

Section 6-20-601(a) of the Code (Supp. 2003), as amended by Acts 2005, No. 1397, defines an "isolated school district" as follows:

As used in this section, "isolated school district" means a school district that meets any four (4) of the following five (5) criteria:

- (1) There is a distance of twelve (12) miles or more by hard-surfaced highway from the high school of the district to the nearest adjacent high school in an adjoining district;
- (2) The density ratio of transported students is less than three (3) students per square mile of area;
- (3) The total area of the district is ninety-five square miles (95 sq. mi.) or greater;
- (4) Less than fifty percent (50%) of bus route miles is on hard-surfaced roads; and
- (5) There are geographic barriers such as lakes, rivers, and mountain ranges which would impede travel to schools that otherwise would be appropriate for consolidation, cooperative programs, and shared services.

Subsection 6-20-603(b) (West Supp. 2005) further provides:

Beginning with the 2004-2005 school year and each school year thereafter, state financial aid in the form of isolated funding shall be provided to school districts containing an isolated school area in an amount equal to the prior year three (3) quarter average daily membership of the isolated school area multiplied by the per student isolated funding amount for the isolated school areas as set forth under column "C" of subsection (a) of this section.<sup>[1]</sup>

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<sup>1</sup> Subsection (e) of this statute provides:

No school district or isolated school area which may qualify under other law to receive additional state aid because its average daily membership is less than three hundred fifty (350) shall be eligible to receive funding under this section except that a district qualifying under other law for such aid and qualifying for funds under this section may elect to receive funds under this section in lieu of aid under the other.

In my opinion, the effect of subsection (e) is to enable a former school district listed in column C of subsection (a) to receive isolated school funding even if, as is the case in a number of instances, the former school district does not qualify as "isolated" under the criteria set forth at A.C.A. § 6-20-601.

As I discussed in detail in the attached Ark. Op. Att'y Gen. No. 2005-115 and will discuss further immediately below, the question of whether an isolated facility should be classified as "open" has immediate implications for the amount of state funding, if any, available to the isolated area containing the facility. With respect to the specific question of when an isolated school facility might be considered "open," I believe the pertinent inquiry is whether the facility provides instruction to an "average daily membership," as it must in order to be eligible to receive state funding. Subsection § 6-13-1601(4), enacted pursuant to Acts 2003, No. 60, § 3, defines the term "average daily membership" as follows:

(A) "Average daily membership" means the total number of days attended plus the total number of days absent by students in grades kindergarten through twelve (K-12) during the first three (3) quarters of each school year divided by the number of school days actually taught in the district during that period of time rounded up to the nearest hundredth.

(B) Students who may be counted for average daily membership are:

(i) Students who reside within the boundaries of the school district and who are enrolled in a public school operated by the district or a private school for special education students, with their attendance resulting from a written tuition agreement approved by the Department of Education;

(ii) Legally transferred students living outside the district but attending a public school in the district; and

(iii) Students who reside within the boundaries of the school district and who are enrolled in the Arkansas National Guard Youth Challenge Program, so long as the students are participants in the program[.]

This definition is repeated verbatim at Acts 2005, No. 2283, § 1, to be codified as A.C.A. § 6-20-2303(3)(A); Acts 2005, No. 2206, § 1, to be codified as A.C.A. §§ 6-20-2502(3)(a);

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With respect to the formula recited in A.C.A. § 6-20-603(b) for computing isolated school funding, I opined in the attached Ark. Op. Att'y Gen. No. 2005-115 that in the year a school is closed or partially closed, isolated school funding should be based upon current-year average daily membership pursuant to A.C.A. § 6-20-604(h), which was enacted pursuant to Acts 2005, No. 1452. I further opined in response to the first question in the attached Ark. Op. Att'y Gen. No. 2005-122 that no isolated school could be closed before August 12, 2005, which is the effective date of Act 1397 of 2005, which authorizes such closings. *See* Ark. Op. Att'y Gen. No. 2005-110 (noting the effective date of legislation enacted in 2005 without an emergency clause). The analysis that led me to this conclusion is rather complicated and I will not repeat it here.

and 6-20-2502(3)(B) – all of which provide materially indistinguishable parameters for the students to be included in the computation of average daily membership.<sup>2</sup>

Although the Code at no point defines precisely what it means for an isolated school to be "open," I believe logic dictates that it should be characterized as such if the state is obligated to provide it funds in pursuit of the state's charge to maintain "a general, suitable, and efficient system of free public schools." Ark. Const. art. 14, § 1 and A.C.A. § 6-20-2302(a)(2) (West Supp. 2005). Section 6-20-2305 of the Code (West Supp. 2005), as enacted pursuant to Acts 2003, No. 59, § 1 (2d Ex. Sess.) and amended pursuant to Acts 2005, No. 2283, § 2, provides for state funding of schools based upon their enrolled K-12 average daily memberships.<sup>3</sup> Subsection (a)(2) of this statute provides for "foundation funding" for all K-12 schools in the 2005-2006 school year of \$5,400, increasing to \$5,497 in the 2006-2007 school year, multiplied by the average daily membership of the school in the previous school year. Subsection (a)(1) sets forth a formula for computing additional "state foundation funding aid" based upon the foundation funding amount. Subsection (b) of the statute sets forth additional funding for various "additional education categories" such as "alternative learning environmental funding" and "English-language learners funding," basing the additional funding on the number of students who are included in both average daily membership and an additional education category. Subsection (c) provides for more additional funding falling into various categories, including isolated funding. Again, funding under each of the recited categories turns on the number of qualifying students included in average daily membership.

To provide additional funding, Acts 2005, No 2206, § 1 enacted subchapter 25 of chapter 20 of title 6 of the Code, known as the Arkansas Public School Academic Facilities Funding Act.<sup>4</sup> Subsection 6-20-2502(1) defines the term "academic facility" as follows:

(A) "Academic facility" means a building or space, including related areas such as the physical plant and grounds, where students receive instruction that is an integral part of an adequate education as described in § 6-20-2302.

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<sup>2</sup> Subsection 6-20-2303, contained within the Public School Funding Act of 2003, A.C.A. § 6-20-2301 through -2306 (West Supp. 2005), added to this definition the following subsection (3)(B):

In those instances in which the average daily membership for fewer than three (3) quarters is specified, the number of days used in the calculation shall be the days in the specified period of time.

<sup>3</sup> Quite logically, for the purpose of computing average daily membership, the Department of Education treats a part-time student as a fraction of a student.

<sup>4</sup> Section 2 of Act 2206 repealed subchapter 24 of chapter 20 of title 6, which was enacted pursuant to Acts 2003, No. 69, § 1 (2d Ex. Sess.), known as the Supplemental School District Funding Act of 2003.

(B)(i) A public school building or space, including related areas such as the physical plant and grounds, used for an extracurricular activity or an organized physical activity course as defined in Act 660 of 2005 shall not be considered an academic facility for the purposes of this subchapter to the extent that the building, space, or related area is used for extracurricular activities or organized physical activities courses, except for physical educational training and instruction under § 6-16-132.

(ii) The Division of Public School Academic Facilities and Transportation shall determine the extent to which a building, space, or related area is used for extracurricular activities or organized physical activities courses based on information supplied by the school district and, if necessary, on-site inspection.

(C) Buildings or spaces, including related areas such as the physical plant and grounds, used for prekindergarten education shall not be considered academic facilities for purposes of this subchapter.

(D) District administration buildings and spaces, including related areas such as the physical plant and grounds, shall not be considered academic facilities for the purpose of this subchapter[.]

As with the foundation funding discussed in the previous paragraph, the level of academic facilities funding turns on average daily membership as defined at A.C.A. § 6-20-2502(3) – a definition that tracks verbatim the definition set forth above.

With respect to your specific question, I consider the term "academic facility" as defined above coterminous with the term "school or campus" as you have used it. I am struck by the fact that the legislature has restricted its definition of "academic facility" to an area "where students receive instruction that is *an integral part of an adequate education* as described in § 6-20-2302" (emphasis added). Section 6-20-2302 provides in pertinent part:

(c) The General Assembly finds that a suitable and efficient system of public education should:

(1) Assure the availability of substantially equal and constitutionally appropriate expenditures by the state for the education of each similarly situated child in the public schools, regardless of where that child resides within the state;

(2) Assure that each school-age child resides in a school district that offers a competitive minimum salary for classroom teachers;

(3) Assure that:

(A) All students graduating from high school are able to demonstrate a defined adequate level of competence in:

(i) English, oral communications, reading, and writing;

(ii) Mathematics skills; and

(iii) Science and social studies disciplines; and

(B) An adequate level of competence evolves over time to higher levels[.]

In my opinion, the "integral" skills recited in this statute are those taught in the core K-12 curriculum offered to students who comprise a facility's average daily membership. Accordingly, I believe that any facility that does not teach those skills to K-12 students falling within the categories set forth at A.C.A. § 6-13-1601(4)(B) could not be characterized as "open." Only district administrators and the Department of Education are situated to determine whether a facility in any particular instance qualifies as "open" under this standard.

Assistant Attorney General Jack Druff prepared the foregoing opinion, which I hereby approve.

Sincerely,

MIKE BEEBE  
Attorney General

MB/JHD:cyh

Enclosures

Opinion 2005-115

June 24, 2005

The Honorable Randy Laverty  
State Senator  
Post Office Box 303  
Jasper, AR 72641-0303

Dear Senator Laverty:

I am writing in response to your request for my opinion on a question I will paraphrase as follows:

In light of the provisions of Act 1452 of 2005, as codified at A.C.A. § 6-20-604, can the Department of Education legally continue to send isolated school funds to school districts based on prior-year average daily membership figures even if the school in question has been completely or partly closed?

**RESPONSE**

In my opinion, the answer to this question is “no” if the isolated school has been closed; "no" for the year in which an isolated school has been partially closed; and "yes" for any year subsequent to the year in which an isolated school has been partially closed.

Section 6-20-601 of the Arkansas Code (Supp. 2003), as amended by Acts 2005, No. 1397, defines an “isolated school” as one that meets various recited criteria that establish it as “isolated” and hence qualify it for the receipt of additional state funding. Subsection 6-20-603(b) (West Supp. 2005) provides:

Beginning with the 2004-2005 school year and each school year thereafter, state financial aid in the form of isolated funding shall be provided to school districts containing an isolated school area in an amount equal to *the prior year three (3) quarter average daily membership of the isolated school area* multiplied by the per student isolated funding amount for the isolated school areas as set forth under column "C" of subsection (a) of this section.

(Emphasis added.) As reflected in the highlighted passage above, the award of financial aid to an isolated school under this formula in any given year is based upon the average daily membership in the school area in the preceding year.

Act 1452 of 2005 added to the Code a new § 6-20-604, which provides for “special needs funding” for qualifying former isolated school districts that were consolidated or annexed pursuant to Acts 2003, No. 60 (2<sup>nd</sup> Ex. Sess.).<sup>5</sup> As you note in your request, § 1 of Act 1452 added as A.C.A. § 6-20-604(h) the following provisions:

(1) A school district eligible to receive isolated funding under § 6-20-603 shall continue to receive partial funding under § 6-20-603 even if part of the isolated schools are closed, ***but a school district shall not receive funding under § 6-20-603 for any isolated schools or parts thereof that have been closed by the local board of directors.***

(2) If part of the isolated schools in a district are closed, the school district shall receive funding under § 6-20-603 ***based on the three-quarter average daily membership of the isolated schools or parts thereof that remain open in the district.***

(Emphases added.)

