1,000 students to 1 per 750 students.<sup>17</sup> The law also notes that districts with “a high concentration of children with disabling conditions as determined by the State Board of Education . . . should” have a nurse-to-student ratio of

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<sup>15</sup> Arkansas Accreditation Standards, 4-E.2.

<sup>16</sup> Adequacy Study Oversight Subcommittee (January 22, 2007). “A Report on Legislative Hearings For the 2006 Interim Study on Educational Adequacy.”

<sup>17</sup> A.C.A. § 6-18-706(e)(1).

1:400. Districts that “provide a center for profoundly disabled students . . . should” have a ratio of 1:125.<sup>18</sup>

However, the law also included a provision that made these requirements effective “only upon the availability of state funds.”<sup>19</sup> A 2016 Arkansas Attorney General opinion stated that “the mere existence of foundation funding does not mean that funds are ‘available’ under subsection 6-18-706(e). ... If the mere existence of foundation funding were sufficient to automatically trigger the ratio requirements of section 6-18-706, then the triggering provision would be superfluous, as there is always some foundation funding in each year. ... No school is required to spend foundation funding on school nurses. So we must conclude that foundation funding is not ‘available’ so as to trigger the ratios under section 6-18-706.”<sup>20</sup>

In 2006, the Adequacy Study Oversight Subcommittee specified in its report that, of the 2.5 FTEs in the pupil support line of the matrix, .67 FTEs per 500 students are intended for nursing staff. Since 2006, the matrix has continued to fund .67 school nurses for every 500 students.

Until the 2019 legislative session, state statute<sup>21</sup> required districts to provide health services as part of their student services program. Act 190 of 2019 eliminated this statute and replaced it with the School Counseling Improvement Act, which established general requirements for coordinating the provision of student services, but made no specific mention of health services. However, accreditation standards still require that school districts provide a health services program under the direction of a licensed registered nurse<sup>22</sup> and that schools and districts “maintain appropriate materials and expertise to reasonably ensure the safety of students, employees, and visitors.”<sup>23</sup>

## Other Pupil Support

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Other pupil support services include psychological services, social work services, speech pathology services, and audiology services. While no specific state standards mandate these individual services, Arkansas accreditation standards do require school districts to “offer a full continuum of special education services as required by the Individuals with Disabilities Education Act.”<sup>24</sup> Schools are required to provide some of these services for special education students whose individualized education program (IEP) calls for them.

The matrix provides 0.72 FTE positions within the 2.5 pupil support services staff for student services personnel. This number is calculated as the remaining pupil support staff (from the 2.5 total pupil support staff), after accounting for 1.11 counselors and .67 school nurses.

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<sup>18</sup> A.C.A. § 6-18-706(e)(2) and (3).

<sup>19</sup> A.C.A. § 6-18-706(g)(1).

<sup>20</sup> Arkansas Attorney General Opinion 2016-028.

<sup>21</sup> A.C.A. § 6-18-1005(a)(6) (repealed).

<sup>22</sup> Arkansas Standards of Accreditation, 2-E.1.

<sup>23</sup> Arkansas Standards of Accreditation, 2-E.2.

<sup>24</sup> Arkansas Standards of Accreditation, 2-F.2.

## *Principal*

The matrix provides funding for 1.0 FTE principal for every 500 students. In 2003, Picus and Associates recommended 1.0 FTE principal for every 500 students, noting that “all comprehensive school designs, and all prototypic school designs from professional judgment studies around the country include a principal for every school unit.”<sup>25</sup> The General Assembly implemented this recommendation in the matrix formula beginning with the 2004-05 school year. When the consultants were hired again in 2006, they noted that the state’s accreditation standards require districts to employ at least a half-time principal (.5 FTE) for every school and one full-time (1.0 FTE) principal for schools with 300 students or more, meaning that some schools smaller than 500 students would need 1 FTE principal to comply with the standards, but would be funded only for a partial FTE principal. Still, as discussed above, the consultants continued to recommend providing funding for one full-time principal for a school of 500 students. They reasoned that the actual salaries paid in smaller schools are typically low enough that the salary provided in the matrix is adequate even for schools with fewer than 500 students. The principal line has included 1.0 FTE principal since that time.

For principal salary, as with teacher salary, the matrix includes a salary and benefits package that includes a health insurance contribution, retirement, Social Security, Medicare, unemployment, and workers’ compensation.

## *Secretary*

The matrix provides funding for one school secretary for every 500 students, including a salary and benefits package (health insurance contribution, retirement, Social Security, Medicare, unemployment, and workers’ compensation).

The Picus and Associates’ 2003 study mentioned clerical staff as a component of the prototypical school’s overall operations and maintenance costs, which the General Assembly translated into a catchall funding line known as the “carry-forward.” When the consultants were rehired in 2006, they noted that efficient school operations require administrative support and clerical services, even though state accreditation standards do not require schools to employ clerical support. They recommended that 2.0 FTE school secretaries be separated from the carry-forward and included as a separate line in the school-level staffing section of the matrix. The Adequacy Subcommittee agreed that two school secretaries should be broken out of the carry-forward and included in the school-level staffing section of the matrix. However, following the publication of the Adequacy Subcommittee’s final report, the number of school-level secretaries was reduced to one. The matrix staffing level for clerical support has remained at one secretary position per 500 students since it was established.

## School-Level Resources

In the matrix, school-level resources refer to items such as technology and instructional materials, as well as extra duty funds, substitutes, and supervisory aides.

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<sup>25</sup> Odden, A., Picus, L. O., Fermanich (2003). *An Evidence-based Approach to School Finance Adequacy in Arkansas. Report* prepared for the Arkansas Joint Committee on Education Adequacy, p. 22.

## *Technology*

The technology line item of the matrix was originally set at \$250 per student based on the 2003 Picus and Associates' recommendations. This rate was established to provide districts \$125,000 per 500 students to purchase, update, and maintain hardware and software. The funding was designed to provide one computer for every three students and the technology infrastructure needed for distance learning. On the advice of the consultants, the General Assembly set the technology funding rate at \$250 per student, but over the next two years, the General Assembly decreased the amount to \$185 per student, due to evidence presented to the Education Committees that the price of technology was decreasing.

In 2006, when the consultants were rehired to adjust the matrix, they again recommended providing districts with \$250 per student to pay for technology expenditures. This time they detailed the individual costs comprising the \$250 funding amount. This funding was designed to cover four categories of technology expenditures: 1) computers, 2) operating systems and other non-instructional software, 3) network equipment, printers and copiers, and 4) instructional software and additional hardware. Picus and Associates described the four components and recommended \$100 per student for computers and \$50 per student for each of the other four components.

Picus and Associates noted that the technology funding was designed to cover the costs of physical technology needs and services, not technology employees. Technology staff, they noted, were funded through other line items in the matrix. Specifically, a 0.5 FTE technology assistant was provided through the instructional facilitator line item of the matrix, and the central office line item supported a technology coordinator.

While the consultants reiterated their recommendation in 2006 that technology should be funded at \$250 per student, the Adequacy Subcommittee determined that \$185 per student accurately reflected the cost of technology (minus technology staff) in schools. However, the subcommittee opted to increase the technology funding in 2007-08 to \$220 and decrease it to \$201 for 2008-09 based on a declining inflationary index for computers.

Hired again in 2014, Picus and Associates noted that technology had become a necessary instructional tool that should be embedded in student programs and school management. They again recommended funding technology at \$250 per student. The Education Committees agreed with that finding and recommended increasing the funding level by 5.4% for FY16 and 5.1% for FY17, for a total of \$250 for FY17. Technology funding remains at \$250 per student through the 2024-25 school year.

## *Instructional Materials*

In 2003, the Joint Adequacy Committee adopted the Picus and Associates recommendation that the state provide \$250 per student for instructional materials and supplies.<sup>26</sup> This funding level was based on recommendations in other states. The General Assembly accepted this recommendation and adopted \$250 per student as the funding level for instructional materials.

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<sup>26</sup> In one part of the consultants' 2003 report, Picus and Associates indicated that the \$250 per student was meant to cover "instructional materials, equipment, student activities" (p. xii) and in another part of the report "instructional materials and supplies" (p. 40).

In 2006, Picus and Associates recommended a reduced funding amount of \$185 per student and specified the types and costs of instructional materials that would be included. This amount was intended to cover textbooks, consumable supplies (e.g., workbooks) and pedagogical aides, library texts and electronic services, formative assessments (mid-year assessments designed to gauge students' progress and areas for additional instruction) and funding for elementary teachers to purchase instructional materials. The recommended funding amount was calculated to be \$160 per student plus \$25 per student for formative assessments.

The Adequacy Subcommittee, however, recommended funding instructional materials without formative assessments, which are not required by statute or accreditation standards. The Subcommittee set the funding at \$160 per student and recommended further study of formative assessments. The Education Committees subsequently received expert testimony on formative assessments, but opted not to include funding for formative assessments in the matrix.

### *Extra Duty Funds*

In 2003, the Joint Adequacy Committee recommended providing \$90 per student for extra duty activities. The amount was calculated based on \$60 per student for middle schools and \$120 per student for high schools. Although a panel of education professionals convened for the Adequacy Study asked that \$30 per student be added for elementary schools, the Committee did not recommend additional funds for these younger students.

