

Arkansas Department of Education
Emergency Rules Governing the Distribution of Student Special Needs Funding
and the Determination of Allowable Expenditure of Those Funds

March 13, 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 6-20-2304.
- 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.

- 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.

- 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

4.02 Eligible ALE Programs

4.02.1 An eligible ALE program shall meet the following guidelines:

- 4.02.1.2 Have students taught by a currently licensed teacher. If course credit is granted, the teacher must be highly qualified by the 2005-2006 school year or in districts recognized in the Rural Education Achievement Program's (REAP) Small, Rural School Achievement Program (SRSA) by the end of the 2006-2007 school year. Newly hired teachers in these designated districts will have three years from the date of hire to become highly qualified as required by the federal No Child Left Behind Act of 2001.
- 4.02.1.3 Have a student/teacher ratio in grades Kindergarten through six (K-6) of no more than ten (10) to one (1). If a paraprofessional is employed in addition to a licensed supervisor, the student/teacher ratio shall be no more than twelve (12) to one (1).
- 4.02.1.4 Have a student/teacher ratio in grades seven through twelve (7-12) of no more than fifteen (15) to one (1). If a paraprofessional is employed in addition to a licensed supervisor, the student/teacher ratio shall be no more than eighteen (18) to one (1).
- 4.02.1.5 Provide each alternative learning student with access to the services of a school counselor or a mental health professional, a nurse, and support services provided to other students.
- 4.02.1.6 Coordinate the ALE with state and federal student assistance programs.
- 4.02.1.7 Submit a description of the ALE on a form developed by the Department. This description shall be included in the districts' Arkansas Comprehensive School Improvement Plan (ACSIP).
- 4.02.1.8 Have an Alternative Education Placement Team in place in order to determine student placement in the ALE. This team should include the school counselor, the ALE director or principal, a parent or legal guardian and a regular classroom teacher.

- 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

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.

- 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.

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.

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. and 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 shall not use NSLA funds to increase salaries above the minimum salary schedule required by Ark. Code Ann. § 6-17-2403 unless those classroom teachers are exclusively employed for the purposes established under this Rule to increase the academic achievement of NSLA students.

6.05.4 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).

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.
- 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.

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.
- 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.