I believe it is apparent on the face of A.C.A. § 6-20-604(h)(1) that a school district that completely closes an isolated school will receive no additional funds for that school. With respect to computations made to determine funding during the year in which an isolated school is partially closed, I do not believe the highlighted sections of the just recited A.C.A. § 6-20-604(h) can be reconciled with the highlighted section of A.C.A. § 6-20-603(b) quoted above. It can neither be reconciled with A.C.A. § 6-20-2305(a)(2), as amended by Acts 2005, No. 2283, § 2, which defines the “foundation amount” for the upcoming school years as stated sums “multiplied by the average daily membership ***of the previous school year***” (Emphasis added). Section 6-20-604(h) is absolutely unambiguous in declaring that for isolated schools that have been closed or partially closed following an annexation or consolidation, funding pursuant to A.C.A. § 6-20-603 will be based upon the average daily membership of the “parts thereof that remain open” – a present-tense formulation that is flatly inconsistent with the proposition that funding might be based on the average daily membership of the isolated school in the year prior to its closing or partial closing. In the year of a school's partial closure, then, this statute strongly and quite logically implies that the average daily membership figures upon which funding will be based must reflect the student population ***in that particular year***. Compare Acts 2005, No. 2283, § 2, to be codified as A.C.A. § 6-20-2305(b)(4)(B)(ii)(a) (providing that if a school

<sup>5</sup> Act 60 mandated the annexation or consolidation of school districts having an average daily membership of 350 or fewer students.

district has experienced significant growth in enrollment in the previous three years, the expected increase in enrollment for the upcoming year will be factored in for purposes of determining national school lunch payments).

By contrast, in the period following the first year of an isolated school's partial closure, I believe officials could apply the terms of A.C.A. § 6-20-603(b) without violating the current-year provisions of A.C.A. § 6-20-604(h)(2). I offer this opinion because even if officials used prior-year figures to compute funding in these subsequent years, the computation would nevertheless be based upon "the isolated schools or parts thereof that remain open in the district," thereby rendering the formulation consistent with A.C.A. § 6-20-604(h)(2). The same would not hold true if one used pre-closure data to compute post-closure revenues in the first year the school was partially closed. There would consequently be no reason not to apply the formula set forth at A.C.A. § 6-20-603(b) in years following the first year of the partial closure.

I am struck by the fact that the legislature, in addressing isolated schools that have *not* been fully or partially closed, has accepted prior-year average daily membership figures as a sufficient approximation of current-year figures. My inquiries suggest that the legislature's acceptance of these prior-year figures under such circumstances is designed to minimize accounting difficulties and to ensure that pertinent data will be available in timely fashion to ensure prompt funding to the isolated district. By contrast, in dictating the applicable formula to compute funding following the partial closure of an isolated school, the legislature has declined to adopt a fiction that the partial closure never occurred.

In determining how to address the tension between A.C.A. § 6-20-603(b) and A.C.A. § 6-20-604(h) when considering funding during the year of a partial school closure, I am guided by several principles of statutory construction. First, a general statute normally does not apply where there is a specific statute governing a particular subject matter. *Donoho v. Donoho*, 318 Ark. 637, 887 S.W.2d 290 (1994). When two legislative enactments are in such irreconcilable conflict that both cannot stand together, the conflicting provisions of one are repealed by implication by the other. *Donoho*, 318 Ark. 637; *Ward School Bus Mfg., Inc. v. Fowler*, 261 Ark. 100, 547 S.W.2d 394 (1977). However, repeal by implication is not favored and is "never allowed except where there is such an invincible repugnancy between the former and later provisions that both cannot stand together." *Donoho v. Donoho*, 318 Ark. 637, 887 S.W.2d 290 (1994). This is especially so in the case of acts passed during the same session of the General Assembly. *Uilkie v. State*, 309 Ark. 48, 827 S.W.2d 131(1992); *Love v. Hill*, 297 Ark. 96, 759 S.W.2d 550 (1988). Finally, ordinarily the provisions of an act adopted later in time repeal the conflicting provisions of an earlier act. *Daniels v. City of Fort Smith*, 268 Ark. 157, 594 S.W.2d 238 (1980).

In the present case, A.C.A. § 6-20-604(h) is the more particular legislation in that it specifically addresses the funding of isolated schools that have been partially closed,

whereas A.C.A. § 6-20-603(b) only generally addresses the funding of isolated schools and A.C.A. § 6-20-2305(a)(2) even more generally addresses only the standard formula used to compute foundation funding in any district. Moreover, A.C.A. § 6-20-604(h), which was enacted pursuant to Act 1452 of 2005, marks a later expression of legislative will than A.C.A. § 6-20-603(b), which was enacted pursuant to § 1 of Act 65 of 2003 (2<sup>nd</sup> Ex. Sess.). Accordingly, applying the above principles of construction, I believe the provisions of A.C.A. § 6-20-604(h) should control over those of A.C.A. § 6-20-603(b). With respect to the tension between A.C.A. § 6-20-603(b) and A.C.A. § 6-20-2305(a)(2), I appreciate that the latter statute was amended later in the 2005 legislative session than A.C.A. § 6-20-604 was enacted. However, given the fact that A.C.A. § 6-20-604(h) addresses with far greater specificity the treatment of isolated schools that have been completely or partially closed, I think the terms of this statute should control over the general formula set forth at A.C.A. § 6-20-2305(a)(2).

To summarize, then, if an isolated school is completely closed, the district will have no current-year average daily membership and should receive no isolated school funding based upon the closed schools prior-year average daily membership. With respect to a partial closure, *during the year that the partial closure takes effect*, I do not believe it would be appropriate for the Department of Education to fund the partially closed isolated school based upon a formula that incorporates prior-year average daily membership figures. However, *in the first year following a partial closure and on an ongoing basis thereafter*, I believe officials can and should apply the prior-year figures mandated by A.C.A. § 6-20-603(b). I appreciate that there might be some difficulty in obtaining current-year figures that would permit funding a partially closed isolated school in timely fashion. However, I cannot ignore what I take to be the plain meaning of the pertinent statute. In my opinion, any difficulties arising from the statute should be addressed by the legislature.

Assistant Attorney General Jack Druff prepared the foregoing opinion, which I hereby approve.

Sincerely,

MIKE BEEBE  
Attorney General

MB:JD/cyh

Opinion 2005-122

June 27, 2005

The Honorable Jimmy Jeffress  
State Senator  
Post Office Box 904  
Crossett, AR 71635-0904

Dear Senator Jeffress:

I am writing in response to your request for my opinion on the following questions relating to isolated schools:

1. Considering current law and the effective date of Act 1397 of 2005, is it possible for a local school board of directors to close an isolated school or parts thereof prior to August 12, 2005?
2. If the answer to Question 1 is in the affirmative, what type of local board action, if any, is required in order for a school district to be deemed to have "closed" an isolated school or part thereof for purposes of Act 1452?
3. Can the McGehee School District reutilize the grade 7-12 grade span that was not utilized at the Arkansas City campus during the 2004-05 school year and, thus, be entitled to Isolated Funding for students attending those reutilized grade spans for that isolated school?
4. For the purpose of Isolated Funding pursuant to A.C.A. 6-20-602 and Act 1452, does the term "average daily membership" include only those students that reside within the isolated school area (i.e., the former Arkansas City School District boundary lines) or does the term also include any students from other areas of the McGehee School District that are assigned to the Arkansas City school campus for any particular grade or special educational program?
5. Is the Arkansas City isolated school area entitled to receive Isolated Funding for students attending a special needs program such as an ALE program or is the school only entitled to per student isolated funding for students attending traditional K-12 grades at Arkansas City?

6. For purposes of special needs funding pursuant to Act 1452, are school districts required to show full compliance with the Arkansas Standards of Accreditation (see 6-15-202) as required in 6-20-601(b)(3)?

## RESPONSE

In my opinion, although the law on this question is not entirely clear, see A.C.A. §§ 6-20-602(b) and 6-13-1603(f), the answer to your first question is, in all likelihood, "no." Your second question is consequently moot. With respect to your third question, I believe that if the McGehee School District reopens grades 7-12 at the Arkansas City campus and continues to meet the criteria for isolated-school status, it will be entitled to include the additional students in average daily membership computations for the purpose of determining isolated school funding. However, it may do so only in the year following the expansion of service. See A.C.A. § 6-20-603(b). With respect to your fourth question, I believe the term "average daily membership" refers to any students formally registered in grades K-12, irrespective of where they reside. See A.C.A. § 6-13-1601. With respect to your fifth question, I believe that so long as a student enrolled in a special-needs program is also classified as enrolled in any one of grades K-12, the isolated school area may include that student in average daily membership for purposes of computing both isolated funding and special-needs funding. I consider it immaterial whether the student's education is characterized as "traditional" or "nontraditional." In my opinion, the answer to your sixth question is "yes." See A.C.A. § 6-20-601(b)(3) and Acts 2005, No. 1452.

***Question 1: Considering current law and the effective date of Act 1397 of 2005, is it possible for a local school board of directors to close an isolated school or parts thereof prior to August 12, 2005?***

In my opinion, the answer to this question is, in all likelihood, "no," although the law on this question is unclear.

Section 6-20-602 of the Code (West Supp. 2005), which was enacted pursuant to Acts 2003, No. 60, § 5, provides in pertinent part:

- (a) "Isolated school" means a school within a school district that:
- (1) Prior to administrative consolidation or annexation under this section, § 6-13-1601 et seq., and § 6-13-1405(a)(5) qualified as an isolated school district under § 6-20-601; and
  - (2) Is subject to administrative consolidation or annexation under this section, § 6-13-1601 et seq., and § 6-13-1405(a)(5).

(b) *Any isolated school within a resulting or receiving district shall remain open.*

(Emphasis added.)

In Acts 2005, No. 1397, § 2, the legislature amended the highlighted subsection (b) of this statute to read as follows:

*Any isolated school within a resulting or receiving district shall remain open, unless the school board of the resulting or receiving district adopts a motion to close the isolated school or parts thereof . . . .*

(Emphasis added.) As you indirectly acknowledge in your question, Act 1397 will not take effect until August 12, 2005.<sup>6</sup> Read alone, then, A.C.A. § 6-20-602(b) would appear to prohibit closing any isolated school before August 12, 2005.

However, current law contains other pertinent legislation applicable to all schools, including isolated schools, that appears at odds with the blanket prohibition against closing isolated schools set forth in A.C.A. § 6-20-602(b). Subsection 6-13-1603(f) (West Supp. 2005), which like A.C.A. § 6-20-602(b) was enacted pursuant to Act 60 of 2003, provides:

No school facility in a school district included in the consolidation list required by § 6-13-1602 shall be closed by the state board or a local school board until after completion of an assessment of public school facilities by the Joint Committee on Educational Facilities as required by Act 1181 of 2003, but in no event shall any be closed prior to June 1, 2005.

Section 1 of Act 1397 of 2005 repeals this statute, but, as noted above, Act 1397 will not take effect until August 12, 2005. Accordingly, the statute just quoted, like A.C.A. § 6-20-602(b), which prohibits any closure of isolated schools within a resulting or receiving district, is still in effect. Given that June 1, 2005 has passed and that the Joint Committee on Educational Facilities has completed its assessment of school facilities, A.C.A. § 6-13-1603 would thus appear to authorize any school board, in the proper exercise of its discretion,<sup>7</sup> to close any school it chooses in a district that has been subject to an

<sup>6</sup> Act 1397 contained no emergency clause and specified no effective date. Under these circumstances, the legislation will go into effect on August 12, 2005. See Ark. Op. Att'y Gen. No. 2005-110.

<sup>7</sup> In Ark. Op. Att'y Gen. No. 2000-270, in opining that a district board might close a schoolhouse notwithstanding a previous board's pledge not to do so, one of my predecessors summarized the scope of this discretion as follows:

[E]ach school board is granted express statutory authority to determine the sites for its school buildings. This authority is set forth in A.C.A. § 6-13-620, which states in pertinent part:

annexation or consolidation. In my opinion, this statute conflicts with A.C.A. § 6-20-602(b), which was likewise enacted pursuant to Act 60 of 2003.