In their 2006 report, Picus and Associates wrote that students who were engaged in extracurricular activities tended to “perform better academically than students not so engaged, though too much extra-curricular activity can be a detriment to academic learning.” The consultants noted that while districts received \$90 per student for extra duty funds, districts actually spent \$215 per student for activities during the 2004-05 school year, most of which was spent on athletics. They argued that while athletics are important, “we are not aware of any research that suggests the benefits of highly competitive interscholastic athletic programs is any more important in improving student learning than more modest athletic programs.” They further argued that funding for athletic coaches should be at the same level as the funding provided for stipends for other extra-curricular activities. They recommended adding only an inflationary adjustment to the extra duty funding in the matrix, increasing the amount to \$100 per student, and suggested that districts wanting to spend more on athletics could do so using local funds.

The consultants' 2006 report recommended \$100 per student, but that recommendation was based on an earlier miscalculation in the original matrix. The Adequacy Subcommittee determined that the original number did not properly weight the funding amount to account for the fact that elementary students, who made up nearly half of the student population, did not require extra duty funding. The General Assembly corrected the calculation in 2007 by applying the consultants' 2003 recommendation to the 2005-06 count of elementary, middle and high schools. That calculation resulted in a per-student cost of \$48.84, which was rounded to \$50 for the 2006-07 matrix level.

In their final report of the 2014 Adequacy Study, the Education Committees recommended increasing the per-student foundation funding rate for extra duty by 6.7% for FY16 and 6.3% FY17. The Committees reasoned that the extra duty funding level did not account for the extracurricular activities in elementary schools that the Committees believed were increasingly common, particularly STEM-related activities. For the 2023-24 and 2024-25 school years, the matrix includes \$70.90 and \$72.4 for extra duty funding per student.

## *Supervisory Aides*

During the 2003 Adequacy Study, the Joint Adequacy Committee took the advice of panels of Arkansas educators and provided \$35 per student to pay for supervisory aides to monitor students getting on and off the bus and during lunch and recess. Although the state accreditation standards do not specifically require supervisory aides, the educator panels urged the Legislature to include this funding due to a law passed in 2003 limiting the amount of time teachers may be assigned to these supervisory duties.

When the consultants were rehired in 2006, they noted that the original \$35 per student was intended to provide two full-time supervisory aides for a school of 500 students. They recommended two supervisory aides, but they suggested increasing the funding amount to \$98.70 per student. This higher amount was based on a salary of \$24,676 each.

The Adequacy Study Oversight Subcommittee, however, determined that a school of 500 students would require just one supervisory aide each day. They based this conclusion on a 2006 survey conducted by DESE in which districts were asked to submit the total hours spent for supervisory duties and the cost of those hours. That data indicated that the average number of supervisory hours per day per student equaled .01742, or 8.71 hours per day for a school of 500 students. The average salary and benefit cost of this time was \$87.21 per hour. Due to the statutory time restrictions, teachers could fill only 6.28 hours of the 8.71 supervisory hours needed, leaving 2.43 hours that would need to be filled by a non-teacher. For this amount of time, the Adequacy Subcommittee determined that one supervisory aide would be adequate, but increased the level of funding by 33%, based on the information provided by DESE.

In their final report of the 2014 Adequacy Study, the Education Committees recommended decreasing the per-student foundation funding rate for supervisory aides by 11.8% for FY16, with no increase for FY17. The Committees reasoned that districts had spent only 20% of the foundation funding provided for supervisory aides. For the 2023-24 and 2024-25 school years, the matrix provides \$56.80 and \$58.00 per students for supervisory aides.

## *Substitutes*

In 2003, the Joint Adequacy Committee recommended districts receive funding to pay for 10 days for each classroom teacher and specialist teacher in the matrix. The Committee calculated the funding amount based on an average daily salary of \$100, plus benefits, or \$121 per day.

In 2006, Picus and Associates noted that the funding level the General Assembly had approved for substitutes appeared to adequately cover what districts were spending on substitute teachers. However, they noted that districts tended to pay less than the \$100 per day salary on which the matrix is based. "The data actually showed that the average daily reimbursement rate for substitute teachers was below the average wage of a building custodian. Such a low number indicates a problem; either qualified substitute teachers are not available so the wage paid equals the worth of the substitute hired, or substitute wages need to increase to allow districts to hire more qualified substitute teachers."

The consultants recommended that the funding level for substitute pay continue to be based on an average daily salary of \$100. The Committee, however, reduced the substitute funding allocation based on evidence that the average daily pay for substitutes is lower than \$100. Instead, the Committee used a base salary of \$75 per day for substitute teachers and set the funding amount at \$59 per pupil.

## Carry-Forward/District-Level Resources

In Picus and Associates' original 2003 report, the consultants recommended a total amount for the "carry forward," which represented a category of miscellaneous expenditures not otherwise identified in the school staffing or school resources sections of the matrix. The amount recommended was based on districts' actual expenditures at the time. The consultants stated that the expenditures would likely carry forward unchanged.

When the General Assembly hired Picus and Associates again in 2006, the consultants separated the carry forward into three line items: 1) operations and maintenance; 2) central office expenses; and 3) transportation expenses. These items are still in the matrix as district-level resources.

### *Operations and Maintenance*

In 2003, as the Joint Adequacy Committee and its education consultants were developing the foundation funding matrix, another legislatively created group, the Task Force to Joint Committee on Educational Facilities, was meeting to address needs specific to school facilities. In November 2004, the Task Force released its final report, which included information on general operations and maintenance (O&M) cost estimates. The report noted the findings of the 32nd Annual Maintenance and Operations Study conducted by American School and University Magazine (published in 2003). That national study found that, on average, the cost of school district O&M is approximately 9% of a district's expenditures. Therefore, the Task Force recommended that districts dedicate this amount of their operating expenditures "exclusively for custodial/maintenance operations" and noted that "dedicated funding must be provided" at the cited level.<sup>27</sup> The report noted that "deferred maintenance is a key element driving the cost of current [facilities] deficiencies and repairs."

The General Assembly then passed Act 1426 of 2005, which included the finding that "in order to satisfy the constitutional expectations of the Arkansas Supreme Court, the state should...[r]equire school districts to conserve and protect their academic facilities in such a manner that the academic facilities remain adequate." The Act also called for the creation of an Academic Facilities Custodial, Maintenance, Repair, and Renovation Manual and requires the manual to provide standards for the maintenance of school buildings.

Act 1426 also introduced the new requirement that districts spend at least 9% of their foundation funding to pay for utilities, custodial services, maintenance, repair, and renovation. Districts that do not spend the required 9% must transfer unspent funds into an escrow account to be used for future O&M expenses.

In 2006, Picus and Associates recommended providing \$594 per student for O&M to cover the cost of custodians, maintenance workers, groundskeepers, maintenance supplies, and utilities.

The Adequacy Subcommittee, however, determined that the consultants' recommendations were based on costs in higher-priced geographical areas of the country and on more duties than are required in Arkansas. The House and Senate Interim Committees on Education asked the Academic Facilities Oversight Committee to study the issue further. The Academic Facilities Oversight Committee then recommended setting the O&M funding at 9% of the foundation funding rate to mirror the statute

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<sup>27</sup> Arkansas Statewide Educational Facilities Assessment (November 4, 2004). Final Report to the Joint Committee on Educational Facilities, p. 4 and 9.

established by Act 1426 of 2005. This amount included funding to support a director of O&M and a secretary.

In addition to the 9% for O&M, the 2006 Adequacy Subcommittee also recommended providing \$27 per student for property insurance. The amount for property insurance was derived through a calculation made in January 2007, when DESE analyzed the total expenditures by school districts for property insurance. The total was divided by the total number of students, with the result being \$27 expended per student. The 2006 Adequacy Subcommittee also recommended that districts be required to spend the \$27 per student only on property insurance. That recommendation never became law, but in 2007, the General Assembly required the Commission for Arkansas Public School Academic Facilities and Transportation to promulgate rules to establish a property insurance requirement.<sup>28</sup> Rule 4.01 of DESE's "Rules Governing Property Insurance Requirements" requires all school districts to have risk property coverage for school district buildings, structures, and their contents. District property must be insured for at least 90% of the replacement cost to be eligible for state facilities funding assistance administered by the Arkansas Commission for Public School Academic Facilities and Transportation.

The O&M funding level, therefore, was established to include 9% of foundation funding, plus the cost of property insurance. When the General Assembly established the O&M funding level in 2006, the overall foundation funding level had not been finalized. The Legislature calculated an O&M amount based on a total foundation funding rate they knew would exceed the final number to make sure the O&M funding level would be at least 9%. The total O&M amount in 2008 and 2009 was set at \$581 per student, which included \$554 for the 9% of foundation funding and \$27 for property insurance.

## *Central Office*

Central office funding includes funding for the salaries and benefits of the superintendent, administration personnel, certain district instructional and pupil support directors, and clerical staff. It also includes funding for activities of the local school board.

When Picus and Associates attempted to specify an adequate funding level for the central office, the consultants noted that when they completed their first report for Arkansas in 2003, little research existed on the number of people and resources necessary for the central office. The issue was further complicated, they said, by the fact that some district office personnel, such as special education directors and federal coordinators, are partially funded with federal dollars.

