

# 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 \_\_\_\_\_

Department \_\_\_\_\_

Contact \_\_\_\_\_ E-mail \_\_\_\_\_ Phone \_\_\_\_\_

Statutory Authority for Promulgating Rules \_\_\_\_\_

**Rule Title:** \_\_\_\_\_

**Intended Effective Date**

(Check One)

**Date**

Emergency (ACA 25-15-204) Legal Notice Published ..... \_\_\_\_\_

10 Days After Filing (ACA 25-15-204) Final Date for Public Comment ..... \_\_\_\_\_

Other \_\_\_\_\_ Reviewed by Legislatice Council ..... \_\_\_\_\_  
(Must be more than 10 days after filing date.)

Adopted by State Agency ..... \_\_\_\_\_

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

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.)

\_\_\_\_\_/Jennifer Dedman\_\_\_\_\_  
Signature

\_\_\_\_\_  
Phone Number E-mail Address

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**DIVISION OF ELEMENTARY AND SECONDARY EDUCATION  
RULES GOVERNING DISTANCE AND DIGITAL LEARNING  
May 2020**

**1.00 Purpose**

- 1.01 The purpose of these Rules is to set reasonable guidelines for the coordination and implementation of learning where the teacher and student are separated by place and to provide guidance for the implementation of digital learning environments that offer student-centered, personalized, and flexible learning options.
- 1.02 These Rules are intended to ensure that distance learning is available to every Arkansas student who wishes to participate, to improve content and course offerings available to students—including Advanced Placement courses or other academic courses not otherwise available—and encourage innovation in education, and to prepare students for participation in the information age economy.
- 1.03 In order to ensure proper implementation, the Division of Elementary and Secondary Education shall work with other state agencies involved in distance and digital learning to implement distance and digital learning throughout the state.

**2.00 Authority**

- 2.01 The Arkansas State Board of Education’s authority for promulgating these Rules is pursuant to Ark. Code Ann. §§6-16-1401 et seq., 6-47-201 et seq., and Act 709 of 2019.

**3.00 Definitions**

- 3.01 “Adult Facilitator” is the person responsible for supervising and assisting the students at a brick-and-mortar location. The adult facilitator must be an adult approved by the school district or open-enrollment public charter school.
- 3.02 “Blended Learning” is education in which instruction and content are delivered through supervised instruction in a classroom and online delivery of instruction with some element of student control over time, place, path, or pace.
- 3.03 “Digital Learning” is a digital technology or internet-based educational delivery model that does not rely exclusively on compressed interactive video. Digital learning may be a type of distance learning.

- 3.04 “Digital Learning Provider” is an agency or entity approved by the Division of Elementary and Secondary Education pursuant to these rules that provide digital learning courses to public schools.
- 3.05 “Distance Learning” is an interactive telecommunications system that utilizes information technology and/or audio, video, and similar technological elements, is compatible with other distance learning networks, and is used for the purpose of enhancing instructional opportunities in Arkansas public schools. Distance learning may or may not utilize digital learning.
- 3.06 “Division” is the Division of Elementary and Secondary Education.
- 3.07 “Infrastructure” is an interlinked system of wires, cables, fiber optics, or other wireline or wireless communications media.
- 3.08 “Public School Student Accessing Courses at a Distance” is a student who attends all classes virtually through a public school district or open-enrollment public charter school.
- 3.09 “Supplemental Instruction” is instruction used to reinforce or enrich a course or to provide the student an educational opportunity outside of the normal course structure.
- 3.10 “Teacher of Record” is the appropriately licensed or approved educator responsible for:
  - 3.10.1 Ensuring the course content is aligned with the appropriate Arkansas Academic Standards and course frameworks approved by the Division of Elementary and Secondary Education or Division of Career and Technical Education;
  - 3.10.2 Providing direct instruction as necessary; and
  - 3.10.3 Assigning a grade or completion status for the course.
  - 3.10.4 The Teacher of Record shall be responsible for supervising the administration of student assessments or ensuring, through a designee, that appropriate supervision of administration of student assessments is provided.
  - 3.10.5 A Teacher of Record can be either an employee of a school district or open-enrollment public charter school or an employee of a digital learning provider.
- 3.11 “Technology” is any equipment for instructional purposes that is electronic in nature including, but not limited to, computer hardware, computer software, and

internet connectivity.