In determining how to address the tension between these two current statutes, I am guided by several principles of statutory construction. First, the cardinal rule is to give full effect to the will of the legislature. *Flowers v. Norris*, 347 Ark. 760, 765, 68 S.W.3d 289, 292 (2002) ("It is . . . axiomatic that in statutory interpretation matters, we are first and foremost concerned with ascertaining the intent of the General Assembly.") (citing *State v. Havens*, 337 Ark. 161, 987 S.W.2d 686 (1999)). A statute is construed just as it reads, giving the words their ordinary and usually accepted meaning in common language. *Edwards v. State*, 347 Ark. 364, 64 S.W.3d 706 (2002). Nothing is taken as intended that is not clearly expressed. *State ex rel. Sargent v. Lewis*, 335 Ark. 188, 979 S.W.2d 894 (1998). In addition, legislative enactments that are alleged to be in conflict must be

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The board of directors of each school district in the state shall be charged with the following powers and perform the following duties:

(1) Have the care and custody of the schoolhouse, grounds, and other property belonging to the district and shall keep it in good repair and in sanitary and sightly condition;

\* \* \*

(3) Purchase buildings or rent schoolhouses and sites therefor and sell, rent, or exchange such sites or schoolhouses. Provided that, in the selection of any school site or the erection of any schoolhouse outside of an incorporated town or city that contains two thousand five hundred (2,500) or more inhabitants, the selection or erection shall be approved by the county board of education before the contract for securing the site or contract for building the schoolhouse is made;

\* \* \*

(13) Do all other things necessary and lawful for the conduct of efficient free public schools in the district.

A.C.A. § 6-13-620.

The Arkansas courts have long interpreted this statute as allowing school boards wide latitude in governing their districts. *See, e.g., Safferstone v. Tucker*, 235 Ark. 70, 72, 357 S.W.2d 3, 4 (1962); *Isgrig v. Srygley*, 210 Ark. 580, 197 S.W.2d 39 (1946). *See also Springdale Board of Education v. Bowman*, 294 Ark. 66, 69, 740 S.W.2d 909, 910 (1987); *Leola School District v. McMahan*, 289 Ark. 496, 498, 712 S.W.2d 903, 905 (1986). The courts have further held that they will not substitute their judgment for that of a school board with regard to policy matters, unless the school board, in enacting the policy in question, abused its discretion or acted arbitrarily, capriciously, or contrary to law. *Id.* The court in *Leola, supra*, explained "arbitrary and capricious" action by a school board as being action that is not supportable "on any rational basis." *Leola*, 289 Ark. at 498, 712 S.W.2d at 905. It should be noted that the party challenging the school board's policy has the burden of proving the board's abuse of discretion by clear and convincing evidence. *Springdale*, 294 Ark. at 69, 740 S.W.2d at 910.

reconciled, read together in a harmonious manner, and each given effect, if possible. *Gritts v. State*, 315 Ark. 1, 864 S.W.2d 859 (1993); *City of Fort Smith v. Tate*, 311 Ark. 405, 844 S.W.2d 356 (1993). Repeal by implication is not favored and is "never allowed except where there is such an invincible repugnancy between the former and later provisions that both cannot stand together." *Donoho v. Donoho*, 318 Ark. 637, 887 S.W.2d 290 (1994). This is especially so in the case of acts passed during the same session of the General Assembly. *Uilkie v. State*, 309 Ark. 48, 827 S.W.2d 131(1992); *Love v. Hill*, 297 Ark. 96, 759 S.W.2d 550 (1988). When two legislative enactments are in such irreconcilable conflict that both cannot stand together, the conflicting provisions of one are repealed by implication by the other. *Donoho*, 318 Ark. 637; *Ward School Bus Mfg., Inc. v. Fowler*, 261 Ark. 100, 547 S.W.2d 394 (1977).

Moreover, a general statute normally does not apply where there is a specific statute governing a particular subject matter. *Donoho v. Donoho*, 318 Ark. 637, 887 S.W.2d 290 (1994). Ordinarily, the provisions of an act adopted later in time repeal the conflicting provisions of an earlier act. *Daniels v. City of Fort Smith*, 268 Ark. 157, 594 S.W.2d 238 (1980). This rule also applies to conflicting acts passed in the same legislative session, *Sargent v. Cole*, 269 Ark. 121, 598 S.W.2d 749 (1980), although, in such a case, the ordinary presumption that the legislature did not intend a repeal by implication is strengthened. *Merchants' Transfer & Warehouse Co. v. Gates*, 180 Ark. 96, 21 S.W.2d 406 (1929). With respect to such acts, A.C.A. § 1-2-207(b) provides:

When more than one (1) act concerning the same subject matter is enacted by the General Assembly during the same session, whether or not specifically amending the same sections of the Arkansas Code or an uncodified act, all of the enactments shall be given effect except to the extent of irreconcilable conflicts in which case the conflicting provision of the last enactment shall prevail. The last enactment is the one which the Governor signed last.

The presumption, then, is that two acts passed during the same session that address the same subject were actuated by the same policy and that both were intended to be given effect. See *Sutherland on Statutory Construction*, § 23.17 (5<sup>th</sup> Ed., 1993); *Adams v. Arthur*, 969 S.W.2d 598, 333 Ark. 53 (1998); *Horn v. White*, 225 Ark. 540, 284 S.W.2d 122 (1955). However, the Arkansas Supreme Court has held that this rule must yield if doing so is necessary in order to effectuate legislative intent. *Horn, supra*. Moreover, the court has held that if two acts that are passed at the same legislative session contain conflicting clauses, the whole record of legislation will be examined to ascertain the legislative intent, and such intent, if ascertained, will be given effect, regardless of priority of enactment. *Id.*

I am initially struck by the fact that all isolated schools comprise a subset of schools subject to annexation or consolidation. See the definition set forth at A.C.A. § 6-20-

602(a). It follows that both A.C.A. § 6-20-602(b) and A.C.A. § 6-13-1603(f) apply to isolated schools, creating what I consider an irreconcilable tension between the two with respect to the question of whether an isolated school might be closed before August 12, 2005. I must accordingly apply the principles of statutory construction set forth above in an effort to determine which of these currently applicable statutory provisions will control.

Priority of legislation is not an issue in resolving this tension, since, as noted above, both statutes were enacted not only in the same legislative session, but pursuant to the same act. Acts 2003, No. 60. However, I consider it dispositive that A.C.A. § 6-13-1603(f) deals only generally with the whole category of schools that have been administratively annexed or consolidated, whereas A.C.A. § 6-20-602(b) deals specifically with annexed or consolidated schools that further qualify as "isolated." Applying the principle that a more specific statute will control over a more general statute in the event of a conflict, I believe A.C.A. § 6-20-602(b) should be given effect in this instance, leading to the conclusion that a school district board may not close an isolated school before August 12, 2005.

***Question 2: If the answer to Question 1 is in the affirmative, what type of local board action, if any, is required in order for a school district to be deemed to have "closed" an isolated school or part thereof for purposes of Act 1452?***

This question is moot in light of my response to your first question.

***Question 3: Can the McGehee School District reutilize the grade 7-12 grade span that was not utilized at the Arkansas City campus during the 2004-05 school year and, thus, be entitled to Isolated Funding for students attending those reutilized grade spans for that isolated school?***

In my opinion, in the second year following the change described in your question, the former Arkansas City School District will be eligible for isolated funding based upon its entire student population, including students in the "reutilized" grades 7-12, if it meets the following criteria, which are set forth at A.C.A. § 6-20-601 (Supp. 2003):

(a) As used in this section, "isolated school district" means a school district that meets any four (4) of the following five (5) criteria:

- (1) There is a distance of twelve (12) miles or more by hard-surfaced highway from the high school of the district to the nearest adjacent high school in an adjoining district;
- (2) The density ratio of transported students is less than three
- (3) students per square mile of area;

- (3) The total area of the district is ninety-five square miles (95 sq. mi.) or greater;
- (4) Less than fifty percent (50%) of bus route miles is on hard-surfaced roads; and
- (5) There are geographic barriers such as lakes, rivers, and mountain ranges which would impede travel to schools that otherwise would be appropriate for consolidation, cooperative programs, and shared services.

With regard to the question of a district's entitlement to isolated funding, the statute further provides:

(b) An isolated school district shall be eligible to receive isolated funding if:

- (1) The district's budget is prepared by the local district with Department of Education approval;
- (2) The district has an average daily membership of less than three hundred fifty (350)<sup>[8]</sup>; and
- (3) The district meets the minimum standards for accreditation of public schools prescribed by law and regulation.

(c) Any school district designated as an isolated school district for the 1996-1997 fiscal year that used geographic barriers as one (1) of the four (4) criteria necessary to receive isolated funding shall be allowed to continue to use geographic barriers as a criterion for future allocations of isolated funding.

Section 6-20-602 of the Code (West Supp. 2005), which was enacted pursuant to Acts 2003, No. 60, § 5, provides in pertinent part:

(a) "Isolated school" means a school within a school district that:

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<sup>8</sup> Since the enactment of Act 60 of 2003, which mandated the consolidation or annexation of all districts having an average daily membership of fewer than 350 students, this condition no longer applies to any school district. Accordingly, there are no longer any "isolated school districts." There are, however, "isolated school areas" comprised of former "isolated school districts" that have been annexed or consolidated pursuant to Act 60 of 2003. A.C.A. § 6-20-603 (West Supp. 2005). As reflected in the above quoted definition of "isolated school" set forth at A.C.A. § 6-20-602(a), former isolated school districts under the definitions just quoted continue to remain eligible for isolated school funding.

(1) Prior to administrative consolidation or annexation under this section, § 6-13-1601 et seq., and § 6-13-1405(a)(5) qualified as an isolated school district under § 6-20-601; and

(2) Is subject to administrative consolidation or annexation under this section, § 6-13-1601 et seq., and § 6-13-1405(a)(5).

So long as the decision of the McGehee School District to "reutilize the grade 7-12 grade span that was not utilized at the Arkansas City campus during the 2004-05 school year" would not disqualify the campus as an isolated school under this standard, I believe it would remain eligible to receive isolated funding. In my opinion, if the district remained eligible following such a change, the average daily membership figure used to compute isolated funding pursuant to A.C.A. § 6-20-601(d) would include students in grades 7-12. However, assuming the district made this change in the 2005-06 school year, I do not believe the district's isolated funding would reflect the increased enrollment until the 2006-07 school year. I base this conclusion on the terms of A.C.A. § 6-20-603(b) (West Supp. 2005), which provides:

Beginning with the 2004-2005 school year and each school year thereafter, state financial aid in the form of isolated funding shall be provided to school districts containing an isolated school area in an amount equal to *the prior year* three (3) quarter average daily membership of the isolated school area multiplied by the per student isolated funding amount for the isolated school areas as set forth under column "C" of subsection (a) of this section.

(Emphasis added.) As reflected in the highlighted term, the formula for computing isolated funding is based upon the prior year's enrollment.<sup>9</sup> Accordingly, assuming the McGehee School District remained isolated after the change, it would not realize an increase in special needs funding until the 2006-07 school year.

***Question 4: For the purpose of Isolated Funding pursuant to A.C.A. 6-20-602 and Act 1452, does the term "average daily membership" include only those students that reside within the isolated school area (i.e., the former Arkansas City School District boundary lines) or does the term also include any students from other areas of the McGehee School District that are assigned to the Arkansas City school campus for any particular grade or special educational program?***

<sup>9</sup> As discussed in the attached Ark. Op. Att'y Gen. No. 2005-115, this rule does not appear to apply if a school *reduces* its enrollment by a partial closure. In that instance, special needs funding would apparently be based upon current-year enrollment figures. See A.C.A. § 6-20-604(h), enacted pursuant to Act 1452 of 2005 (effective August 12, 2005). I appreciate that this disparate treatment following a partial closure, on the one hand, and an expansion, on the other, may appear unfair. However, I believe current law dictates this result.

The term ""isolated school area" is defined indirectly at A.C.A. § 6-20-603 (West Supp. 2005), which provides in pertinent part:

- (a) Upon the effective date of consolidation, annexation, or reorganization, the following school districts that received isolated funding in the 2003-2004 school year shall become isolated school areas for the sole purpose of receiving isolated funding and shall have a per student isolated funding amount as follows . . . .

Included among the former districts that now comprise "isolated school areas" is the former Arkansas City School District.