In 2006, the consultants contended, based on research completed in 2005, that a district of 3,500 students would need a central office staff of 17 people. Prorating to a district size of 500 students, Picus and Associates reasoned, would require one-seventh of that staffing level, costing \$328 per student. Another \$263 per student would be needed for other miscellaneous central office needs, for a total of \$591 per student.

The consultants' recommendation was based on a prototypical district of 3,500 students, but in Arkansas in 2006, only 26 of the districts, or 11%, had 3,500 or more students. To test the appropriateness of the recommended funding level for Arkansas schools, DESE obtained 2005-06 central office expenditures and personnel counts for districts with an average daily membership (ADM)

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<sup>28</sup> A.C.A. § 6-21-114(d)(2)(A).

between 3,000 and 4,000. The average number of personnel was 17.82. The average total central office cost was \$395 per ADM.

Based on this information, the Adequacy Subcommittee determined that the consultants' figures were "inflated because they were based on higher-priced geographical areas and on more duties than are required in Arkansas." The Subcommittee instead recommended that central office expenses be funded at \$376 per student for 2008. This figure represented the \$395 per student in actual costs, less \$19 per student for the Director of O&M and a secretary position that were included as part of the O&M line of the matrix.

## *Transportation*

In their 2006 report, the consultants recommended funding transportation at \$286 per student, based on districts' actual 2005 transportation expenses inflated for 2008. The General Assembly authorized \$286 per student for transportation beginning in 2008. Transportation funding within the matrix remained at \$286 per student through 2009, but was increased each subsequent year through 2015.

The consultants' 2006 report also noted that while the state transportation expenditures averaged around \$286 per ADM, individual districts' expenditures varied considerably, from a low of \$67 to a high of \$695 per student. The consultants recommended that the General Assembly collect better data on transportation operations and develop a funding formula based on student density, mileage, or hours of operation, rather than on ADM. They recommended that the General Assembly consider moving the funding for transportation out of the matrix to be funded separately. Supplemental funding has been provided to districts in some years beyond the transportation funding provided within foundation funding. The supplemental funding is discussed in a separate section below.

## Categorical Funding Streams

In addition to foundation funding, districts receive four types of state categorical funding. Three of the four categorical funds are used to promote equitable funding among school districts by helping schools educate students with particular needs. The fourth categorical fund is designed to pay districts for providing staff professional development.

### English Language Learners

#### *Federal Law Prior to 2003*

The 2002 No Child Left Behind Act required teachers of English language learners (ELL) to be certified as English language proficient and that curricula be demonstrated as effective. The act targeted federal funds to be used for teaching ELL and gave local districts the flexibility to choose their method of instruction. The act also established achievement objectives for ELL students and set English language proficiency as the objective. Additionally, No Child Left Behind required reading and language arts assessments of children in English and enforced accountability requirements. Finally, it required that parents be notified why their child needed specialized language instruction and for parents to have the right to choose among instructional programs if options are available.<sup>29</sup>

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<sup>29</sup> U.S. Department of Education (September 11, 2006). *New No Child Left Behind Regulations: Flexibility and Accountability for Limited English Proficient Students*. <https://www2.ed.gov/admins/lead/account/lepfactsheet.html>.

## *Arkansas Funding for ELL*

In 2003, Picus and Associates recommended that the state provide additional funding to school districts to support the equivalent of 40% of a full-time teacher (.4 FTE) for every 100 students who were both ELL and FRL students, or about \$195 per qualifying student. The General Assembly adopted the recommendation, but with funding provided for all ELL students, regardless of whether they were FRL students. School districts began receiving funding in 2004-05.

When Picus and Associates made recommendations in 2006, they recommended increasing ELL funding to support one full-time teacher for every 100 ELL students, regardless of FRL status. The Adequacy Study Oversight Subcommittee opted to adopt a 50% increase for the ELL per-student funding rate. The subcommittee reasoned that while districts were spending more money on ELL programs than they were provided in ELL funding, financial data showed that districts had significant balances of ESA funding, which was meant to supplement ELL funding.

Since 2006, the ELL per-student funding rate has generally been set at about 5% of each year's foundation funding rate.

## *Changes Based on Every Student Succeeds Act*

The federal Every Student Succeeds Act (ESSA) of 2015 required new uses of ELL funding, including providing and implementing other effective activities and strategies that enhance or supplement new language instruction educational programs for ELL students. These strategies must include parent, family, and community engagement activities.

ESSA also led to Arkansas's ELL exit criteria changing beginning in the 2019 school year. Previously, a student who tested proficient on the ELPA21 (the test used to measure English-language proficiency) was allowed to exit the ELL program only if he/she meet three requirements: 1) maintained a "C" average or higher in each core subject area; 2) scored "ready" or "exceeding" on state standardized achievement scores; and 3) received a recommendation to exit by two current teachers. ESSA requires that states use standardized criteria for students to exit and enter ELL programs. Currently, Arkansas requires that a student must score at the proficient level on the ELPA21 and demonstrate academic content proficiency using two pieces of supporting evidence.

ESSA also requires districts and charters to monitor former ELL students for at least four years, an increase from two years.

Additionally, ESSA changed the way ELL students are included in the state's accountability system. The state's ESSA plan includes three student success measures related to ELL: 1) progress toward English language proficiency, 2) student achievement on academic content, and 3) the graduation rate. ESSA also requires states to identify schools with any "consistently underperforming" student subgroups, including ELL students. These schools are designated as needing "Targeted Support and Improvement." Schools are identified if they have significant achievement gaps between student subgroups for at least two years.

## *Recent Changes in Arkansas ELL Approach*

Act 989 of 2017 allows an educator to communicate with a student in the student's native language in order to facilitate the student's ability to become proficient and learn in the English language. Prior to

passage of the act, teachers could be fined for communicating with a student in the student’s native language.

Act 663 of 2021 allows districts and charters to adopt an approved bilingual program or dual-immersion program.

## Alternative Learning Environments

Alternative Learning Environment (ALE) funding began in Arkansas under Act 59 of the Second Extraordinary Session of 2003. ALE funding is meant to cover additional costs “to eliminate traditional barriers to learning for students.” Schools receive ALE funding for full-time equivalent students (FTEs). Except for a few years, FTEs have included only those students who are in the alternative learning environment for 20 consecutive days. While some students may attend alternative learning environments for a full day for the full year, many attend the program for partial days and/or for part of the year.

Act 59 set an initial level of ALE funding at \$3,250 per ALE student to support a teacher-pupil ratio of 1 to 15 for ALE students in 7-12 grades and a 1 to 10 ratio for kindergarten through sixth grade. In addition, the General Assembly appropriated nearly \$16 million for ALE funding, increasing the existing \$3 million annual appropriation for alternative education to almost \$19 million.

In 2006, the General Assembly increased the funding to support one teacher for every 12 ALE students beginning in the 2007-08 school year due to changes in the student-count methodology and complaints that ALE programs were underfunded. However, even though funding increased, the 2003 mandated student-to-teacher ratios remained in place and remain the same today.

## Enhanced Student Achievement

### *ESA Funding*

The General Assembly originally passed Enhanced Student Achievement (ESA) funding in the Second Extraordinary Session of 2003. The General Assembly created ESA funding (then National Student Lunch funding) and appropriated the first funds for the 2004-05 school year.

ESA funding came out of recommendations from consultants Picus and Associates, who argued that districts with high concentrations of poverty needed additional resources. The consultants recommended that the state provide additional funding for two purposes: teacher tutors and pupil support personnel (guidance counselors, nurses, social workers, family outreach workers). In their 2003 report, Picus and Associates noted that for struggling students, “the most powerful and effective strategy is individual one-to-one tutoring provided by licensed teachers.” The consultants recommended that the state fund one fully-licensed teacher tutor for every 100 FRL students, with a minimum of one for each school. The consultants also recommended the state fund extended-day and summer-school programs as secondary measures if the tutoring strategy was not fully sufficient.

In addition, the consultants noted that schools need a strategy for student support services and family outreach, and that the strategy should be based on each district’s level of poverty. The consultants recommended, based on the general standard, that the state fund two full-time employee positions for every 100 FRL students—essentially, one teacher tutor and one pupil support services full-time employee total.

In the Second Extraordinary Session of 2003, the General Assembly passed Act 59, which transformed the staffing level into a dollar amount for each FRL student. The levels funded one full-time employee position for districts with FRL concentrations below 70%, two FTE positions for districts with FRL concentrations between 70% and less than 90%, and three FTE positions for districts with FRL concentrations at 90% and above.

Act 1083 of 2019 changed the name of the funding from National School Lunch state categorical funding to Enhanced Student Achievement Funding. The act did not change the purpose of the funding or mandate that DESE promulgate new rules related to ESA funding.

In addition to ESA funding, the state has three other related state funding programs: ESA transitional adjustments, ESA growth funding, and ESA matching grants. ESA transitional adjustments and ESA growth funding are discussed in more detail later in this section. ESA matching grants are discussed later in the report in the section on Additional Funding for Matrix and Categorical Items.

### *ESA Funding Allowable Uses*

Throughout the history of ESA funding, ESA funding has been restricted, meaning the funding has been limited to certain allowable uses. Act 59 of the Second Extraordinary Session of 2003 included a list of allowable expenditures, along with the requirement that the State Board of Education (SBOE) promulgate rules related to ESA funding prior to June 1, 2004.