#### **4.00 Arkansas Distance Learning Development Program**

- 4.01 The Arkansas Distance Learning Development Program shall be conducted by the Division of Elementary and Secondary Education and administered through the Commissioner.
- 4.02 The Arkansas Distance Learning Development Program shall have four (4) focus areas:
  - 4.02.1 To help alleviate the increasing shortage of available qualified teachers;
  - 4.02.2 To provide additional course-scheduling opportunities for students;
  - 4.02.3 To provide an opportunity for students to access an enriched curriculum and additional courses beyond those mandated by the Standards for Accreditation of Arkansas Public Schools and School Districts; and
  - 4.02.4 To develop and make available online professional development and instructional resources for all teachers and administrators.
- 4.03 The funding necessary to carry out the provisions of Section 4.00 may be derived from donations, grants or legislative appropriation.
  - 4.03.1 The Commissioner may solicit and receive donations and grants for the purpose of administering the Arkansas Distance Learning Development Program.
  - 4.03.2 All donations, grants, and appropriations received shall be accounted for by the Division.
  - 4.03.3 Fund balances may be carried over from one year to the next to continue the Arkansas Distance Learning Development Program.
- 4.04 The Commissioner shall review the implementation of the Arkansas Distance Learning Development Program annually and make recommendations to the State Board of Education regarding the number and amount of awards to ensure that the purpose of the Arkansas Distance Learning Development Program is achieved.
- 4.05 The Commissioner may enter into contracts or provide grants to local education agencies, education service cooperatives, or other entities for personnel, facilities, and services necessary to implement the Arkansas Distance Learning Development Program.

- 4.06 Students taking courses through the Arkansas Distance Learning Development Program shall be considered entitled to any public education credits and grades assigned through the Arkansas Distance Learning Development Program and those credits and grades shall be accepted by all public schools in the State of Arkansas.

**5.00 Distance Learning Grants**

- 5.01 The following grant standards are hereby developed to provide grants to education service cooperatives for acquiring equipment and receiving telecommunications services necessary for each school district to have distance learning availability.
- 5.02 The grants shall be used to assist school districts that do not have distance learning capabilities and to assist school districts in upgrading existing distance learning capabilities.
- 5.03 The grants shall also be used by the education service cooperatives to provide technical assistance to the school districts in implementing and maintaining distance learning as an educational tool.
- 5.04 Each school district shall have adequate connectivity to provide quality of service for distance learning.
- 5.05 Distance learning technical protocols shall be in alignment with technical standards set by the Director of the Division of Information Systems.
- 5.06 Education service cooperatives and school districts shall coordinate with the Division to seek to obtain the benefits of the Federal Communications Commission's E-Rate discount program.

**6.00 Requirements for the Administration of Distance Learning in Elementary and Secondary Schools**

Note: These rules provide minimum distance learning educational supervision requirements only and are not designed to replace legal or other student supervision responsibilities schools have to properly protect and supervise students.

- 6.01 Courses offered through distance learning shall include, without limitation:
  - 6.01.1 College preparatory courses, including, without limitation, calculus, physics, Arkansas history, foreign languages, and computer science; and

- 6.01.2 Technological courses, including, without limitation, advanced math and science courses, advanced computer skills courses, and advanced courses in the arts.
- 6.02 All distance learning courses shall follow the Arkansas Academic Standards and course frameworks regardless of digital provider.
  - 6.02.1 Schools may utilize courses from outside the state if the out-of-state provider is approved by the Division before the school offers the courses.
  - 6.02.2 Any out-of-state provider shall provide assurances of alignment with Arkansas Academic Standards and course frameworks through the application process.
  - 6.02.3 Districts that choose to offer additional digital offerings that are not currently approved for credit may offer the course for no credit or local credit only, or submit the course through the course approval process.
- 6.03 All distance learning courses shall have a teacher of record who is an appropriately licensed or approved primary instructor and is responsible for the course. School districts are responsible for ensuring that the teacher of record in a digital learning platform is performing job responsibilities as a teacher of record.
- 6.04 Each receiving site shall have an adult facilitator to:
  - 6.04.1 Supervise any instructional activity where students meet as a group; and
  - 6.04.2 Administer all student achievement assessments used to determine a student's final grade.
- 6.05 Student achievement assessments shall be designed to assess the degree to which a student masters the approved content standards and curriculum framework for the distance learning course.
- 6.06 Distance learning that is purely supplemental instruction shall be considered an enhancement to the teacher's regular instruction and shall not be subject to the restrictive provisions of these rules. This includes any incorporation of digital resources that does not provide the student some element of control over time, place, path, and/or pace in the delivery.
- 6.07 Distance learning courses shall be considered large group instruction courses for the purposes of the Standards for Accreditation of Arkansas Public Schools and School Districts.