With respect to the "average daily membership" referenced in your question, A.C.A. § 6-13-1601 (West Supp. 2005) provides in pertinent part:

- (4)(A) "Average daily membership" means the total number of days attended plus the total number of days absent by students in grades kindergarten through twelve (K-12) during the first three (3) quarters of each school year divided by the number of school days actually taught in the district during that period of time rounded up to the nearest hundredth.
- (B) Students who may be counted for average daily membership are:
  - (i) Students who reside within the boundaries of the school district and who are enrolled in a public school operated by the district or a private school for special education students, with their attendance resulting from a written tuition agreement approved by the Department of Education;
  - (ii) Legally transferred students living outside the district but attending a public school in the district; and
  - (iii) Students who reside within the boundaries of the school district and who are enrolled in the Arkansas National Guard Youth Challenge Program, so long as the students are participants in the program[.]

This definition is repeated verbatim at Acts 2005, No. 2283, § 1, to be codified as A.C.A. § 6--20-2303(3)(A); A.C.A. §§ 6-20-1702; 6-20-2303; and 6-20-2403, all of which provide materially indistinguishable parameters for the students to be included in the computation of average daily membership.

Although the statute just quoted addresses the average daily membership of a "school district," as opposed to an "isolated school area," I nevertheless consider it instructive in that it quite logically directs that "attendance" be computed based upon the number of students actually served by the district, irrespective of where they might actually reside. Although the Code is silent on the issue, I believe logic dictates that average daily membership for purposes of computing funding for an isolated school area should likewise be figured based upon the number of students served by the Arkansas City school campus - - i.e., the "isolated school area" -- regardless of whether these students reside in the former Arkansas City School District or somewhere else within the McGehee School District. This conclusion is consistent with various other provisions of the Code allowing a nonresident student to be counted for purposes of tallying average daily membership. *See, e.g.,* A.C.A. §§ 6-15-430 (allowing a district not classified as being in academic distress to receive and to count students from a district classified as being in academic distress); 6-18-205(a) (directing that designated students attending school outside the districts in which they reside should be counted in the districts where they attend); 6-18-206(e) ("For purposes of determining a school district's state equalization aid, the nonresident student shall be counted as a part of the average daily membership of the district to which the student has transferred."); and 6-18-307(c) and -316(d) (both providing that a transferred child shall be counted in the district to which he has been transferred).

In my opinion, then, for purposes of determining isolated school funding provided to an isolated school area, officials may include in average daily membership any McGehee School District pupil served by the Arkansas City School. However, I must note that the Arkansas Code at no point directly declares as much. In large part, I am basing this conclusion on extrapolation from statutes addressing closely analogous situations, which I believe might serve as a barometer of legislative intent. Nevertheless, legislative clarification appears warranted.

***Question 5: Is the Arkansas City isolated school area entitled to receive Isolated Funding for students attending a special needs program such as an ALE program or is the school only entitled to per student isolated funding for students attending traditional K-12 grades at Arkansas City?***

In my opinion, for the purpose of determining whether an isolated school area may include a student in average daily membership, it is immaterial whether the student is enrolled in a "traditional" or "nontraditional" K-12 program. So long as the student is classified as enrolled in a K-12 grade, under the circumstances described in your question, the school area will be independently entitled to receive isolated funding and special-needs funding.

Section 6-18-508 of the Code (Repl. 1999) provides in pertinent part:

- (a) Every school district shall establish an alternative learning environment which shall afford students an environment conducive to learning.

(b) The alternative learning environment required by this section may be established by more than one (1) school district or may be operated by a public school educational cooperative established under § 6-13-901 *et seq.*

Section 6-18-509 (Repl. 199) further provides in pertinent part:

(b) An Arkansas school district electing to operate an alternative class or school should provide for:

(1) Student assessment either before or upon entry into the class or school; and

(2) Intervention services designed to address the specific educational needs of individual students.

Sections 6-15-1801 through -1806 (West Supp. 2005) further establish the Arkansas Pygmalion Commission on Nontraditional Education to provide funding and standards for alternative education programs.

The fact that alternative learning environment funding and other special-needs funding comprise categories distinct from and additional to other categories of state funding is reflected in the following definition set forth at A.C.A. § 6-20-2303(1) (West Supp. 2005), as amended by Acts 2005, No. 2283, § 1:

**"Additional** education categories" means state funds distributed to school districts for alternative learning environments, English language learners, national school lunch students, professional development, and technology[.]

(Emphasis added.) The highlighted term reflects the fact that special-needs funding categories are in addition to the "foundation funding" defined at A.C.A. § 6-20-2303(6). This conclusion is expressly stated at A.C.A. § 6-20-2305(b)(1), as amended by Acts 2005, No. 2283, § 2, which provides:

In addition to state foundation funding aid, each school district shall receive funding for additional education categories as provided in subdivisions (b)(2)-(6) of this section.

Section 6-20-2305(b)(2) of the Code (West Supp. 2005), sets the amount of alternative learning environment funding at \$3,250 per student. Implicit in these statutory provisions is a recognition that classifying and funding a student as falling within a special-needs category in no way precludes further including the same student in K-12 average daily membership.

With respect to isolated school funding, A.C.A. § 6-20-2305(c) provides:

Isolated funding under § 6-20-601, student growth funding, and special education-catastrophic occurrences funding shall be allocated and funded to school districts in a line item appropriation within the Public School Fund pursuant to law or rules promulgated by the State Board of Education.

Implicit in this provision is a recognition that isolated funding is likewise a discrete category of funding that will supplement other available revenue sources. This conclusion is expressly set forth at A.C.A. § 6-20-2305(d), which provides:

The sum of subsections (a)-(c) of this section shall be the total state aid allocated and funded to school districts pursuant to this section.

Subsection (a) of A.C.A. § 6-20-2305 sets the foundation funding amount at \$5,400 multiplied by the average daily membership of the previous school year. As noted above, subsections (b) and (c) authorize funding for alternative learning environment students and isolated school students, respectively. Like foundation funding, these funding amounts are calculated in terms of average daily membership, see A.C.A. §§ 6-20-2305(b)(2) and 6-20-603. As reflected in A.C.A. § 6-13-1601(4), the term "average daily membership" refers to the number of students served by a particular district or isolated area. In my opinion, although the pertinent statutes do not directly acknowledge as much, in light of the fact that special needs programs such as ALE are sponsored by the public schools, participants in such programs should logically be included in the calculation of average daily membership so long as they are assigned within grades K-12. I consider immaterial to this inquiry the fact that special needs programs might be classified as "nontraditional."

***Question 6: For purposes of special needs funding pursuant to Act 1452, are school districts required to show full compliance with the Arkansas Standards of Accreditation (see 6-15-202) as required in 6-20-601(b)(3)?***

In my opinion, the answer to this question is "yes."

Section 6-15-202 of the Code (Supp. 2003) provides in pertinent part:

(a) The State Board of Education is authorized and directed to develop comprehensive regulations, criteria, and standards to be used by the board and the Department of Education in the accreditation of school programs in elementary and secondary public schools in this state.

(b)(1) *All public schools and school districts shall meet the Standards of Accreditation* for Arkansas Public Schools which shall be adopted by the state board.

(Emphasis added.) Section 6-20-601 of the Code (Supp. 2003) further provides in pertinent part:

(b) *An isolated school district shall be eligible to receive isolated funding if:*

\* \* \*

(3) *The district meets the minimum standards for accreditation* of public schools prescribed by law and regulation.

(Emphasis added.)

Act 1452 of 2005, which you reference in your request, provides for special-needs funding for isolated schools. Section 1 of Act 1452 directly references the issue of accreditation in the following provision:

SECTION 1. Arkansas Code Title 6, Chapter 20, Subchapter 6 is amended to add an additional section to read as follows:

6-20-604. Additional funding.

(a)(1) The new requirements under the Standards for Accreditation of Arkansas Public Schools adopted by the State Board of Education have disproportionately increased the cost of operations for school districts that contained isolated schools.

I gather from your question that you believe this provision might reflect a legislative intention to relieve financially overburdened isolated schools from the burden of complying with the accreditation requirement. In my opinion, this is clearly not the case. I believe Act 1452 does no more than provide for additional funding to enable isolated schools to continue meeting their accreditation requirements.

I base this opinion on the fact that Act 1452 expressly conditions the receipt of special needs funding upon compliance with the accreditation requirement. Section 1 adds to the Code A.C.A. § 6-20-604(b)(3), which mandates that both during the course of an annexation or consolidation and upon the completion thereof, an isolated school must attest by affidavit, subject to verification by the State Board of Education, that it has met the requirements of A.C.A. § 6-20-601. As noted above, among these requirements is

meeting "the minimum standards for accreditation." Accordingly, I believe an isolated school will be eligible to receive special-needs funding only upon a showing of what you term "full compliance with the Arkansas Standards of Accreditation."

Assistant Attorney General Jack Druff prepared the foregoing opinion, which I hereby approve.

Sincerely,

MIKE BEEBE  
Attorney General

MB:JHD/cyh

Enclosure

Rules and Regulations  
Governing the Distribution of Isolated Funding  
Revised 6/14/99

1.00 Regulatory Authority

- 1.01 These regulations shall be known as Arkansas Department of Education Regulations Governing the Distribution of Funding to Isolated School Districts in accordance with Arkansas Code Annotated § 6-20-601 and Arkansas Code Annotated § 6-20-303 (17)(Supp. 1997), as amended by Section 10 of Act 1549 of 1999.
- 1.02 These regulations are enacted pursuant to the State Board of Education's authority under Arkansas Code Annotated §6-11-105 (Repl. 1993) and §6-20-305 (Supp. 1995).

2.00 Purpose

- 2.01 It is the purpose of these regulations to establish criteria by which a school district may choose the basis for calculation of the district's qualify to receive isolated funding and to establish a isolated funding factor.

3.00 Definitions

- 3.01 Isolated Funding - The state financial aid provided to local school districts with an average daily membership of less than three hundred fifty (350), and student density of 5.0 or less, from funds made available for that purpose.
- 3.02 Isolated Funding Factor - A factor calculated by dividing the isolated funding budgeted by the State Board of Education, by the total amount qualifying school districts would be eligible to receive based on the calculation of aid as defined by law.

~~4.00 Selection of Method of Calculation~~

- ~~4.01 School districts with an ADM of less than 350 will not be required to apply for isolated funding as established by Arkansas Code Annotated § 6-20-303 (17) (Supp. 1997), as amended by Section 10 of Act 1549 of 1999.~~
- ~~4.02 School districts which may elect to qualify for isolated funding as provided in Arkansas Code Annotated § 6-20-601 (Supp. 1997), shall apply to the Department of Education.~~

4.00 Categories of Funding

- 4.01 Category I Isolated Funding shall be provided to all school districts qualifying under Section 3.01.
- 4.02 Category II Isolated Funding shall be further provided to those school districts qualifying under Section 3.01 and having an ADM density ration of less than 1.2 students per square mile and shall be calculated as fifty percent (50%) of Category I Isolated Funding.

~~5.00 Application for Aid~~

~~5.01 School district applications to qualify for isolated funding, in accordance with Arkansas Code Annotated § 6-20-601 (Supp. 1997), shall be on forms provided by the Arkansas Department of Education.~~

~~5.02 Applications to qualify for isolated funding are due by May 15, preceding the school year for which Isolated Funding is to be provided.~~

~~5.03 The Department of Education shall review all applications for isolated status to determine compliance with all eligibility criteria.~~

~~65.00 Funding Distribution~~

~~65.01 Isolated funding shall be calculated as defined by law.~~

~~65.02 Funds shall be distributed by multiplying each qualifying school district's isolated funding by the Isolated Funding Factor.~~

Agency # 005-23

ARKANSAS DEPARTMENT OF EDUCATION  
RULES GOVERNING THE CLOSING OF ISOLATED SCHOOLS  
July 2005

1.00 PURPOSE

- 1.01 These rules shall be known as the Arkansas Department of Education Rules Governing the Closing of Isolated Schools Following an Annexation or Consolidation of Public School Districts.