The original rules, effective June 14, 2004, require that funds must “be expended for eligible program(s) or purpose(s) that are research-based and aligned to the Arkansas Content Standards for improving instruction and increasing achievement of [ESA] identified students at risk of not meeting challenging academic standards either existing or new.” The rules specifically addressed increasing achievement of ESA-identified students at risk. July 2010 updates to the rule took out the ESA requirement, but still required that funds be expended for “improving instruction and increasing achievement of students at risk of not meeting challenging academic standards.” Rules modified on July 2, 2020, contained the same requirement.

The legislature passed Act 1082 in 2019, which mandated that the list of approved programs established prior to passage of the act expires as of June 30, 2022. The practical effect of the act was that, in the absence of action by the General Assembly in the 2021 legislative session, ESA funds would have become effectively unrestricted.

However, the General Assembly acted on ESA funding by passing Act 322 of 2021. Under Act 322, school districts must spend funds in accordance with DESE rules to provide supports and resources enumerated in the statute, including enhancements to teacher salaries (assuming the district is in compliance with the minimum salary schedule), academic supports and interventions, social emotional and behavioral supports, physical and mental health resources, early intervention resources, and access to postsecondary opportunities. School districts must also submit a three-year enhanced student achievement plan to DESE describing the district’s intended and implemented strategies. DESE is required to monitor the implementation and progress of the district plans and may impose sanctions if a district is not demonstrating progress.

Act 322 also changed DESE’s reporting requirement. Previously, DESE was required to report on the impact of ESA funding on closing the achievement gap. Under Act 322, DESE is required to report on the progress of school districts in meeting plan goals.

## *Other Related State Funding*

### ESA Transitional Adjustments

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ESA transitional adjustments began with Act 811 of 2007. Districts with FRL percentages that are close to the funding rate break points (for example, 69%-70% and 89%-90%) can easily shift between rates from one year to the next, resulting in significant gains or losses in funding. Transitional adjustments allow districts moving from a higher or lower funding rate to receive adjustments over a three-year period to create more gradual changes, to ensure that districts shift to a higher or lower rate gradually, rather than all at once.

### ESA Growth Funding

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ESA funding is based on prior year's enrollment data, which means that growing districts receive ESA funds for a smaller number of students than they are responsible for educating. Act 2283 of 2005 created a provision that provides additional ESA funding for growing districts. Districts that have grown at least one percent in total enrollment each of the last three years qualify for ESA growth funding.

## **Professional Development**

### *History of Funding and Professional Development Generally*

In the Second Extraordinary Session of 2003, the General Assembly passed multiple laws related to professional development, following recommendations from Picus and Associates' 2003 report.

The report recommended additional funding for professional development, maintaining that "improving teacher effectiveness through high-quality professional development is arguably as important as all of the other resource strategies identified." The report outlined four strategies for implementing an effective professional development program: 1) time during the summer for intensive training institutes; 2) on-site coaching for all teachers; 3) collaborative work with teachers in their schools during planning and preparation periods; and 4) funds for trainings.

Act 83 of the Second Extraordinary Session of 2003 defined professional development and its purposes in statute, as well as requiring districts to prepare a professional development plan with involvement from teachers, administrators, and classified school employees. Act 59 of the Second Extraordinary Session of 2003 extended the basic teacher contract length to 190 days (previously 185), and included a total of 10 professional development days. The General Assembly added approximately \$101 per student to the teacher salary funding to pay for the additional days. In addition, Act 59 provided \$50 per student in professional development funding, or \$25,000 for the prototypical school of 500 students, to bring in trainers, pay for travel costs associated with intensive summer institutes, and cover other miscellaneous professional development costs. Act 59 also included funding for 2.5 instructional facilitators to help with the on-site coaching Picus and Associates recommended. Finally, Act 462 of the 2003 Regular Session required teachers to have planning time of no less than 200 minutes per week, in increments of no less than 40 minutes to allow for more collaborative work with other teachers.

Following 2003, the next big changes to professional development came in 2013, when the General Assembly significantly reduced the amount of professional development funding provided to districts. Act 2 of the First Extraordinary Session of 2013 reduced the amount of professional development funding from \$54 per student (the amount established for fiscal year 2015 during the 2013 regular

session) to \$32.40 per student. The General Assembly reduced the amount to buoy the public-school employee insurance plan, and did so with the expectation that the SBOE would reduce the number of required professional development hours from 60 to 36. Subsequently, the SBOE changed DESE’s Rules Governing Professional Development to require 36 hours of professional development.<sup>30</sup>

In 2015, the General Assembly passed Act 44, which reduced the number of professional development days in the basic teacher contract from ten to no less than six. Even though the number of professional development days were reduced to six, the total number of contract days remains at 190.<sup>31</sup>

Act 2131 of 2005 contained special language authorizing DESE to spend up to \$4 million of professional development funding to “develop and implement statewide professional development support systems for teachers that will benefit student achievement.” The language was included in each Public School Fund appropriation bill until 2016, when it was removed to delete unnecessary language.<sup>32</sup> However, Act 1044 of 2017 re-added the special language and amended the law to require DESE to report back information to the state including annual expenditure information, statistics pertaining to users, course offerings, course hours completed, and certificate awarded. The new language also reduced the \$4 million to \$3.5 million, due to DESE’s new grant review process. Act 1044 required that AETN, the current vendor for the statewide system, report the amount of grant monies that remain unspent at the end of each fiscal year.

Act 667 of 2019 increased the amount of professional development funding per student to \$40.80 beginning in 2020-2021, but also increased the amount of professional development funding available to Professional Learning Communities (PLCs).

## Additional Funding for Matrix and Categorical Items

### Additional Enhanced Student Achievement

In addition to ESA funding, the General Assembly supplemented the existing ESA funds with additional funding for a separate matching grant program to be used to help districts provide tutoring services, pre-kindergarten programs, and before- and after- school programs. The matching grants began in fiscal year 2018, when the General Assembly funded \$4.3 million in matching grants.

### Special Education High-Cost Occurrences Funding

Prior to the *Lake View* case and the 2003 Picus and Associates recommendations, Arkansas provided funding for special education services. Beginning with Act 39 of 1971, Arkansas gave districts the option and support to voluntarily provide special education services if districts had more than five eligible students in their district or among multiple districts. Act 102 of 1973 mandated that districts provide special education services to eligible children aged 6-21 years.

In their 2003 recommendations, Picus and Associates noted that districts receive the same amount of foundation funding for special education regardless of the severity of students’ disabilities. The consultants recommended supplemental funding for students with severe and multiple disabilities,

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<sup>30</sup>Arkansas Department of Education Rules Governing Professional Development. (February 2016).

<sup>31</sup> A.C.A. § 6-17-2402.

<sup>32</sup> Act 987 of 2015.

noting that these students do not occur in equal percentages in all districts. The consultants recommended that the state fund the entire cost of such students.

When the consultants made their recommendations, the state provided additional state aid, then called Catastrophic Occurrences funding, when the cost of educating a student exceeded \$30,000 of district expenditures. However, \$30,000, the consultants noted, was far more than districts received in state equalization aid (the state funding mechanism at the time), placing a significant financial burden on the districts. The consultants recommended that the state reduce the expenditure threshold. Based on that recommendation, the SBOE approved new rules in 2004 that changed the threshold to \$15,000, making more students' costs eligible for reimbursement. To support the change, the General Assembly increased the Catastrophic Occurrences funding appropriation from \$1 million for fiscal year 2004 to \$9.8 million for fiscal year 2005.

In 2006, the consultants returned and recommended continuing Catastrophic Occurrences funding, as well as affirming the new \$15,000 threshold and the cap on funding at \$100,000 per child.

In 2019, DESE changed the formula for calculating High-Cost Occurrence funding. Prior to the 2019-20 school year, districts qualified for funding for any student who needs more than \$15,000 worth of services; after Medicaid, federal Individual with Disabilities Education Act (IDEA) Part B funding and available third-party funding was applied. The maximum amount of reimbursement a district or charter could receive was 100% of the first \$15,000, 80% of the amount between \$15,000 and \$50,000, and 50% of the costs between \$50,000 and \$100,000. No special education High-Cost Occurrence was eligible for more than \$100,000 each year.

The formula in the new rules calls for districts to receive 0% for the first \$15,000, 100% of the expenditures between \$15,000 and \$65,000, and 80% of expenditures above \$65,000 (with a reimbursement cap of \$100,000).

## Enhanced Transportation

The General Assembly first provided supplemental transportation funding in Act 1075 of 2011. The act authorized a \$500,000 appropriation and special language that required DESE to allocate and commit \$500,000 in funding for extraordinary transportation needs of districts and develop rules to govern the distribution.

Legislative authorization for supplemental funding was not provided again until Act 987 of 2015 authorized an appropriation of \$3 million for enhanced transportation funding for 2015-16, as recommended by the House and Senate Education Committees in their 2014 Adequacy Study recommendations. The Committees specifically recommended creating a separate, supplemental funding program for districts with high transportation costs, with the total funding amount to be established at the equivalent of 2% of the total funding provided for transportation in 2015-16 and 2016-17 (about \$3 million each year), with the funding to be distributed by a method developed by the Bureau of Legislative Research. The General Assembly appropriated an additional \$3 million for enhanced transportation funding for both 2015-16 and 2016-17,<sup>33</sup> but a method of distributing the money to the districts was not specified in statute until the passage of Act 445 of 2017. While DESE received \$3 million in 2015-16 and 2016-17, DESE only distributed the funding to districts in 2016-17 using the distribution methodology enacted in Act 445. The General Assembly funded \$7,200,000 for

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<sup>33</sup> Act 987 of 2015 and Act 229 of 2016.

the 2023-24 school year and \$8,000,000 for the 2024-25 school year in enhanced transportation funding.

