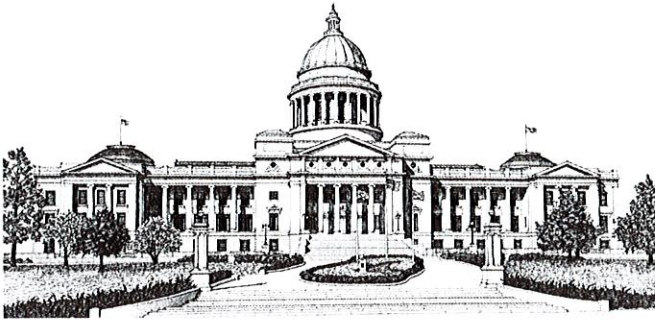


# ARKANSAS REGISTER

## Transmittal Sheet

Use only for FINAL and EMERGENCY RULES



Secretary of State  
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For Office  
Use Only:

Effective Date \_\_\_\_\_ Code Number \_\_\_\_\_

Name of Agency Arkansas Division of Elementary and Secondary Education

Department Fiscal and Administrative Services

Contact Courtney Salas-Ford E-mail courtney.salas-ford@arkansas.gov Phone (501) 682-4752

Statutory Authority for Promulgating Rules Ark. Code Ann. 6-11-105, 6-5-301 et seq., 6-20-2301 et seq., 19-5-942, 25-15-201 et seq.

**Rule Title:** (Emergency) DESE Rules Governing the School District Educational Excellence Trust Fund

Intended Effective Date  
(Check One)

Emergency (ACA 25-15-204)

10 Days After Filing (ACA 25-15-204)

Other \_\_\_\_\_  
(Must be more than 10 days after filing date.)

Legal Notice Published .....

Final Date for Public Comment .....

Reviewed by Legislatice Council .....

Adopted by State Agency .....

Date

N/A

N/A

Executive Subcommittee--7/18/19

6/13/19

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Courtney Salas-Ford courtney.salas-ford@arkansas.gov

July 19, 2019

Contact Person

E-mail Address

Date

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

  
\_\_\_\_\_  
Signature

(501) 682-4752

courtney.salas-ford@arkansas.gov

Phone Number

E-mail Address

Deputy General Counsel

Title

July 19, 2019

Date

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

**January 2014 EMERGENCY RULE - Effective July 20, 2019**

**1.00 PURPOSE**

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

**2.00 AUTHORITY**

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

**3.00 DEFINITIONS**

As used in these rules:

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

**4.00 CALCULATION**

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

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

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

## 5.00 ALLOCATION

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

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

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

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

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

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

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

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

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

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

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

#### Emergency Clause

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

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

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

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

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

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Arkansas Department of Education

**DIVISION** Fiscal and Administrative Services

**PERSON COMPLETING THIS STATEMENT** Courtney Salas-Ford

**TELEPHONE** 501-682-4752 **FAX** 501-682-4249 **EMAIL:** [Courtney.Salas-Ford@arkansas.gov](mailto:Courtney.Salas-Ford@arkansas.gov)

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

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

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

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

- (a) How the additional benefits of the more costly rule justify its additional cost;  
\_\_\_\_\_
  
- (b) The reason for adoption of the more costly rule;  
\_\_\_\_\_
  
- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;  
\_\_\_\_\_
  
- (d) Whether the reason is within the scope of the agency’s statutory authority; and if so, please explain.  
\_\_\_\_\_

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

- (a) What is the cost to implement the federal rule or regulation?

<b><u>Current Fiscal Year</u></b>	<b><u>Next Fiscal Year</u></b>
General Revenue _____	General Revenue _____
Federal Funds _____	Federal Funds _____
Cash Funds _____	Cash Funds _____
Special Revenue _____	Special Revenue _____
Other (Identify) _____	Other (Identify) _____

Total \_\_\_\_\_

Total \_\_\_\_\_

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

**Current Fiscal Year**

**Next Fiscal Year**

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>
 Total	 <u>0</u>

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>
 Total	 <u>0</u>

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

**Current Fiscal Year**

**Next Fiscal Year**

\$ 0

\$ 0

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

**Current Fiscal Year**

**Next Fiscal Year**

\$ 0

\$ 0

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

Yes  No

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

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
  - (a) justifies the agency's need for the proposed rule; and
  - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

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