2.00 AUTHORITY

- 2.01 The State Board of Education's authority for promulgation of these rules is pursuant to Ark. Code Ann. §§ 6-11-105 and 6-13-1603.

3.00 DEFINITIONS

- 3.01 "Affected district" means a school district that loses territory or students as a result of administrative annexation or consolidation.
- 3.02 "Closure" means the cessation of use of a school or part thereof for the purpose of daily classroom instruction.
- 3.03 "Isolated school" means a school within a school district that, prior to administrative consolidation or annexation pursuant to Ark. Code Ann. §§ 6-13-1601 *et seq.*, qualified as an isolated school district under Ark. Code Ann. § 6-20-602.
- 3.04 "Partial closure" means the cessation of some, but not all, daily classroom instruction within a school (e.g., changing the use of the school from grades one (1) through eight (8) to grade one (1) through five (5)).
- 3.05 "Receiving district" means a school district that receives territory or students, or both, from an affected district as a result of an administrative annexation.
- 3.06 "Resulting district" means the new school district created from an affected district or districts as a result of an administrative consolidation.

4.00 CLOSING OF ISOLATED SCHOOLS

- 4.01 Procedures for Closure by Local School District Board of Directors

Isolated schools within resulting or receiving districts shall remain open unless:

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4.01.1 The school board of the resulting or receiving school district adopts a motion to close the isolated school or parts thereof by:

4.01.1.2 Unanimous vote of the full board of directors, or

4.01.1.3 A majority vote of the full board of directors, but less than a unanimous vote, and such motion is considered by and approved by a majority vote of members of the State Board of Education.

4.02 Procedures For State Board of Education Consideration of Local School District's Motion To Close Part or All of an Isolated School

Any school board seeking the State Board of Education's approval to close an isolated school or schools or parts thereof pursuant to Section 4.01 above shall do the following:

4.02.1 Request, in writing, a hearing on the matter of the isolated school closure before the State Board of Education no less than thirty (30) days before a regularly scheduled meeting of the State Board of Education.

4.02.2 The hearing request shall be accompanied by a petition to have the local school board's motion on the matter of the isolated school's closure reviewed and approved by the State Board of Education. Hearing requests which are not accompanied by a petition shall be returned to the submitting school district and shall not be considered by the State Board of Education.

4.02.3 The petition shall address all of the following:

4.02.3.1 Identify the specific isolated schools or part thereof that the local board has moved to close;

4.02.3.2 State all reasons that the isolated schools or part thereof shall be closed;

4.02.3.3 State how the closure will serve the best interests of the students in the district as a whole;

4.02.3.4 State if the closure will have any negative impacts on desegregation efforts or violate any valid court order from a court of proper jurisdiction; and

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- 4.02.3.5 Have attached a copy of the final motion approving the closure by the local board of directors.
- 4.03 Upon reviewing the local school board's motion to close all or part of an isolated school or schools, the State Board of Education shall have the authority to review and approve or disapprove the petition.
- 4.04 The State Board of Education shall only approve a local school board's motion to close all or part of an isolated school or schools if the closure is in the best interest of the students in the school district as a whole.
- 4.05 The State Board of Education shall not close a school if it finds that the closure will have any negative impact on desegregation efforts or will violate a court order from a court of competent jurisdiction.
- 4.06 The State Board of Education is not authorized to require the closure of an isolated school, or any parts thereof, without a motion from the local school board of directors as described in Section 4.01 above.
- 4.07 This Rule shall become effective on August 12, 2005.

ADE 221-3

**ARKANSAS DEPARTMENT OF EDUCATION  
PRELIMINARY NATIONAL SCHOOL LUNCH ACT FUNDING  
FISCAL YEAR 2006-2007  
14-Aug-06**

Notes: The NSLA enrollment and funding amounts are preliminary estimates.  
 The source of the October 1, 2005 enrollment data is the Statewide Information System.  
 The October 1, 2005 enrollment data is subject to change.  
 The data for provision 2 districts is subject to change.  
 The funding amount is calculated by multiplying the district free and reduced count by the appropriate per student funding amount based on district free and reduced percentage.  
 The calculation of NSLA funding is based on ACA 6-20-2305 and the ADE Rules Governing the Distribution of Student Special Needs Funding.

LEA NO.	COUNTY	SCHOOL DISTRICT	01-Oct-05 Enrollment	District F&R Count	District Percent F&R	90% or Greater than 90% 1440	70% up to 90% 960	Less than 70% 480	Total District NSLA Aid
101	ARKANSAS	DEWITT	1,556	837	53.8%	0	0	401,760	401,760
104	ARKANSAS	STUTTGART	1,977	1,209	61.2%	0	0	580,320	580,320
201	ASHLEY	CROSSETT	2,329	1,337	57.4%	0	0	641,760	641,760
203	ASHLEY	HAMBURG	1,828	1,378	75.4%	0	1,322,880	0	1,322,880
302	BAXTER	COTTER	636	396	62.3%	0	0	190,080	190,080
303	BAXTER	MOUNTAIN HOME	4,009	1,919	47.9%	0	0	921,120	921,120
304	BAXTER	NORFORK	459	337	73.4%	0	323,520	0	323,520
401	BENTON	BENTONVILLE	10,107	2,476	24.5%	0	0	1,188,480	1,188,480
402	BENTON	DECATUR	556	392	70.5%	0	376,320	0	376,320
403	BENTON	GENTRY	1,455	749	51.5%	0	0	359,520	359,520
404	BENTON	GRAVETTE	1,662	703	42.3%	0	0	337,440	337,440
405	BENTON	ROGERS	13,063	6,466	49.5%	0	0	3,103,680	3,103,680
406	BENTON	SILOAM SPRINGS	3,504	1,590	45.4%	0	0	763,200	763,200
407	BENTON	PEA RIDGE	1,302	467	35.9%	0	0	224,160	224,160
501	BOONE	ALPENA	577	289	50.1%	0	0	138,720	138,720
502	BOONE	BERGMAN	978	396	40.5%	0	0	190,080	190,080
503	BOONE	HARRISON	2,784	1,141	41.0%	0	0	547,680	547,680
504	BOONE	OMAHA	445	319	71.7%	0	306,240	0	306,240
505	BOONE	VALLEY SPRINGS	957	383	40.0%	0	0	183,840	183,840
506	BOONE	LEAD HILL	384	280	72.9%	0	268,800	0	268,800
601	BRADLEY	HERMITAGE	499	369	73.9%	0	354,240	0	354,240
602	BRADLEY	WARREN	1,627	1,083	66.6%	0	0	519,840	519,840
701	CALHOUN	HAMPTON	734	421	57.4%	0	0	202,080	202,080
801	CARROLL	BERRYVILLE	1,804	912	50.6%	0	0	437,760	437,760
802	CARROLL	EUREKA SPRINGS	682	337	49.4%	0	0	161,760	161,760
803	CARROLL	GREEN FOREST	1,250	778	62.2%	0	0	373,440	373,440
901	CHICOT	DERMOTT	591	556	94.1%	800,640	0	0	800,640
903	CHICOT	LAKESIDE (with EUDORA)	1,566	1,278	81.6%	0	1,226,880	0	1,226,880
1002	CLARK	ARKADELPHIA	2,245	1,009	44.9%	0	0	484,320	484,320
1003	CLARK	GURDON	850	605	71.2%	0	580,800	0	580,800
1101	CLAY	CORNING	1,199	684	57.0%	0	0	328,320	328,320
1104	CLAY	PIGGOTT	1,028	500	48.6%	0	0	240,000	240,000
1106	CLAY	RECTOR	631	290	46.0%	0	0	139,200	139,200
1201	CLEBURNE	CONCORD	537	304	56.6%	0	0	145,920	145,920
1202	CLEBURNE	HEBER SPRINGS	1,748	851	48.7%	0	0	408,480	408,480
1203	CLEBURNE	QUITMAN	584	265	45.4%	0	0	127,200	127,200
1204	CLEBURNE	WEST SIDE	512	260	50.8%	0	0	124,800	124,800

1304	CLEVELAND	WOODLAWN	580	199	34.3%	0	0	95,520	95,520
1305	CLEVELAND	CLEVELAND COUNTY	873	502	57.5%	0	0	240,960	240,960
1402	COLUMBIA	MAGNOLIA	3,223	1,977	61.3%	0	0	948,960	948,960
1408	COLUMBIA	EMERSON-TAYLOR	698	320	45.8%	0	0	153,600	153,600
1503	CONWAY	NEMO VISTA	463	266	57.5%	0	0	127,680	127,680
1505	CONWAY	WONDERVIEW	419	205	48.9%	0	0	98,400	98,400
1507	CONWAY	SO. CONWAY CO.	2,360	1,350	57.2%	0	0	648,000	648,000
1601	CRAIGHEAD	BAY	586	284	48.5%	0	0	136,320	136,320
1602	CRAIGHEAD	WESTSIDE CONS.	1,671	746	44.6%	0	0	358,080	358,080
1603	CRAIGHEAD	BROOKLAND	1,316	512	38.9%	0	0	245,760	245,760
1605	CRAIGHEAD	BUFFALO IS. CENTRAL	855	453	53.0%	0	0	217,440	217,440
1608	CRAIGHEAD	JONESBORO	4,774	2,879	60.3%	0	0	1,381,920	1,381,920
1611	CRAIGHEAD	NETTLETON	2,919	1,343	46.0%	0	0	644,640	644,640
1612	CRAIGHEAD	VALLEY VIEW	1,793	423	23.6%	0	0	203,040	203,040
1613	CRAIGHEAD	RIVERSIDE	785	444	56.6%	0	0	213,120	213,120
1701	CRAWFORD	ALMA	3,224	1,429	44.3%	0	0	685,920	685,920
1702	CRAWFORD	CEDARVILLE	931	468	50.3%	0	0	224,640	224,640
1703	CRAWFORD	MOUNTAINBURG	764	434	56.8%	0	0	208,320	208,320
1704	CRAWFORD		571	339	59.4%	0	0	162,720	162,720
		MULBERRY/PLEASANT VIEW BI-COUNTY							
1705	CRAWFORD	VAN BUREN	5,710	2,732	47.8%	0	0	1,311,360	1,311,360
1802	CRITTENDEN	EARLE	874	830	95.0%	1,195,200	0	0	1,195,200
1803	CRITTENDEN	WEST MEMPHIS	5,995	4,886	81.5%	0	4,690,560	0	4,690,560
1804	CRITTENDEN	MARION	3,842	1,867	48.6%	0	0	896,160	896,160
1805	CRITTENDEN	TURRELL	392	326	83.1%	0	312,960	0	312,960
1901	CROSS	CROSS COUNTY	693	453	65.4%	0	0	217,440	217,440
1905	CROSS	WYNNE	3,060	1,621	53.0%	0	0	778,080	778,080
2002	DALLAS	FORDYCE	1,154	586	50.8%	0	0	281,280	281,280
2104	DESHA	DUMAS	1,752	1,316	75.1%	0	1,263,360	0	1,263,360
2105	DESHA	MCGEHEE	1,329	956	71.9%	0	917,760	0	917,760
2202	DREW	DREW CENTRAL	1,050	685	65.2%	0	0	328,800	328,800
2203	DREW	MONTICELLO	2,185	1,099	50.3%	0	0	527,520	527,520
2301	FAULKNER	CONWAY	8,618	3,035	35.2%	0	0	1,456,800	1,456,800
2303	FAULKNER	GREENBRIER	2,606	1,021	39.2%	0	0	490,080	490,080
2304	FAULKNER	GUY-PERKINS	438	247	56.4%	0	0	118,560	118,560
2305	FAULKNER	MAYFLOWER	944	413	43.8%	0	0	198,240	198,240
2306	FAULKNER	MT. VERNON/ENOLA	475	298	62.7%	0	0	143,040	143,040
2307	FAULKNER	VILONIA	2,784	900	32.3%	0	0	432,000	432,000
2402	FRANKLIN	CHARLESTON	906	316	34.9%	0	0	151,680	151,680
2403	FRANKLIN	COUNTY LINE	560	234	41.8%	0	0	112,320	112,320
2404	FRANKLIN	OZARK	1,875	902	48.1%	0	0	432,960	432,960
2501	FULTON	MAMMOTH SPRING	460	303	65.9%	0	0	145,440	145,440
2502	FULTON	SALEM	735	403	54.8%	0	0	193,440	193,440
2503	FULTON	VIOLA	417	187	44.8%	0	0	89,760	89,760
2601	GARLAND	CUTTER-MORNING STAR	704	401	57.0%	0	0	192,480	192,480
2602	GARLAND	FOUNTAIN LAKE	1,170	480	41.0%	0	0	230,400	230,400
2603	GARLAND	HOT SPRINGS	3,754	2,899	77.2%	0	2,783,040	0	2,783,040
2604	GARLAND	JESSIEVILLE	881	431	48.9%	0	0	206,880	206,880
2605	GARLAND	LAKE HAMILTON	3,917	1,703	43.5%	0	0	817,440	817,440
2606	GARLAND	LAKESIDE	2,728	820	30.1%	0	0	393,600	393,600
2607	GARLAND	MOUNTAIN PINE	644	473	73.4%	0	454,080	0	454,080
2703	GRANT	POYEN	526	256	48.7%	0	0	122,880	122,880
2705	GRANT	SHERIDAN	4,267	1,631	38.2%	0	0	782,880	782,880
2803	GREENE	MARMADUKE	776	416	53.6%	0	0	199,680	199,680
2807	GREENE	GREENE CO. TECH	3,435	1,673	48.7%	0	0	803,040	803,040
2808	GREENE	PARAGOULD	2,769	1,528	55.2%	0	0	733,440	733,440
2901	HEMPSTEAD	BLEVINS	737	509	69.1%	0	0	244,320	244,320
2903	HEMPSTEAD	HOPE	2,711	1,898	70.0%	0	1,822,080	0	1,822,080
2906	HEMPSTEAD	SPRING HILL	517	238	46.0%	0	0	114,240	114,240
3001	HOT SPRING	BISMARCK	1,051	570	54.2%	0	0	273,600	273,600