## Additional Professional Development Funding

Beginning in the 2017-18 school year, DESE, in partnership with Solution Tree (a private organization that provides professional development resources, training, and support to K-12 educators), started the PLCs at Work Pilot Program, as recommended in the 2016 Adequacy Report. Funding was first provided by Act 427 of 2017, which required that additional funding provided for professional development above the amount required by statute shall be used by DESE for the development and administration of the PLCs. In 2017-18, this excess amount included \$4 million which was paid to Solution Tree to implement a pilot PLC program. Since the 2017-18 school year, a total of 51 schools and 8 districts have been chosen from a rigorous application and evaluation process to participate in the program.

## Enhanced Salary/Teacher Salary Equalization

In 2019, the General Assembly then passed Act 170 to increase the minimum teacher salary from \$31,800 to:

- \$32,800 in 2019-20,
- \$33,800 in 2020-21,
- \$34,900 in 2021-22 and
- \$36,000 in 2022-23.

To help districts meet the new minimum salary schedule, the General Assembly authorized \$60 million in existing funding to be spent from the Educational Adequacy Fund over the next four years.

In 2021, the General Assembly passed Acts 679 and 680, creating the Teacher Salary Equalization Fund, to provide public school districts and open-enrollment charter schools with additional restricted funding dedicated to increasing teacher salaries and reducing disparities in teacher salaries within the state and compared to surrounding states.

## Declining, Growth, and Isolated Funding

Arkansas provides three types of funding to help schools handle the challenges related to changes in enrollment or geography: isolated funding, student growth funding, and declining enrollment funding.

### Isolated Funding

Isolated funding is supplementary money provided to school districts with low enrollment or geographic challenges, such as rugged road systems or low-student density, which increase certain costs. There are three types of isolated funding: isolated funding, special needs isolated (SNI) funding, and SNI—transportation funding.

Isolated funding first originated in Act 42 of the First Extraordinary Session of 1983. In the Second Extraordinary Session of 2003, Act 60 removed the ability for school districts to qualify for isolated funding. Because of Act 60, many school districts that qualified for isolated funding prior to Act 60 would be required to consolidate because their prior year ADM fell below the 350-student requirement. In

response to concerns about districts losing isolated funding, the General Assembly passed Act 65 of the Second Extraordinary Session of 2003.

Act 65 identified 56 “isolated school areas” that had been isolated districts before the districts were required to consolidate. In addition to identifying the districts with their corresponding isolated school areas, Act 65 also stipulated the per-pupil amount of funding that would be paid to each district (amounts that are still in effect).

Following Act 60 and Act 65, fewer districts qualified for isolated funding, but legislators argued there were still isolated school funding needs. As a result, the General Assembly passed Act 1452 of 2005, which created a new form of funding for isolated schools called special needs isolated (SNI) funding.

In addition, the General Assembly passed Act 1397 of 2005, which created a process that allows school districts to close an isolated school if the school district’s school board voted unanimously to do so. Act 60 had prevented reorganized school districts that received isolated schools in formerly isolated districts from closing the acquired isolated schools. If the vote for closure is less than unanimous but represents a majority of the school board members, the SBOE decides the matter based on what is best for all students in the district as a whole.

Following Act 1397 of 2005, there were concerns about the continuance of isolated funding for a closed isolated school area. Although not legally binding, Arkansas Attorney General Opinion No. 2005-115 initially addressed this concern, stating that a “school district that completely closes an isolated school will receive no additional funds for that school.” Attempts at clarifying the issue led to Act 1131 of 2011. The Act provides that if a district fully closes an isolated area, it will receive for the following school year an amount of money based on its isolated area’s ADM of the preceding year. After that, because there would be no prior year ADM, the isolated funding ceases. However, if a district closes only part of an isolated school area, it gets only part of the money and continues to receive part of the funding as long as part of the isolated school area remains open. In addition, if a district closes and reopens an isolated school as an alternative learning environment or for regular classroom teaching, the funding could be applied for and reinstated based on the three-quarter ADM of the prior school year.

Act 1052 of 2007 created SNI—transportation funding to help isolated districts with transportation needs. After the isolated and SNI funds are distributed, any remaining funding is distributed to all SNI districts that qualified for the 20%, 15%, or 10% categories of funding. This funding is limited to transportation expenses.

The most recent legislative change to SNI funding came through Act 129 of 2017, which changed the density ratio requirement for the 20% funding category.

## Student Growth Funding

Student growth funding began in Arkansas in 1995. A 1994 task force, made up of members of the General Assembly and the SBOE, heard concerns from teacher, administrator, and school board associations. Northwest Arkansas residents raised concerns about funding the growing population in that area of the state.<sup>34</sup>

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<sup>34</sup> Reinholds, C. (June 28, 1994). Ideas to Pad School Funds Flood Panel New Money Vital, State Leaders Agree. *Arkansas Democrat-Gazette*.

Act 917 of 1995 created a mechanism to determine how growth funding would be distributed to districts and later to charter schools; in addition, the General Assembly funded \$29 million in student growth funding. The original student growth calculation was based on comparing first quarter ADM of the current year to the previous year ADM for the first three quarters.<sup>35</sup> The calculation has changed multiple times since 1995,<sup>36</sup> with the last change for traditional public school districts occurring in Act 741 of 2017.

Act 741 of 2017 also contained a provision that can reduce the amount of student growth funding that some districts receive. The affected districts are those that generate enough revenue from their Uniform Rate of Tax (URT) that they do not receive state foundation funding aid. If any of these districts are eligible for student growth funding, Act 741 requires their student growth funding to be reduced by the amount of revenue the districts generate (URT and other related funding) above the foundation funding amount.

Act 933 of 2017 impacted charter school student growth funding. Prior to Act 933, charter schools that were newly opened or added new grades received foundation funding based on current year ADM, rather than prior year ADM, to accommodate the additional new students. In these cases, charter schools did not receive student growth funding, since the current foundation funding amount provided for the new students. Act 933 expanded the triggers under which a charter receives funding based on current year ADM to include charter schools operating under a new license (e.g. issued when an existing charter opens a new campus in another school district) and the first year of adding a new campus.

## Declining Enrollment Funding

Declining enrollment first became a topic of discussion in Arkansas in the Special Masters 2005 report. The Special Masters noted “a loss of students does not necessarily translate into a reduction in the district’s financial need.”

The Adequacy Study Oversight Subcommittee held hearings on issues related to declining enrollment in February and March 2006. In April 2006, the General Assembly passed Acts 20 and 21 of the First Extraordinary Session of 2006. Those acts created declining enrollment funding and appropriated \$10 million for it.

The \$10 million appropriation was intended to be a temporary measure, providing funding until the funding’s effectiveness could be studied further. In August 2006, the Adequacy Study Oversight Subcommittee conducted further study, examining districts that qualified for funding, population trends in Arkansas counties, and other states’ declining enrollment funding programs.

The Adequacy Study Oversight Subcommittee, in its final 2006 Adequacy Report (published in January 2007), recognized that districts with declining enrollments (and thus declining revenues) do not always have similar decreases in costs. The Subcommittee further stated that because foundation funding is based on prior-year ADM, districts already receive a “cushion” for the loss of students. A district that has fewer students this year than in the previous year is still receiving foundation funding for the number of students from the previous year; therefore, the district is receiving funding for more students than the

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<sup>35</sup> Act 917 of 1995.

<sup>36</sup> Act 59 of the Second Extraordinary Session of 2003; Act 2283 of 2005, Act 272 of 2007, Act 461 of 2007, Act 1501 of 2009, Act 741 of 2017.

district is responsible for educating. Still, the Subcommittee’s report recommended that the state continue to pay declining enrollment funding while engaging in further study.

Since 2007, no changes have been made to declining enrollment funding. In 2022, both the House and Senate Education Committees recommended no changes to declining enrollment funding.

While declining enrollment has not changed, the limitations on receiving multiple types of enrollment-related funding have changed. During its 2021 Regular Session, the General Assembly passed Act 909, which allows a district to receive both declining enrollment funding and special needs isolated funding.<sup>37</sup> Previously, districts could only receive either declining enrollment or special needs isolated funding; under DESE rules, DESE awarded the funding that would provide the district with the higher amount of funding, which was almost always isolated funding.<sup>38</sup>

## Accountability Programs

Arkansas has three accountability systems for K-12 education: the Arkansas Educational Support and Accountability Program, the Fiscal Assessment and Accountability Program (fiscal distress), and facilities distress. Each of the programs is discussed below.

### State Accountability System: Arkansas Educational Support and Accountability Program

Accountability in Arkansas dates back to 1983 and the Arkansas Supreme Court ruling *Dupree v. Alma* that found the state’s school funding system to be unconstitutional. In response to the ruling, the General Assembly increased school funding, but also passed laws to make sure schools were making proper use of those additional dollars.

Act 445 of 1983 mandated standardized testing of students in 3rd, 6th, and 8th grades. Failure to meet the new standards for accreditation could result in a district being dissolved or annexed into another district.