- 6.08 Any public school district or open-enrollment public charter school offering distance learning courses shall abide by the policies adopted by the distance learning provider or supplier of courses in such a way that students taking distance learning courses are able to participate in the courses without falling outside of established attendance policies.
- 6.09 Attendance in distance learning courses shall be determined by the online attendance and time the student is working on the course as monitored by the school district or open-enrollment public charter school to ensure the student progresses toward credit attainment for the course.

**7.00 Participation in Distance Learning Courses**

- 7.01 A public school district or open-enrollment public charter school may offer and teach distance learning courses to a student enrolled in a private school or a home school if:
  - 7.01.1 The student resides in the public school district where the public school or open-enrollment public charter school is located;
  - 7.01.2 The student agrees to physically attend the public school or open-enrollment public charter school for the purposes of taking state tests and assessments required for the particular course or courses taken by the student; and
    - 7.01.2.1 Section 7.01.2 shall not be construed to require a home-schooled student or private school student to take any test or assessment not specifically required for completion of the course for which the student is enrolled.
  - 7.01.3 The distance learning course is approved by the Division of Elementary and Secondary Education, or is aligned with the appropriate content standards and curriculum frameworks developed and approved by the State Board of Education or Division of Career and Technical Education.
  - 7.01.4 The Commissioner of Elementary and Secondary Education may waive the requirements of Section 7.01 on an individual basis for a student who is unable to attend due to conditions that prevent the child from physically attending a public school or open-enrollment public charter school, upon written request from the parent mailed to:

Office of the Commissioner  
ATTN: Distance and Digital Learning Waiver  
Division of Elementary and Secondary Education  
Four Capitol Mall

Little Rock, Arkansas 72201

- 7.02 A public school district or open-enrollment public charter school that teaches or offers a distance learning course that complies with section 6.00 of these rules to one (1) or more home-schooled or private school students who meet the conditions of 7.01 shall be entitled to an amount equal to one-sixth (1/6) of the state foundation funding amount for each course taught to a private school student or home-schooled student.
- 7.03 A public school district or open-enrollment public charter school shall not be entitled to more than the equivalent of state foundation funding for one (1) average daily membership per student regardless of the number of distance learning courses received by a particular home-schooled or private school student.
- 7.04 A student may take all courses virtually through a public school district or open-enrollment public charter school.
  - 7.04.1 Once a student who formerly was home-schooled or attended a private school accesses all courses virtually through a public school district or open-enrollment public charter school, the student is a public school student accessing courses at a distance.
    - 7.04.1.1 All laws pertaining to public school students shall pertain to a public school student accessing courses at a distance.

**8.00 Digital Learning Environment**

- 8.01 A digital learning environment shall be composed of:
  - 8.01.1 Access to quality digital learning content and online blended learning courses;
  - 8.01.2 Tailored digital content designed to meet the needs of each student;
  - 8.01.2 Digital learning content that meets or exceeds the curriculum standards and requirements adopted by the State Board of Education that is capable of being assessed and measured through standardized tests or local assessments; and
  - 8.01.3 Infrastructure that is sufficient to handle and facilitate a quality digital learning environment.