3002	HOT SPRING	GLEN ROSE	1,042	477	45.8%	0	0	228,960	228,960
3003	HOT SPRING	MAGNET COVE	791	332	42.0%	0	0	159,360	159,360
3004	HOT SPRING	MALVERN	2,203	1,297	58.9%	0	0	622,560	622,560
3005	HOT SPRING	OUACHITA	408	188	46.1%	0	0	90,240	90,240
3102	HOWARD	DIERKS	532	253	47.6%	0	0	121,440	121,440
3104	HOWARD	MINERAL SPRINGS	617	457	74.1%	0	438,720	0	438,720
3105	HOWARD	NASHVILLE	1,846	1,056	57.2%	0	0	506,880	506,880
3201	INDEPENDENCE	BATESVILLE (with Sulphur Rock)	2,567	1,362	53.1%	0	0	653,760	653,760
3203	INDEPENDENCE	CUSHMAN	349	209	59.9%	0	0	100,320	100,320
3209	INDEPENDENCE	SOUTHSIDE	1,402	752	53.6%	0	0	360,960	360,960
3211	INDEPENDENCE	MIDLAND	568	349	61.4%	0	0	167,520	167,520
3212	INDEPENDENCE	CEDAR RIDGE	779	404	51.9%	0	0	193,920	193,920
3301	IZARD	CALICO ROCK	486	292	60.1%	0	0	140,160	140,160
3302	IZARD	MELBOURNE	867	438	50.5%	0	0	210,240	210,240
3306	IZARD	IZARD CO. CONS.	530	400	75.5%	0	384,000	0	384,000
3403	JACKSON	NEWPORT	1,618	1,106	68.4%	0	0	530,880	530,880
3405	JACKSON	JACKSON CO.	860	536	62.3%	0	0	257,280	257,280
3502	JEFFERSON	DOLLARWAY (with Altheimer)	1,983	1,799	90.7%	2,590,560	0	0	2,590,560
3505	JEFFERSON	PINE BLUFF	5,549	4,245	76.5%	0	4,075,200	0	4,075,200
3509	JEFFERSON	WATSON CHAPEL	3,438	1,986	57.8%	0	0	953,280	953,280
3510	JEFFERSON	WHITE HALL	3,223	986	30.6%	0	0	473,280	473,280
3601	JOHNSON	CLARKSVILLE	2,377	1,380	58.1%	0	0	662,400	662,400
3604	JOHNSON	LAMAR	1,110	596	53.7%	0	0	286,080	286,080
3606	JOHNSON	WESTSIDE	631	468	74.2%	0	449,280	0	449,280
3701	LAFAYETTE	BRADLEY	398	288	72.4%	0	276,480	0	276,480
3704	LAFAYETTE	LAFAYETTE COUNTY	933	702	75.2%	0	673,920	0	673,920
3804	LAWRENCE	HOXIE	923	662	71.7%	0	635,520	0	635,520
3806	LAWRENCE	SLOAN-HENDRIX	622	438	70.4%	0	420,480	0	420,480
3809	LAWRENCE	HILLCREST	488	317	65.0%	0	0	152,160	152,160
3810	LAWRENCE	LAWRENCE COUNTY	1,083	607	56.0%	0	0	291,360	291,360
3904	LEE	LEE COUNTY	1,415	1,334	94.3%	1,920,960	0	0	1,920,960
4003	LINCOLN	STAR CITY	1,739	961	55.3%	0	0	461,280	461,280
4101	LITTLE RIVER	ASHDOWN	1,669	836	50.1%	0	0	401,280	401,280
4102	LITTLE RIVER	FOREMAN	528	326	61.7%	0	0	156,480	156,480
4201	LOGAN	BOONEVILLE	1,474	791	53.7%	0	0	379,680	379,680
4202	LOGAN	MAGAZINE	537	387	72.1%	0	371,520	0	371,520
4203	LOGAN	PARIS	1,151	619	53.8%	0	0	297,120	297,120
4204	LOGAN	SCRANTON	395	186	47.1%	0	0	89,280	89,280
4301	LONOKE	LONOKE	1,855	1,009	54.4%	0	0	484,320	484,320
4302	LONOKE	ENGLAND	941	621	66.0%	0	0	298,080	298,080
4303	LONOKE	CARLISLE	753	360	47.8%	0	0	172,800	172,800
4304	LONOKE	CABOT	8,488	2,747	32.4%	0	0	1,318,560	1,318,560
4401	MADISON	HUNTSVILLE	2,491	1,243	49.9%	0	0	596,640	596,640
4501	MARION	FLIPPIN	920	566	61.5%	0	0	271,680	271,680
4502	MARION	YELLVILLE-SUMMIT	933	561	60.1%	0	0	269,280	269,280
4602	MILLER	GENOA CENTRAL	986	382	38.7%	0	0	183,360	183,360
4603	MILLER	FOUKE	1,011	559	55.3%	0	0	268,320	268,320
4605	MILLER	TEXARKANA	4,633	3,206	69.2%	0	0	1,538,880	1,538,880
4701	MISSISSIPPI	ARMOREL	421	105	24.9%	0	0	50,400	50,400
4702	MISSISSIPPI	BLYTHEVILLE	3,140	2,559	81.5%	0	2,456,640	0	2,456,640
4706	MISSISSIPPI	SO. MISS. COUNTY	1,304	959	73.5%	0	920,640	0	920,640
4708	MISSISSIPPI	GOSNELL	1,450	903	62.3%	0	0	433,440	433,440
4712	MISSISSIPPI	MANILA	1,025	611	59.6%	0	0	293,280	293,280
4713	MISSISSIPPI	OSCEOLA	1,601	1,327	82.9%	0	1,273,920	0	1,273,920
4801	MONROE	BRINKLEY	950	744	78.3%	0	714,240	0	714,240
4802	MONROE	CLARENDON	704	560	79.5%	0	537,600	0	537,600
4901	MONTGOMERY	CADDO HILLS	596	421	70.6%	0	404,160	0	404,160
4902	MONTGOMERY	MOUNT IDA	604	364	60.3%	0	0	174,720	174,720
5006	NEVADA	PRESCOTT	1,052	675	64.2%	0	0	324,000	324,000
5008	NEVADA	NEVADA	426	310	72.8%	0	297,600	0	297,600

5102	NEWTON	JASPER	909	558	61.4%	0	0	267,840	267,840
5106	NEWTON	DEER/MT. JUDEA CONSOLIDATED	443	310	70.0%	0	297,600	0	297,600
5201	OUACHITA	BEARDEN	664	441	66.4%	0	0	211,680	211,680
5204	OUACHITA	CAMDEN FAIRVIEW	2,807	1,987	70.8%	0	1,907,520	0	1,907,520
5205	OUACHITA	HARMONY GROVE	1,048	491	46.9%	0	0	235,680	235,680
5206	OUACHITA	STEPHENS	513	392	76.4%	0	376,320	0	376,320
5301	PERRY	EAST END	715	352	49.2%	0	0	168,960	168,960
5303	PERRY	PERRYVILLE	998	464	46.5%	0	0	222,720	222,720
5401	PHILLIPS	BARTON-LEXA	836	491	58.7%	0	0	235,680	235,680
5403	PHILLIPS	HELENA/ W.HELENA	3,050	2,782	91.2%	4,006,080	0	0	4,006,080
5404	PHILLIPS	MARVELL	879	826	94.0%	1,189,440	0	0	1,189,440
5501	PIKE	DELIGHT	386	247	64.0%	0	0	118,560	118,560
5502	PIKE	CENTERPOINT	1,036	559	54.0%	0	0	268,320	268,320
5503	PIKE	KIRBY	447	241	53.9%	0	0	115,680	115,680
5504	PIKE	MURFREESBORO	535	276	51.6%	0	0	132,480	132,480
5602	POINSETT	HARRISBURG	1,092	711	65.1%	0	0	341,280	341,280
5604	POINSETT	MARKED TREE	642	469	73.1%	0	450,240	0	450,240
5605	POINSETT	TRUMANN	1,737	1,114	64.1%	0	0	534,720	534,720
5607	POINSETT	WEINER	351	172	49.0%	0	0	82,560	82,560
5608	POINSETT	EAST POINSETT CO.	798	478	59.9%	0	0	229,440	229,440
5703	POLK	MENA	2,097	1,182	56.4%	0	0	567,360	567,360
5704	POLK	VAN COVE	463	289	62.4%	0	0	138,720	138,720
5705	POLK	WICKES	692	480	69.4%	0	0	230,400	230,400
5706	POLK	OUACHITA RIVER	727	519	71.4%	0	498,240	0	498,240
5801	POPE	ATKINS	1,109	560	50.5%	0	0	268,800	268,800
5802	POPE	DOVER	1,439	683	47.5%	0	0	327,840	327,840
5803	POPE	HECTOR	689	447	64.9%	0	0	214,560	214,560
5804	POPE	POTTSVILLE	1,382	593	42.9%	0	0	284,640	284,640
5805	POPE	RUSSELLVILLE	5,204	2,647	50.9%	0	0	1,270,560	1,270,560
5901	PRAIRIE	DES ARC	631	329	52.1%	0	0	157,920	157,920
5903	PRAIRIE	HAZEN	686	393	57.3%	0	0	188,640	188,640
6001	PULASKI	LITTLE ROCK	24,746	15,290	61.8%	0	0	7,339,200	7,339,200
6002	PULASKI	N. LITTLE ROCK	8,729	5,414	62.0%	0	0	2,598,720	2,598,720
6003	PULASKI	PULASKI CO. SPEC.	16,466	8,016	48.7%	0	0	3,847,680	3,847,680
6102	RANDOLPH	MAYNARD	501	321	64.1%	0	0	154,080	154,080
6103	RANDOLPH	POCAHONTAS	1,881	1,111	59.1%	0	0	533,280	533,280
6201	ST FRANCIS	FORREST CITY	3,859	3,130	81.1%	0	3,004,800	0	3,004,800
6202	ST FRANCIS	HUGHES	600	500	83.3%	0	480,000	0	480,000
6205	ST FRANCIS	PALESTINE- WHEATLEY	574	449	78.2%	0	431,040	0	431,040
6301	SALINE	BAUXITE	1,161	378	32.6%	0	0	181,440	181,440
6302	SALINE	BENTON	4,409	1,434	32.5%	0	0	688,320	688,320
6303	SALINE	BRYANT	6,851	1,680	24.5%	0	0	806,400	806,400
6304	SALINE	HARMONY GROVE	848	310	36.6%	0	0	148,800	148,800
6401	SCOTT	WALDRON	1,789	1,108	61.9%	0	0	531,840	531,840
6502	SEARCY	MARSHALL	1,000	719	71.9%	0	690,240	0	690,240
6505	SEARCY	OZARK MOUNTAIN	748	540	72.2%	0	518,400	0	518,400
6601	SEBASTIAN	FORT SMITH	13,370	8,074	60.4%	0	0	3,875,520	3,875,520
6602	SEBASTIAN	GREENWOOD	3,272	762	23.3%	0	0	365,760	365,760
6603	SEBASTIAN	HACKETT	624	238	38.1%	0	0	114,240	114,240
6604	SEBASTIAN	HARTFORD	437	248	56.8%	0	0	119,040	119,040
6605	SEBASTIAN	LAVACA	908	348	38.3%	0	0	167,040	167,040
6606	SEBASTIAN	MANSFIELD	1,098	521	47.4%	0	0	250,080	250,080
6701	SEVIER	DEQUEEN	2,455	1,684	68.6%	0	0	808,320	808,320
6703	SEVIER	HORATIO	826	500	60.5%	0	0	240,000	240,000
6802	SHARP	CAVE CITY	1,319	721	54.7%	0	0	346,080	346,080
6804	SHARP	HIGHLAND	1,580	918	58.1%	0	0	440,640	440,640
6806	SHARP	TWIN RIVERS	474	360	75.9%	0	345,600	0	345,600
6901	STONE	MOUNTAIN VIEW	1,712	993	58.0%	0	0	476,640	476,640
7001	UNION	EL DORADO	4,577	2,666	58.2%	0	0	1,279,680	1,279,680
7003	UNION	JUNCTION CITY	686	286	41.7%	0	0	137,280	137,280