In addition, Act 54 of 1983 called for any school or school district with less than 85% of tested students passing the mandated Minimum Competency Test to enter into a school improvement program with DESE.

Act 999 of 1999 also strengthened the state’s accountability efforts. The act created the Arkansas Comprehensive Testing, Assessment and Accountability Program (ACTAAP), which addressed components across the education system—everything from professional development requirements for teachers to curricular and graduation requirements for Arkansas students. Act 999 required additional testing to help judge school performance, as well as help the state comply with federal requirements.

Despite the state’s efforts, the state lagged near the bottom of national education rankings, a fact cited in the 2002 Lake View ruling by the Arkansas Supreme Court.<sup>39</sup> The Court ruled that the state’s school funding system failed to meet constitutional standards because it did not ensure access to an adequate

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<sup>37</sup> Act 909 of 2021.

<sup>38</sup> Arkansas Department of Education Rules Governing Declining Enrollment and Student Growth Funding for Public School Districts, Section 4.04 (January 1, 2019).

<sup>39</sup> *Lakeview Sch. Dist. No. 25 v. Huckabee*, 351 Ark. 31, 91 S.W.3d 472 (2002).

and equitable system of education for all students. However, the Court credited the state for having ACTAAP and called for continued strong implementation of the program. When the Court ruled that the state had resolved the Lake View-related issues in 2007,<sup>40</sup> the status of ACTAAP contributed to the state's being deemed in compliance with constitutional standards.

ACTAAP continued in Arkansas with occasional tweaks until 2017. Under ACTAAP, schools or school districts labeled as being in academic distress had five years to meet the 49.5% proficient threshold and resolve any other issues identified by the SBOE. If they failed, they would face consolidation, annexation, or reconstitution of the school or district—unless a majority of the SBOE found they were unable to meet the criteria due to factors beyond their control.

Leading up to 2017, DESE worked with a number of stakeholders on its plan to comply with the federal Every Student Succeeds Act, which was signed into law December 10, 2015. At the same time, DESE created a new system of state accountability for Arkansas's schools. As has been the trend nationwide, Arkansas's new system provides schools and school districts with more autonomy and flexibility, more support from the state (as opposed to labels and sanctions) and multiple measures by which to prove their successes with students.

The General Assembly passed Act 930 of 2017, which codified the changes, repealed ACTAAP, and replaced it with the Arkansas Educational Support and Accountability Act.

## Fiscal Distress

Fiscal distress was originally created in Act 915 of 1995. The program was tweaked over the years until 2019. Act 929 of 2019 broadened the focus of the Fiscal Assessment and Accountability Program. Prior to 2019, the goal of the program was to identify, assess, and address school districts in fiscal distress. Act 929 of 2019 created a new program to improve public school districts' finances through reviewing financial management practices of all public school districts, identifying and addressing districts in fiscal distress, and providing continuous support to districts returned to local control after being removed from the fiscal distress classification.

## Facilities Distress

In 2005, Act 1426 established the Academic Facilities Distress Program to provide the state with a mechanism to intervene when districts do not provide adequate academic facilities or comply with facilities rules. Facilities distress is used to identify, correct, or sanction a district or school that has not maintained the health and safety of its academic facilities. Although schools or districts placed in facilities distress are given opportunities to address academic facilities issues, the facilities distress program allows the state to exert control over a noncompliant school or district by enforcing statutes regarding construction, health, safety, and other standards.

No individual schools have been placed in facilities distress, and, to date, only one school district has received that designation. In 2008, Hermitage School District was put in facilities distress due to building code and procurement law violations. After correction of the violations, Hermitage was removed from facilities distress in 2009.

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<sup>40</sup> *Lakeview Sch. Dist. No. 25 v. Huckabee*, 370 Ark. 139, 257 S.W.3d 879 (2007).

# Other Topics

## Waivers

In Arkansas, waivers first existed through charter schools. Charters were first envisioned in Arkansas law with Act 1126 of 1995, which was “to establish a procedure whereby local schools may be permitted to become charter schools and to operate under the charter provisions rather than under state and local rules, regulations, policies, and procedures... .”

## Conversion Charters

Conversion charter schools are traditional public schools that have applied to operate under a charter, usually with waivers from laws and rules governing Arkansas’s education system. They enroll students from within the district in which they are located and are funded by the same tax base as other schools in their school district.

As stated earlier, conversion charter schools were the first charter schools envisioned in Arkansas law. Act 1126 of 1995 sought “to establish a procedure whereby local schools may be permitted to become charter schools and to operate under the charter provisions rather than under state and local rules, regulations, policies, and procedures... .”

When no public school had used the law passed by the General Assembly four years earlier, Act 890 of 1999 authorized the creation of open-enrollment charter schools, while still allowing public schools to convert to charter schools. The law specified the following items for which waivers would not be granted:

- Monitoring for compliance with the charter school law
- Criminal background checks for employees
- High school graduation requirements as established by the SBOE
- Special education programs
- Public school accountability under the charter school law
- Health and safety codes as established by the SBOE and local governments

A public school had to first have its application approved by the local school board, which would then forward the application to the SBOE. The law also considered certified teachers at the public school who might not wish to teach in a charter school environment. Certified teachers could not be transferred to or employed by the charter school if they objected. If there were no schools at the same level to which a teacher could transfer, then a vote by all certified teachers in the school would be called, with a majority of the certified teachers having to vote for implementation of the charter school for the application to proceed.

Among other things, Act 2005 of 2005 increased the time for which a conversion charter could be approved from up to three years to up to five. It also delineated three purposes for becoming a conversion charter school that conversion charters “may include” in their application, though they would not be limited to them:

- Adopting research-based school or instructional designs to improve student and school performance
- Addressing school improvement status/sanctions

- Partnering with other districts or schools to address students' needs in a geographical location or multiple locations.

Another significant change is that applications are now first submitted to the Charter Authorizing Panel as opposed to the SBOE. The panel was designed to deal with all charter school business, including applications for new schools or requests to change existing charters, and to make recommendations to the SBOE for final action. The SBOE can choose to review and overrule the panel's decisions or to approve them with no further hearings.

## Open-Enrollment Charters

As stated earlier, by 1999, no public schools had made the transformation to be a charter,<sup>41</sup> so the General Assembly enacted Act 890 to authorize both the creation of open-enrollment public charter schools and the conversion of public schools to charter schools. The goal stated in the law included increasing learning opportunities for all students, encouraging innovative teaching methods and providing parents and students with expanded choice. Charters, which were to be performance-based contracts, were to be approved by the SBOE and could be issued for up to three years. Charters could be granted for a maximum of 12 open-enrollment charter schools in the state, with no more than three to be located in a single congressional district.

Eligible entities (higher education institutions, non-sectarian nonprofits) were to include in their applications the specific education laws found in Title 6 of the Arkansas Code and state and local rules from which they were requesting exemptions. The law specified several things for which waivers would not be granted:

- Monitoring for compliance with the charter school law
- Criminal background checks for employees
- High school graduation requirements as established by the SBOE
- Special education programs
- Public school accountability under the charter school law
- Health and safety codes as established by the SBOE and local governments

Federal law prohibits waivers from civil and disability rights laws.

Legislation regarding open-enrollment public charter schools in subsequent years expanded the number of charter schools allowed in the state, changed reporting requirements and created new funding sources for facilities.

In addition, legislation passed in 2005 and 2007 allowed eligible open-enrollment public charter schools to apply for licenses to open additional schools under their existing charters, a condition that means several current charters are systems with multiple campuses.

Open-enrollment public charters, as with conversion charters, now submit applications to the Charter Authorizing Panel, which is appointed by the Secretary of DESE, rather than the SBOE. Charters for these schools can be approved for up to five years. No limit to the number of conversion charter schools that may exist in the state has been legislated.

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<sup>41</sup> Thompson, D. (February 15, 1999). Senators draft bill to help development of charter schools. *Arkansas Democrat-Gazette*.

## Districts and Schools of Innovation

Districts and schools of innovation are public schools that are to implement innovative techniques to improve school and student performance. They, like both types of charters, may apply for waivers from a number of local and state rules and state laws to do so.

In 2013, Act 601 created districts and schools of innovation, which allowed these public educational entities to apply for and operate under waivers from many Arkansas laws and rules similarly to their charter counterparts. (Though the law allows the creation of districts of innovation, the applications approved so far are mostly for schools of innovation.)

Before the passage of the ESSA, federal law<sup>42</sup> allowed only charter schools to employ non-certified (but still highly qualified) teachers in core subjects, while schools of innovation had to continue to employ licensed teachers in those areas. Under the law, schools of innovation are no longer restricted from asking for the waiver from teacher licensure.

Act 601 stipulated that 60% of a school's eligible employees must be supportive of the innovation designation before the school district could submit a plan for that school. While charter school applications are submitted to the charter authorizing panel, school of innovation plans are submitted to and must be approved by the Commissioner of Education alone. Initial approval is for four years, and four-year renewals are available after that.