**9.00 Digital Learning Providers**

- 9.01 To become an approved digital learning provider a digital learning provider shall submit proof that the provider:



- 9.01.1 Is nonsectarian and nondiscriminatory in its programs, employment practices, and operations;
- 9.01.2 Demonstrates or partners with an organization that demonstrates successful experience in furnishing digital learning courses to public school students as demonstrated by student growth in each subject area and grade level for which it proposes to provide digital learning courses;
- 9.01.3 Provides digital learning services that meet or exceed the minimum curriculum standards and requirements established by the State Board of Education and ensures instructional and curricular quality through a curriculum and accountability plan that addresses every subject area and grade level for which it agrees to provide digital learning courses; and
- 9.01.4 Utilizes qualified teachers to deliver digital learning courses to public school students.
  - 9.01.4.1 A qualified teacher who delivers digital learning courses under this section is not required to be licensed as a teacher or administrator by the State Board, but shall meet the minimum qualifications for teaching in a core content area established by rules of the State Board.
- 9.02 The Division of Elementary and Secondary Education or State Board of Education shall not require as a condition of approval of a digital learning provider that the digital learning provider limit the delivery of digital learning courses to public schools that require physical attendance at the public school to successfully complete the credit for which the digital learning course is provided.
- 9.03 To become an approved digital learning provider in Arkansas, a prospective digital learning provider shall complete the application found on the Division of Elementary and Secondary Education’s Learning Services webpage and provide the completed application by March 1 of the year in which the provider intends to participate to:
  - ATTN: Digital Learning Provider Applications
  - Arkansas Division of Elementary and Secondary Education
  - Division of Learning Services
  - Four Capitol Mall
  - Little Rock, AR 72201
- 9.04 Public school districts and open-enrollment public charter schools that provide digital learning courses to their own students without the assistance of an external

digital learning provider are not required to seek approval as a digital learning provider pursuant to these rules.

- 9.05 Public school districts and open-enrollment public charter schools that provide digital learning courses to students other than their own students without the assistance of an external digital learning provider are required to seek approval as digital learning providers pursuant to these rules.
- 9.06 Digital learning services may be procured from both in-state and out-of-state digital learning providers. Out-of-state providers approved by the Division must provide assurance through the application process that courses align to the Arkansas Academic Standards and course frameworks.
- 9.07 The Division of Elementary and Secondary Education shall annually:
  - 9.07.1 Publish a list of approved digital learning providers that offer digital learning services; and
  - 9.07.2 Provide a copy of the list of approved digital learning providers to the House Committee on Education and the Senate Committee on Education no later than June 1 of each year.

## **10.00 Digital Learning Courses**

- 10.01 All public school districts and open-enrollment public charter schools shall provide at least one (1) digital learning course to their students as either a primary or supplementary method of instruction.
- 10.02 All digital learning courses provided by public school districts and open-enrollment public charter schools shall:
  - 10.02.1 Be of high quality;
  - 10.02.2 Meet or exceed the curriculum standards and requirements established by the State Board of Education; and
  - 10.02.3 Be made available in a blended learning, online-based, or other technology-based format tailored to meet the needs of each participating student.
- 10.03 Digital learning courses shall be capable of being assessed and measured through standardized tests or local assessments.
- 10.04 Each high school student shall be required to take at least one (1) digital learning course for credit to graduate. The course may be provided by the

district or a digital provider and made available in a blended learning, online-based, or other technology-based format.

- 10.05 The State Board of Education shall not limit the number of digital learning courses for which a student may receive credit through a public school district or open-enrollment public charter school and shall ensure that digital learning courses may be used as both primary and secondary methods of instruction.
- 10.06 A public school district or open-enrollment public charter school that expels a student shall offer to the expelled student digital learning courses or other alternative educational courses for which the student may receive academic credit that is at least equal to the credit the expelled student may have received if he or she was still enrolled in his or her assigned public school or open-enrollment public charter school immediately before he or she was expelled.

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

DEPARTMENT \_\_\_\_\_  
DIVISION \_\_\_\_\_  
PERSON COMPLETING THIS STATEMENT \_\_\_\_\_  
TELEPHONE NO. \_\_\_\_\_ FAX NO. \_\_\_\_\_ EMAIL: \_\_\_\_\_

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

**SHORT TITLE OF THIS RULE**

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?

Current Fiscal Year

Next Fiscal Year

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

Total \_\_\_\_\_

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

Current Fiscal Year

Next Fiscal Year

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

Total \_\_\_\_\_

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

\$ \_\_\_\_\_

\$ \_\_\_\_\_

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.