7006	UNION	NORPHLET	556	236	42.4%	0	0	113,280	113,280
7007	UNION	PARKERS CHAPEL	757	177	23.4%	0	0	84,960	84,960
7008	UNION	SMACKOVER	838	353	42.1%	0	0	169,440	169,440
7009	UNION	STRONG	668	435	65.1%	0	0	208,800	208,800
7102	VAN BUREN	CLINTON	1,318	813	61.7%	0	0	390,240	390,240
7104	VAN BUREN	SHIRLEY	576	425	73.8%	0	408,000	0	408,000
7105	VAN BUREN	SOUTH SIDE	508	258	50.8%	0	0	123,840	123,840
7201	WASHINGTON	ELKINS	1,136	373	32.8%	0	0	179,040	179,040
7202	WASHINGTON	FARMINGTON	2,039	626	30.7%	0	0	300,480	300,480
7203	WASHINGTON	FAYETTEVILLE	8,343	2,788	33.4%	0	0	1,338,240	1,338,240
7204	WASHINGTON	GREENLAND	929	470	50.6%	0	0	225,600	225,600
7205	WASHINGTON	LINCOLN	1,237	716	57.9%	0	0	343,680	343,680
7206	WASHINGTON	PRAIRIE GROVE	1,594	547	34.3%	0	0	262,560	262,560
7207	WASHINGTON	SPRINGDALE	15,660	7,818	49.9%	0	0	3,752,640	3,752,640
7208	WASHINGTON	WEST FORK	1,254	515	41.1%	0	0	247,200	247,200
7301	WHITE	BALD KNOB	1,320	829	62.8%	0	0	397,920	397,920
7302	WHITE	BEEBE	2,899	1,144	39.5%	0	0	549,120	549,120
7303	WHITE	BRADFORD	538	304	56.5%	0	0	145,920	145,920
7304	WHITE	WHITE CO. CENTRAL	688	318	46.2%	0	0	152,640	152,640
7307	WHITE	RIVERVIEW	1,272	849	66.7%	0	0	407,520	407,520
7309	WHITE	PANGBURN	704	361	51.3%	0	0	173,280	173,280
7310	WHITE	ROSE BUD	820	442	53.9%	0	0	212,160	212,160
7311	WHITE	SEARCY	3,902	1,550	39.7%	0	0	744,000	744,000
7401	WOODRUFF	AUGUSTA	675	572	84.7%	0	549,120	0	549,120
7403	WOODRUFF	MCCRORY	640	384	60.0%	0	0	184,320	184,320
7503	YELL	DANVILLE	892	632	70.9%	0	606,720	0	606,720
7504	YELL	DARDANELLE	1,811	1,062	58.6%	0	0	509,760	509,760
7509	YELL	WESTERN YELL CO.	442	292	66.1%	0	0	140,160	140,160
7510	YELL	TWO RIVERS	1,028	737	71.7%	0	707,520	0	707,520
<b>TOTALS</b>			459,865	246,523		11,702,880	42,604,800	93,127,680	147,435,360

Agency # 005.23

**Arkansas Department of Education**  
**Emergency Rules Governing the Distribution of Student Special Needs Funding**  
**and the Determination of Allowable Expenditure of Those Funds**  
July 10, 2006

**1.00 Authority**

- 1.01 The Arkansas State Board of Education's authority for promulgating these Rules is pursuant to Ark. Code Ann. §§ 6-11-105 and 6-20-2305 and Act 30 of the First Extraordinary Session of 2006.
- 1.02 These Rules shall be known as the Arkansas Department of Education Rules Governing the Distribution of Student Special Needs Funding and the Determination of Allowable Expenditures of Those Funds.

**2.00 Purpose**

- 2.01 The purpose of these Rules is to distribute student special needs funding and define the allowable expenditures of those funds.

**3.00 Definitions** – For purposes of these Rules, the following terms mean:

- 3.01 "Alternative Learning Environment (ALE)" is a student intervention program in compliance with Ark. Code Ann. §§ 6-18-508 and 6-18-509 and these Rules that seeks to eliminate traditional barriers to student learning.
- 3.02 "Average Daily Membership (ADM)" is the total number of days of school attended plus the total number of days absent by students in grades kindergarten through twelve (K-12) during the first three (3) quarters of each school year divided by the number of school days actually taught in the school district during that period of time rounded up to the nearest hundredth.
  - 3.02.1 in those instances in which the ADM for less than three (3) quarters is specified, the number of days used in the calculation shall be the days in the specified period of time.
  - 3.02.2 As applied to these Rules, students who may be counted for ADM are:
    - 3.02.2.1 Students who reside within the boundaries of the school district and who are enrolled in a public school operated by the school district.

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- 3.02.2.2 Legally transferred students living outside the school district but attending a public school in the school district under a provision of the Arkansas Code or Rules.
- 3.02.2.3 Students who are eligible to attend and reside within the boundaries of a school district and who are enrolled in the Arkansas National Guard Youth Challenge Program, so long as the students are participants in the program.
- 3.03 "Classroom Teacher" is an individual who is required to hold a teaching license from the Arkansas Department of Education (Department) and who is working directly in instruction with students in a classroom setting for more than seventy percent (70%) of the individual's contracted time; a guidance counselor; or a librarian.
- 3.04 "English Language Learners (ELL)" are students identified by the State Board of Education (State Board) as not proficient in the English language based upon approved English proficiency assessment instruments administered annually in the fall of the current school year, which assessments measure oral, reading, and writing proficiency.
- 3.05 "Eligible Alternative Learning Student" is a student who meets the qualifications of 4.01, is in a program that meets the qualifications of 4.02, has attended an eligible ALE for a minimum of twenty (20) days per school year and meets the requirements outlined in Section 4.
- 3.06 "NSLA" - National School Lunch Act.
- 3.07 "National School Lunch Students" are those students from low socio-economic backgrounds as indicated by eligibility for free or reduced-priced meals under the National School Lunch Act as determined on October 1 of the previous school year, unless the district participates in the NSLA Provision 2 Program.
- 3.08 "Previous Year" is the school year immediately preceding the school year in which funds are allocated.
- 3.09 "Professional Development" is a coordinated set of planned learning activities for school teachers and administrators that are based on research, are standards-based and continuous.
  - 3.09.1 Professional development shall result in individual, school-wide, and district-wide improvement designed to ensure that all students demonstrate proficiency in the state academic standards.

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- 3.10 "Provision Two (2) School District" is a school district participating in the National School Lunch Program under 42 U.S.C. § 1759a, as interpreted in 7 C.F.R. § 245.9.
- 3.11 "School District" is a geographic area with an elected board of directors that qualifies as a taxing unit for purposes of *ad valorem* property taxes under Ark. Code Ann. § 26-1-101 et seq. and which board conducts the daily affairs of public schools pursuant to the supervisory authority vested in it by the General Assembly via Title 6 of the Arkansas Code.
- 3.12 "School Year" is the year beginning July 1 of one calendar year and ending June 30 of the next calendar year.
- 3.13 "Technology" is any equipment for instructional purposes that is electronic in nature, including, but not limited to, computer hardware, computer software, internet connectivity, and distance learning.

**4.00 Special Needs - Alternative Learning Environment (ALE)**

**4.01 Eligible ALE Students**

4.01.1 An eligible ALE student shall exhibit two (2) or more of the characteristics identified in 4.01.1.1 and 4.01.1.2. Students will not be placed in the ALE based on academic problems alone.

4.01.1.1 Students placed at risk, though intelligent and capable, typically manifest one or more of the following characteristics:

- Disruptive behavior
- Drop out from school
- Personal or family problems or situations
- Recurring absenteeism
- Transition to or from residential programs

4.01.1.2 Situations that negatively affect the student's academic and social progress may include, but are not limited to:

- Ongoing, persistent lack of attaining proficiency levels in literacy and mathematics
- Abuse: physical, mental, or sexual
- Frequent relocation of residency
- Homelessness
- Inadequate emotional support
- Mental/physical health problems
- Pregnancy
- Single parenting

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- 4.02.1.9 Maintain documentation of the presence of these characteristics listed in 4.01.1.
- 4.02.1.10 Provide that the ALE shall not be punitive but should provide the guidance, counseling, and academic support to enable students who are experiencing emotional, social or academic problems to continue to make progress toward educational goals either in the traditional educational system or the General Educational Development (GED) Program.
- 4.02.1.11 Provide that computer programs when used in the ALE setting will supplement teacher instruction.
- 4.02.1.12 Develop an agreement with the parent or guardian, teacher or ALE director, and student outlining the responsibilities of the school, parent, and the student to provide assurance that the plan for each student is successful.
- 4.02.1.13 Provide a curriculum including mathematics, science, social studies, and language arts aligned with the regular classroom instruction or with the standards for the tests of the GED.
- 4.02.1.14 Develop exit criteria on which to base a student's return to the regular program.
- 4.02.1.15 Require ALE staff to meet the same professional development requirements as other certified staff.
- 4.02.1.16 The Department shall monitor ALEs as required in compliance with Ark. Code Ann. § 6-18-509.

#### 4.03 ALE Funding

- 4.03.1 The ALE funding amount shall be the amount required by law times the district's eligible ALE student's full time equivalent (FTE) in the previous school year as defined in this Rule.
- 4.03.2 An ALE student shall be counted as no more than one student for ALE funding purposes.
- 4.03.3 An eligible ALE student's FTEs shall be determined by the number of hours taught in an eligible ALE each day divided by 6 hours, times

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the number of days an eligible student attends the ALE, plus the number of days absent, divided by the number of school days actually taught in the school year.

4.03.3.1 Alternative Learning Student is a student who has attended an eligible ALE for a minimum of twenty (20) days per school year.

4.03.3.2 Full Time Equivalent (FTE) Alternative Learning Student is an alternative learning student who has at least six (6) hours per day of student/teacher interaction time in the ALE, and attends the ALE for the entire school year.