Act 601 did not place a cap on the number of allowed schools of innovation. The law does state that schools of innovation are to specify goals and performance targets for the school, which may include:

- Reducing the achievement gap
- Increasing student participation in curriculum options
- Exploring new ways to expand students' college and career readiness
- Motivating students through innovative teaching and learning choices
- Transforming the school's culture and climate to lead to "transformative teaching and learning"

DESE's rules supporting Act 601 allow schools of innovation to request exemptions from "local policies and specific laws and rules ... to include any provision of law or rule governing public school districts which is required to implement or to support the school of innovation plan."<sup>43</sup>

Act 601 specifies that schools of innovation continue:

- Ensuring the same health, safety, civil rights and disability rights requirements are in place that apply to all other public schools
- Adhering to financial audit procedures required of all school districts
- Requiring criminal background checks for school employees and volunteers as is done in all public school districts
- Complying with open meetings and open records requirements
- Complying with purchasing limitations and requirements

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<sup>42</sup> Section 9101 of Public Law 107-110, Elementary and Secondary Education Act.

<sup>43</sup> Arkansas Department of Education Rules Governing Schools of Innovation, February 2016.

- Providing instructional time that meets or exceeds the instructional time required by the SBOE unless granted an exception by the Secretary, and instructional time may include onsite, distance or virtual, and work-based learning on nontraditional school days or hours
- Providing data requested by DESE for generating reports

In 2017, the General Assembly passed Act 871, which further stipulated that schools of innovation are to understand and implement research-based practices of PLCs throughout the school. Act 815 of 2019 allows DESE to designate a school as a school of innovation if it has met the objectives outlined in its application within the prescribed timeline. The law further clarifies the education secretary may revoke a school of innovation designation if the school does not fulfill the plan outlined in its application.

## Act 1240 Waivers

Legislation passed in 2015 introduced another, quicker pathway to waivers that school districts can now pursue. While any school could follow the months-long process to develop a plan and ask for any eligible waiver to become a conversion charter or a school of innovation, the new Act 1240 districts (the law does not apply to schools) could request the same waivers held by any open-enrollment charter that enrolls a student from within the school district's borders within a matter of months. DESE's application required schools to name the open-enrollment charter schools that hold the requested waiver.

Act 815 of 2019 amends much of Act 1240 of 2015 and now allows school districts to apply for any waiver that has been granted to any open-enrollment charter school in the state. The waivers may be granted for up to five years and, as under Act 1240, do not require lengthy planning or application processes.

Another education waiver created by legislation in 2015 is the minimum size school district waiver made possible by Act 377 of 2015. As the name implies, this waiver is granted specifically to allow a school district to operate below the 350 average-daily-membership threshold set by Act 60 of the Second Extraordinary Session of 2003. It does not provide waivers from any other laws or regulations.

## Distance Learning Waivers

Waivers for Digital Learning Programs (DLP) – actually an expedited version of Act 1240 waivers – were established by DESE to allow schools to teach students remotely through online courses during the COVID-19 pandemic. Learning delivery could be provided either synchronously (meaning the teacher and student are online at the same time) or asynchronously. The waivers were to expire in June of 2022, 2023, or 2024. Separate local education agencies (schools) did not have to be formed but instead the DLP waivers were granted to existing schools. Most of the DLP waivers were from instructional time requirements, followed by waivers from class size and teaching load, and from attendance requirements.

## Career and Technical Education

Arkansas Code Annotated § 10-3-2102, which identifies what must be examined in the adequacy study, does not explicitly include a review and analysis of Career and Technical Education (CTE). However, the definition of “educational adequacy” that serves as part of the basis for identifying the resources required for adequate funding includes the mandatory thirty-eight (38) Carnegie units defined by the

Arkansas Standards of Accreditation to be taught at the high school level.<sup>44</sup> The Standards require nine (9) units of sequenced CTE courses representing three (3) occupational areas.

Further, the first component of the definition of “adequacy” was amended by the Education Committees in 2016 and 2018 to include career and technical frameworks. A separate report on the Career and Technical Education program has been provided since the 2016 adequacy cycle at the request of the Education Committee.

## CTE Governance Structure

Prior to 1997, career education was regulated by the Vocational and Technical Education Division, which was part of DESE. Act 803 of 1997 separated vocational education from DESE and created the State Board of Workforce Education and Career Opportunities and transferred the Vocational and Technical Education Division to the newly created Department of Workforce Education.

Unlike most areas of K-12 education between 1997 and 2019, DESE and the SBOE were not responsible for approving, overseeing, and regulating CTE. Under state law, the Arkansas Department of Career Education (ARCareerEd) and the Career Education and Workforce Development Board were responsible for approving and monitoring career and technical education programs. The Workforce Development Board was responsible for adopting rules governing CTE programs, prescribing academic standards for CTE programs and teachers, approving CTE program and courses, and approving program funding.<sup>45</sup> ARCareerEd was responsible for receiving and distributing federal and state funds intended to support CTE in secondary education and ensuring compliance with CTE program rules and standards. ARCareerEd was also responsible for visiting schools on a five-year rotating cycle to ensure schools’ CTE programs were safe, appropriately equipped, and provided quality instruction. Because state law<sup>46</sup> specified that ARCareerEd’s responsibility was *secondary* education, the agency did not monitor career education/exploration in elementary grades [K-6]; however, they did ensure schools with 7<sup>th</sup> and 8<sup>th</sup> grade students were scheduling time to offer Career Orientation and Keyboarding in those grade levels.

State law required the Career Education and Workforce Development Board to coordinate with the SBOE “to ensure that academic, workplace, and technical skills create opportunities for a strong comprehensive education regardless of the student’s ultimate career choice”.<sup>47</sup> State law also required the Career Education and Workforce Development Board to coordinate with the Arkansas Higher Education Coordinating Board “to ensure that secondary and postsecondary career preparation is connected to create opportunities for a strong comprehensive education regardless of the student’s ultimate career choice.”<sup>48</sup>

After the Transformation and Efficiencies Act of 2019 (Act 910) was passed, the Department of Career Education was transferred to the Department of Education and is now the Division of Career and Technical Education and under the direction of the SBOE.<sup>49</sup>

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<sup>44</sup> Arkansas Standards of Accreditation, 1-A.1.3.

<sup>45</sup> A.C.A. § 25-30-102.

<sup>46</sup> A.C.A. § 25-30-107.

<sup>47</sup> A.C.A. § 25-30-104.

<sup>48</sup> A.C.A. § 25-30-105(a).

<sup>49</sup> Section 1095 of Act 910 assigns the SBOE with the duty to provide “general supervision of career and technical education.”

Act 910 also transferred the Office of Skills Development from the Division of Career and Technical Education to the Department of Commerce. The Office of Skills Development, operating under the direction of the Career Education and Workforce Development Board, is responsible for providing funding to Secondary Area Technical Centers, which provide secondary level CTE instruction, and for maintaining a list of approved industry certifications that secondary students may earn through participation in CTE programs.

## Secondary Technical Career Centers

Secondary Technical Career Centers were first created in 1985 with the passage of Act 788. The purposes of the centers as specified in statute are:

- Support economic, industrial, and employment development efforts;
- Provide equity and substantially equal access to quality vocational programs; and
- Improve school programs to assist schools in meeting accreditation standards.

Act 509 of 2017 created the statutory authority for school districts and vocational technical schools (defined to include vo-tech schools, technical institutes and two- and four-year colleges) to partner together to form “Workforce Development Center Authorities,” which would operate one or more workforce development centers within their areas of operation. This statute recognized the Workforce Development Center Authorities as legal entities, empowered them to raise funds by issuing bonds and authorized districts or communities to levy taxes to support a center. Workforce Development Centers, however, would not receive any existing Career Center funding, unless they were also approved as a Secondary Area Career Center. The Workforce Development Center Authority statute required the sponsoring entities to enter into an agreement filed with the Arkansas Secretary of State’s office.

Act 545 of 2021 amended Arkansas Code Annotated § 6-51-302, requiring the SBOE to review recommendations from the Career Education and Workforce Development to establish new vocational centers to serve high school students. However, the centers are managed through the Department of Commerce, Office of Skills Development through an annual Memorandum of Understanding with DESE in collaboration with the Division of Career and Technical Education.

## Learning Expectations

Following *DuPree v. Alma School District*, Act 445 of 1983 significantly strengthened the requirements both for what courses schools were expected to teach and which of those courses students must successfully complete to graduate. The SBOE approved the resulting Standards for Accreditation of Arkansas Public Schools the following year, which specifically listed the required-to-teach courses as well as the required-to-graduate courses.

The requirements were intended to be a baseline for what all schools were to provide students, not the ceiling. In addition, to help ensure equity for students regardless of where they lived in Arkansas, the new standards stipulated that any district with a high school that did not teach all of the required courses would risk annexation or consolidation with another school district.

The 1984 Standards outlined subjects to be taught in grades K-4, 5-8, and 9-12, with the high school offerings to include 38 units that must be taught at least every other year. That meant that schools not only had to show they had a designated teacher for the course, but at least one student had to be enrolled in the course for the entire unit of time. Schools could not simply say they were offering the

course, but no one enrolled. Schools not teaching the required 38 courses were to be placed in probationary status instead of being deemed accredited, and two consecutive years of probation could lead to penalties from the state.

In addition, course offerings were to include appropriate Advanced Placement courses and additional foreign language courses—both higher levels of the foreign language offered to meet the standards, as well as additional languages. The new standards also increased graduation requirements from 16 units to 20, with 15 specifically required.

Following implementation of the new standards, about 30 small districts voluntarily consolidated with other districts in 1985 and 1986 due to their inability to teach all of the required courses.

