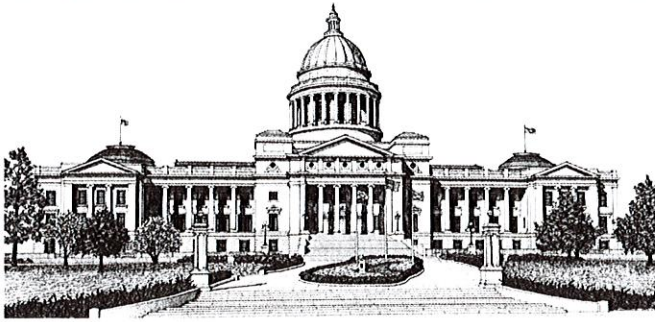


ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

Mark Martin

500 Woodlane, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Department of Education Division of Elementary and Secondary Education

Department Learning Services

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

Statutory Authority for Promulgating Rules Ark. Code Ann. 6-20-2303, 6-20-2304, 6-41-207

Rule Title: DESE Rules Governing Special Education and Related Services, Sec. 24.00 High-Cost Occurrences

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 Legislative Council

Adopted by State Agency

Date

2/24/2019

3/26/2019

8/23/2019

5/9/2019

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

Courtney Salas-Ford

courtney.salas-ford@arkansas.gov

10/2/2019

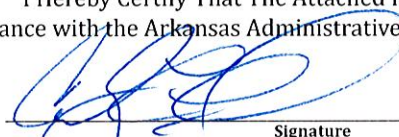
Contact Person

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

Phone Number

courtney.salas-ford@arkansas.gov

E-mail Address

Deputy General Counsel

Title

10/2/2019

Date

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Education

DIVISION Learning Services

PERSON COMPLETING THIS STATEMENT Courtney Salas-Ford

Courtney.Salas-

TELEPHONE 501-682-4752 **FAX** 501-682-4249 **EMAIL:** 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 Rules Governing the Special Education Catastrophic Occurrence 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;
N/A

(b) The reason for adoption of the more costly rule;
N/A

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;
N/A

(d) Whether the reason is within the scope of the agency’s statutory authority; and if so, please explain.
N/A

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

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

Current Fiscal Year

Next Fiscal Year

General Revenue	<u>N/A</u>
Federal Funds	_____
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____

General Revenue	<u>N/A</u>
Federal Funds	_____
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____

Total N/A

Total N/A

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

Current Fiscal Year

General Revenue N/A
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total N/A

Next Fiscal Year

General Revenue N/A
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total N/A

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

\$ 0

Next Fiscal Year

\$ 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

\$ _____

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.

**ARKANSAS DIVISION OF ELEMENTARY AND SECONDARY EDUCATION
SPECIAL EDUCATION AND RELATED SERVICES
24.00 SPECIAL EDUCATION HIGH-COST OCCURRENCES
Effective October 2019**

24.01 REGULATORY AUTHORITY

24.01.1 These rules shall be known as the Division of Elementary and Secondary Education Rules Governing Special Education High-Cost Occurrences.

24.01.2 These rules are enacted pursuant to the State Board of Education's authority under Ark. Code Ann. §§ 6-20-2303, 6-20-2304, 6-41-207 and 6-11-105, and Act 757 of 2019.

24.02 PURPOSE

24.02.1 It is the purpose of these rules to set forth the criteria for determining local school district eligibility for seeking reimbursement for Special Education High-Cost Occurrences as defined under Ark. Code Ann. § 6-20-2303(21).

24.02.2 These rules define the process for local school district access to funds for Special Education High-Cost Occurrences.

24.03 DEFINITIONS

24.03.1 For the purpose of these rules, Special Education High-Cost Occurrences means those individual cases where special education and related services required by the individualized education program (IEP) of a particular child with disabilities are unduly expensive, extraordinary and/or beyond the routine and normal costs associated with special education and related services provided by the local education agency.

24.03.2 IDEA refers to the Individuals with Disabilities Education Act.

24.03.3 IEP means the individualized education program for a student with disabilities under the IDEA.

24.04 ADMINISTRATION

24.04.1 The Special Education High-Cost Occurrences fund will be administered by the Arkansas Department of Education.

24.04.2 In the event that requests for reimbursement exceed the amount of funds available in the High-Cost Occurrences fund, reimbursements will be pro-rated.

24.05 ELIGIBILITY CRITERIA FOR HIGH-COST OCCURRENCE

24.05.1 A district is deemed eligible to apply for reimbursement under these rules for a high-cost occurrence when the costs associated with an individual student, after offsets from other available revenue sources, equal or exceed \$15,000.

24.05.2 In calculating costs associated with an individual student, the costs must be incurred solely as a result of the provision of special education and related services to the individual student.

24.05.3 Ineligible costs include, but may not be limited to, the basic costs of the classroom, such as the maintenance and operation of the classroom, basic materials and supplies, basic transportation and other routine and normal costs associated with the provision of special education and related services to children with disabilities.

24.05.4 Eligible costs include any other costs not excluded in 24.05.3 that the district is incurring solely as a result of the provision of special education and related services to this student. Examples include private duty nursing services, special transportation aide, specialized equipment, specific staff development, occupational therapy, physical therapy, speech language pathology, personal care assistance, extended school year services, the pro-rata share of the costs of a teacher whose primary assignment is the student, and Medicaid match.

24.05.6 The district must demonstrate and document that it has fully accessed, to the maximum extent possible, other available revenue sources, including Medicaid and Title VI-B, or provide documentation as to why these other revenue sources were unavailable to the district for this high-cost occurrence.

24.00 SPECIAL EDUCATION HIGH-COST OCCURENCES

24.05.7 Other available revenue sources, including Medicaid and Title VI- B, are to be applied by the district as offsets to reimbursable costs for each high-cost occurrence reimbursed through the High-Cost Occurrence fund.

24.06 REIMBURSEMENT FOR HIGH-COST OCCURRENCE BASED ON INDIVIDUAL STUDENT

24.06.1 The Arkansas Division of Elementary and Secondary Education, Special Education Unit, will provide local education agencies with a format for requesting high-cost occurrence reimbursement to be completed and submitted to the Special Education Unit no later than April 1 of each school year.

24.06.2 Reimbursement requests will be reviewed to determine whether the district has incurred a “high-cost occurrence” as defined in these rules.

24.06.3 After offsets from other revenue sources as specified in 24.05.6, the maximum amount of reimbursement for each high-cost occurrence will be the sum of the following -

24.06.3.1 One hundred percent (100%) of the amount above the \$15,000 threshold up to \$65,000, and

24.06.3.2 Eighty percent (80%) of the amount above \$65,000.

24.07 LIMITATION ON REIMBURSEMENT

24.07.1 No individual high-cost occurrence shall be eligible for reimbursement of more than \$100,000 from this fund per year.