4.03.4 ALE funding is restricted state aid.

4.03.5 ALE funding shall be spent on eligible activities identified in this Rule except as otherwise allowed by law or rule.

4.03.6 ALE funding may be carried over from one fiscal year to the next but these funds shall remain restricted to the priority areas as defined in this Rule.

**5.00 Special Needs English Language Learners (ELL)**

5.01 The ELL funding amount shall be the amount required by law, times the district's identified English Language Learners in the current school year.

5.01.1 The number of identified ELL students shall be a total of all students identified by the State Board as not proficient in the English language based upon approved English proficiency assessment instruments.

5.01.2 Documentation to be used for the calculation of the number of identified ELL students must be submitted to the Department no later than November 30 of each school year.

5.01.3 An ELL student shall be counted as no more than one student for ELL funding purposes.

5.02 School districts shall maintain documentation of each student identified as an ELL.

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- 5.03 For ELL funding purposes, State-approved English proficiency assessment instruments include:
  - 5.03.1 LAS (Language Assessment Scales)
  - 5.03.2 IDEA (IPT-Idea Proficiency Test)
  - 5.03.3 Woodcock-Munoz
  - 5.03.4 Maculaitis Assessment of Competencies
  - 5.03.5 Language Assessment Battery
- 5.04 ELL funding shall be expended for the following eligible activities:
  - 5.04.1 Salaries for ELL-skilled instructional services (not supplanting district financial obligations for providing teachers for ELL students).
  - 5.04.2 Funds for teacher training, consultants, workshops, ELL course work, including Department sponsored training programs.
  - 5.04.3 Released-time for planning program selection, and ELL program development.
  - 5.04.4 Selection and purchase of language-appropriate instructional and supplemental (enrichment) materials for ELL students (including computer-assisted technology and library materials).
  - 5.04.5 Counseling services, community liaison staff with language and cultural skills appropriate to the ELL population.
  - 5.04.6 Assessment activities, which address identification, placement, and review of ELL student academic progress, as well as evaluation activities to determine the effectiveness of the district's ELL program.
- 5.05 ELL funding may be carried over from one fiscal year to the next, but these funds shall remain restricted to those priority areas defined in this Rule.

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**6.00 Special Needs National School Lunch Act (NSLA)**

- 6.01 The NSLA funding amount shall be determined by the district's total students identified as eligible to participate in the NSLA Program divided by the district's total enrolled students. The product shall be calculated to one tenth of one percent, and rounded up to the nearest whole number from five tenths or down to the nearest whole number from four tenths. NSLA funding for Provision 2 districts shall be determined as defined in Ark. Code Ann. § 6-20-2303\_(12)(B)(i) and (ii).
  - 6.01.1 Districts with ninety percent (90%) or greater of the previous school year's enrolled students eligible for the NSLA Program shall receive the amount required by law for each student eligible for the NSLA Program.
  - 6.01.2 Districts with less than ninety percent (90%) and at least seventy percent (70%) of the previous school year's enrolled students eligible for the NSLA Program shall receive the amount required by law for each student eligible for the NSLA Program.
  - 6.01.3 Districts with less than seventy percent (70%) of the previous school year's enrolled students eligible for the NSLA Program shall receive the amount required by law for each student eligible for the NSLA Program.
  - 6.01.4 Districts must participate in the federal National School Lunch Program to receive NSLA Funding.
- 6.02 The district percentage of NSLA eligible students shall be determined from the Arkansas Public School Computer Network's Cycle 2 report for the previous school year.
  - 6.02.1 The Child Nutrition Unit of the Department shall verify the Cycle 2 report for accuracy.
  - 6.02.2 Adjustments to the Cycle 2 report shall be made by the Department based on documentation provided by the school district.

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## 6.03 NSLA Growth Funding

6.03.1 The Department shall use the Cycle 2 enrollment data for the previous four years to calculate a three year trend in district enrollment.

6.03.2 If a district has grown at least one percent for each of the three previous years, they shall qualify for NSLA Growth Funding.

6.03.3 Districts that qualify for funding shall receive NSLA Growth Funding.

6.03.4 The funding shall be calculated as the three year average growth in enrollment multiplied by the district's previous year's percentage of students eligible for the NSLA Program multiplied by the per student funding determined in 6.01.

6.04 Each school district with NSLA students shall provide a research based program(s) or purpose(s) for students eligible for NSLA funding in order to improve instruction and increase academic achievement of those students.

6.05 NSLA funding shall not be used to meet or satisfy the Arkansas Standards for Accreditation required by Ark Code Ann. § 6-15-201 et seq. the Arkansas Minimum Teacher Salaries required by Ark. Code Ann. § 6-17-2403 except as otherwise allowed herein this section.

6.05.1 NSLA funding shall not be used to augment, replace, or supplement the mandatory requirements of the Arkansas Standards for Accreditation required by Ark. Code Ann. § 6-15-201 et seq. unless the expenditure is for the purposes outlined under Section 6.06 of this Rule.

6.05.2 The salary of an employee in an eligible program under Section 6.00 of this Rule that would exceed the Standards for Accreditation may be paid with NSLA funding.

6.05.3 District may use NSLA funds to increase salaries above the minimum salary schedule required by Ark. Code Ann. § 6-17-2403 provided those classroom teachers are exclusively employed for the purposes established under this Rule to increase the academic achievement of NSLA students.

6.05.4 Through June 30, 2007, districts may use NSLA funds to supplement or increase all classroom teacher salaries above the

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minimum salary schedule required by Ark. Code Ann. § 6-17-2403 provided the district meets the following conditions:

6.05.4.1 The school district meets the minimum teacher salary schedule in § 6-17-2403 without using Section 6.00 NSLA funds; and

6.05.4.2 The school district was already using NSLA Section 6.00 funds to supplement salaries of classroom teachers as of January 1, 2006.

6.05.5 NSLA funds may be used to pay salaries of teachers to reduce the pupil to teacher ratio below the mandates specified in the Arkansas Standards of Accreditation.

6.06 NSLA funding shall 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 NSLA identified students at risk of not meeting challenging academic standards either existing or new. These programs or purposes include:

6.06.1 Employing Literacy and/or Mathematics and/or Science Specialists/Coaches (K-12) that meet the following requirements:

6.06.1.1 The Specialists/Coaches are educators who assist in curriculum alignment with state curriculum documents; alignment of classroom assessment with statewide exams; instructional strategies; professional development and implementation of training; choosing standards-based instructional materials; understanding of current research; advantageous arrangement of the instructional day; and integrating technology into instruction.

6.06.1.2 Qualifications for Specialists/Coaches (K-12):

- At least three years of recent teaching experience in appropriate content areas within grades K-12
- Knowledge of Arkansas Curriculum Framework
- Knowledge of current research and effective practices in standards-based curriculum, instruction, and assessment
- Experience in adult learning situations and in team problem solving
- A bachelor's degree (a master's degree would be preferred).

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- 6.06.2 Providing research based professional development in the areas of literacy and/or mathematics and/or science in grades Kindergarten through twelfth grade (K-12) as defined in the Arkansas Department of Education Regulations Governing Attendance at Certified Instructional Professional Development Sessions (Ark. Code Ann. § 6-17-702).
- 6.06.3 Employing highly qualified classroom teachers in grades Kindergarten through twelfth grade (K-12) pursuant to the restrictions set forth in Section 6.05 of this Rule.
- 6.06.4 Providing research-based before and after-school academic programs, including transportation to and from the programs.
- 6.06.5 Providing research-based pre-kindergarten programs that meet the program standards as outlined in the Rules Governing the Arkansas Better Chance program.
- 6.06.6 Employing Tutors:
  - 6.06.6.1 Tutors must be able to demonstrate competency (as determined locally) in each area where instruction is provided.
  - 6.06.6.2 Tutors must work under the supervision of highly qualified classroom teachers.
- 6.06.7 Employing Teacher's Aides:
  - 6.06.7.1 Teacher's aides must be highly qualified.
  - 6.06.7.2 Teacher's aides must work under the direct supervision of highly qualified teachers.
- 6.06.8 Employing certified counselors, licensed social workers and/or nurses.
- 6.06.9 Employing Curriculum Specialists:
  - 6.06.9.1 The Curriculum Specialists shall meet current licensure requirements that are outlined in the Rules Governing Initial and Standard Administrator Licensure.
- 6.06.10 Providing parent education.

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- 6.06.11 Providing summer programs that employ research-based methods and strategies.
- 6.06.12 Providing early intervention programs:
  - 6.06.12.1 Early intervention means short-term, intensive, focused, individualized instruction developed from ongoing, daily, systematic diagnosis that occurs while a child is in the initial, kindergarten through grade one (K-1), stages of learning early reading, writing, and mathematical strategies to ensure acquisition of the basic skills and to prevent the child from developing poor problem-solving habits which become difficult to change.
- 6.06.13 Obtaining materials, supplies, and equipment, including technology, used in approved instructional programs or for approved purposes. The approved programs and or purposes support the local educational agency's ACSIP.
- 6.06.14 Other activities approved by the Department that will further the purposes of this Section.
- 6.07 Use of these funds shall be included within the school and/or school district's ACSIP. The ACSIP will include how the funds will be spent, the person(s) responsible, a timeline, and budget.
  - 6.07.1 The district shall evaluate programs supported by NSLA funds annually to ensure that the programs are providing intervention/prevention services designed to increase student achievement.
  - 6.07.2 The district shall maintain documentation that supports gains in student achievement as measured by the state assessment system.
- 6.08 NSLA funding may be carried over from one fiscal year to the next, but these funds shall remain restricted to priority areas as defined in this Rule.
- 6.09 NSLA funding is restricted state aid, except as otherwise allowed by law or Rule.

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**7.00 Special Needs Professional Development**

- 7.01 The Professional Development funding amount shall be an amount up to the amount required by law times the district's ADM of the previous school year.
- 7.02 Professional Development funding shall be expended for approved programs and purposes identified in the Rules Governing Professional Development and employing literacy, mathematics, or science coaches as described in this Rule.
- 7.03 Districts may expend state Professional Development funding to provide the requisite hours of professional development required by Rule or law.
- 7.04 Professional Development funding is restricted state aid. Professional Development funding shall be spent on activities identified in this Rule, except as otherwise allowed by law or Rule.
- 7.05 Professional Development funding may be carried over from one fiscal year to the next, but these funds shall remain restricted to priority areas as defined in this Rule.

**8.00 Financial Accounting for Special Needs Funding for ALE, ELL, NSLA, and Professional Development**

- 8.01 After having provided programs designed to meet the needs of students in the respective categorical funding areas, a school district may transfer and expend funds on any of the special needs categories allowed for in this Rule.
- 8.02 Special needs funding of ALE, ELL, NSLA, and Professional Development may be used for any of the expenditures identified in this Rule.
- 8.03 Districts shall report the funds received under each special needs funding category.
- 8.04 Districts shall report the expenditures of all special needs funds as required by law, including, but not limited to, fund balances remaining on June 30 of each year.
- 8.05 The funds received, transferred, expended, and/or carried over shall balance.

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8.06 If the Department determines that a district would lose any federal funding due to these explicated expenditure requirements, the special needs funds may be expended for other academic programs or salaries, as permitted by the Department.

9.00 Emergency Clause

Whereas, due to the recent decision of the Arkansas Supreme Court in the matter of *Lake View School District No. 25, et al v. Mike Huckabee, et al*, that determined that the Arkansas General Assembly failed to provide sufficient stringent control over the proper allocation and expenditure of certain educational categorical funding; therefore, it is hereby determined that the aforementioned amendments to these Rules are immediately necessary, and the Arkansas State Board of Education finds that imminent peril to the schools and school districts of this state, as articulated above, will exist if these Rules are not promulgated on an emergency basis pursuant to Ark. Code Ann. § 25-15-204.

10.00 Effective Date

These emergency Rules shall become effective immediately upon approval by the Arkansas State Board of Education and shall be in effect until such time as the permanent rules becomes effective.