When the Standards for Accreditation were revised in 1993, the 38 units that had to be taught (some only every other year) remained, and the graduation requirements inched up to 21. A student could pursue either of two tracks to graduation under the standards: a “traditional college-preparatory core” of classes or a “technical post-secondary core” curriculum.

By 2003, the state had to respond to the mandates of the new federal No Child Left Behind Act as well as to the first *Lake View* decision. The impact of these events could be seen in the 2005 Standards for Accreditation, which strengthened course requirements. Now, the curriculum at each public school had to include 38 units that must be taught each year, not only every other year. Two new graduation tracks, Smart Core with 22 required credits for graduation and Common Core (now known as “Core”) with 21 required credits—were introduced. Both of these sets of classes were contained within the 38 units, but Smart Core required more rigorous coursework.

In 2008, the Arkansas Task Force on Higher Education Remediation, Retention, and Graduation Rates published a report of recommendations to increase the percentage of Arkansas adults holding bachelor’s degrees. One of the recommendations was to improve high school students’ preparation for college, specifically to have fewer students opting out of the state’s more rigorous Smart Core graduation track. The period after 2010 was the first in several decades to see Arkansas boost its ranking among states in terms of percent of adults with bachelor’s degrees, possibly due to the implementation of the report’s many recommendations.

Beginning in 2009, students were automatically enrolled in Smart Core, with the ability to opt out with their parents’ approval. The number of units required to graduate in the Core curriculum inched up to 22 from 21 because Core graduates now also had to take four years of math.

Act 835 of 2015 changed the mandate that schools must teach 38 units. The act allowed a high school to not teach one of the required 38 units if it could show that it had offered the course but that no one had signed up for, or remained enrolled in, the course. The pressure to have certified teachers on hand or to encourage students to enroll in less popular courses was alleviated for some schools and districts. Furthermore, according to DESE, if schools offer an unrequired course for a second year that no child enrolled in, the school could receive an accreditation violation notice.

In 2018, the Standards of Accreditation were revised; the list of specific courses that were approved to be taught and the list of courses required for graduation were removed from the rule, meaning that the legislature no longer has review authority over what those courses are. They are now maintained in a separate document annually approved by the SBOE, while the rules still contain the number of required courses by content area.

Act 930 of 2017, which created the new accountability system for the state, maintained DESE responsibility to establish required courses and also the content (academic standards) taught within those courses. Instruction in all of the state’s public schools is to be based on these standards. The standards are to be reviewed and revised periodically with input from Arkansas K-12 and higher education educators, as well as from community members with professional experience related to the academic content area.

## Additional Special Education Topics

In addition to special education funding for teachers and High-Cost Occurrences, several other topics are relevant to special education. The topics discussed below are dyslexia screening requirements, Medicaid behavioral health and development disability systems reimbursement changes, the Succeed Scholarship, and special education teacher licensure changes.

### *Dyslexia Screening Requirements*

Act 1294 of 2013 established the requirement that districts screen every K-2 student for dyslexia, and districts must screen others as required by DESE (for example, K-2 student who has moved to a new district and has not been screened, or students in grade 3 or higher if a dyslexia marker has been noted by their classroom teacher).

Since the dyslexia screening requirement first went into effect for a full school year in the 2014-15 school year, there has been an increase in the number of students receiving intervention services for students identified with characteristics of dyslexia, which can qualify as a specific learning disability. DESE emphasizes that the dyslexia program is not a special education program, and students with dyslexia characteristics are not necessarily special education students or are usually not considered special education students. Students identified with characteristics of dyslexia may be identified for therapy services, but they may not necessarily be identified for special education. Additionally, students who are eligible for some dyslexia interventions may not qualify through testing as dyslexic. They may only show some markers or traits of dyslexia.

### *Medicaid Behavioral Health and Development Disability Systems Reimbursement Changes*

Changes to the state Medicaid behavioral health and developmental disability systems underwent multiple changes beginning in the 2016-17 school year that impact special education services.

One such change was a 90-minute a week cap on occupational (OT), physical (PT), and speech therapy (ST). Any services that exceed that amount require prior authorization. Since the new requirement went into effect in July 2017, some districts have come across an issue in which districts have to obtain prior authorization for services they provide that exceed the 90-minute cap. That is because some students receive OT, PT, and ST outside of school with a provider for medical purposes, but also receive the same services in school for educational purposes as part of their federally required IEP. When a student receives the same therapy in an outside provider’s facility and in the school, both entities will bill Medicaid. The outside providers typically bill more frequently than the district, so the outside provider will likely bill for services first. When a district later bills for that same service, its therapy is combined with the outside provider’s therapy. Typically, the therapy provided by the district does not exceed the

90-minute cap, but when combined with the provider's, it does. This creates a competitive environment for providers and districts to bill first.

In addition, schools are required to seek authorization from the primary care provider prior to offering and billing for services regardless of the minutes provided for Provider-led Arkansas Shared Savings Entity (PASSE) beneficiaries. However, PASSE beneficiaries are not required to have a primary care provider assigned—any provider member in the PASSE may act as the child's primary care provider. This creates a barrier for schools in seeking the information necessary to get approval for billing a PASSE beneficiary.

The second change includes the transition of the responsibility of providing a free and appropriate public education (FAPE) from the early intervention day treatment (EIDT) facilities to the local education agencies (LEAs). Effective July 1, 2019, the EIDT centers stopped accepting federal Title VI-B funds for the provision of special education services to IDEA-eligible preschool age children. This means that LEAs, instead of EIDT facilities, are now responsible for providing a FAPE to preschool-age children enrolled in development day treatment clinic services (DDTCS) facilities. Prior to this change, preschool age children who were eligible for special education services under IDEA received those from EIDT facilities, district-run preschools, or educational service cooperatives on behalf of districts.

The districts and educational service cooperatives that operate early childhood special education programs on behalf of districts must work with EIDT centers within their attendance areas to ensure a seamless transfer of services for IDEA-eligible children whose families elect to continue special education services provided through the IEP. LEAs and the EIDT centers can create their own agreements as to what the arrangement will be for IDEA-eligible students. In most cases, children did not physically move from the EIDT facilities to LEAs, but the responsibility of special education services transferred from EIDT centers to resident LEAs.

### *Succeed Scholarship*

Act 1178 of 2015 created the Succeed Scholarship Program. The program was created to provide scholarships to students who have IEPs to use at a private school of their choice; eligibility was eventually extended to other types of students including foster children, students with an Individual Service Plan, children of a member of the uniformed services, and children medically diagnosed with a disability. The Succeed Scholarship was repealed as part of the LEARNS Act, and students participating in the Succeed Scholarship in the 2022-23 school year were among the students who qualified for Educational Freedom Accounts in the 2023-24 school year.

### *Licensure Changes*

In an effort to increase the number of people who are certified to teach special education and to reduce the number of waivers districts need, DESE changed the special education licensure creating more pathways to certification. Until 2014, DESE regulations required individuals wanting to teach special education to get an initial license and then add a special education endorsement to their license. This meant that in addition to the undergraduate degree required for their initial teaching license, they were required to take an additional 21 credit hours of a master's level special education program for the endorsement. The concern was that many aspiring teachers chose not to get special education certification because it required additional training but offered no increase in salary.

However, DESE changed some of its licensure rules to make it easier and faster for teachers to become certified in special education.

DESE created a new K-12 initial license for special education that allows teachers to get their standard license in special education. This change allowed them to teach special education after obtaining their bachelor's degree without having to add an endorsement to their license. Arkansas universities launched preparation programs for the K-12 special education license in the fall of 2014, and individuals could begin applying for the program during the 2014-15 school year. This license can also be received as an added endorsement to an existing license at ten Arkansas higher education institutions.<sup>50</sup>

DESE also created a K-12 special education resource endorsement option. This expedited special education endorsement is for individuals who are already licensed to teach elementary grades (K-6) or English, math, or science (4-8 or 7-12). The endorsement, approved October 2015, requires teachers to complete only 12 credit hours of additional coursework. Three of those hours must be obtained through an expedited course called "SPED 101 Academy." Applicants who completed a special education survey course as part of their undergraduate degree can count up to 3 credits toward the 12 required for this endorsement. Teachers with this certification will be limited to teaching special education in a resource room setting in their area of certification.

Additionally, DESE created a route to credential special education teachers through a Masters of Arts in Teaching (MAT) program. This avenue allows people who are not certified teachers to obtain a master's degree in teaching to become certified. Individuals can teach under a provisional license (six hours of coursework, including SPED 101 Academy, and passing approved content assessment) while completing the program. This certification was approved in May 2016.

DESE also created the Early Childhood Special Education Birth through Kindergarten license. This license provides an option for individuals interested in working with children in the birth to kindergarten age range. It is available as an initial license, add-on license, and through the MAT program. Two universities currently offer the initial license, three offer the add-on license, and two offer this through the MAT program.<sup>51</sup>

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<sup>50</sup> Approved IHE Programs for Educator Licensure. (May 2020).

[https://dese.ade.arkansas.gov/Files/20210125110304\\_IHE\\_Approved\\_Programs\\_Matrix\\_May\\_2020.pdf](https://dese.ade.arkansas.gov/Files/20210125110304_IHE_Approved_Programs_Matrix_May_2020.pdf).

<sup>51</sup> Approved IHE Programs for Educator Licensure. (May 2020).

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