

# ARKANSAS REGISTER



## Proposed Rule Cover Sheet

Secretary of State

John Thurston

500 Woodlane Street, Suite 026

Little Rock, Arkansas 72201-1094

(501) 682-5070

[www.sos.arkansas.gov](http://www.sos.arkansas.gov)

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Name of Department Arkansas Department of Education

Agency or Division Name Division of Elementary and Secondary Education

Other Subdivision or Department, If Applicable \_\_\_\_\_

Previous Agency Name, If Applicable \_\_\_\_\_

Contact Person Taylor Dugan

Contact E-mail taylor.dugan@arkansas.gov

Contact Phone 501-682-1958

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Name of Rule ADE-DESE Rules Governing Scoliosis Screening

Newspaper Name Arkansas Democrat Gazette

Date of Publishing February 7, 8, 9, 2020

Final Date for Public Comment March 9, 2020

Location and Time of Public Meeting Four Capitol Mall, Little Rock, AR 72201

**ARKANSAS DEPARTMENT OF EDUCATION DIVISION OF ELEMENTARY AND  
SECONDARY EDUCATION AND ARKANSAS DEPARTMENT OF HEALTH  
RULES GOVERNING SCOLIOSIS SCREENING**

**1.00 REGULATORY AUTHORITY**

1.01 These rules shall be known as the Arkansas Department of Education Division of Elementary and Secondary Education Rules Governing Scoliosis Screening.

1.02 These rules are enacted pursuant to the Arkansas State Board of Education's authority under Ark. Code Ann. §§ 6-11-105, 20-15-801 et seq, 25-15-201 et seq, and Act 843 of 2019.

**2.00 PURPOSE**

2.01 The purpose of these rules is to provide a method to assure that all school age children shall be screened for scoliosis, and to assure that all children who fail the screening are referred for appropriate medical follow-up.

**3.00 DEFINITIONS**

3.01 "Certified Instructors" means individuals who train the screeners. These shall be licensed health practitioners who have successfully completed the Arkansas Department of Health Instructor Training Course in Scoliosis Screening.

3.02 "Screeners" means Individuals who perform the actual scoliosis screening. These shall be licensed physicians, individuals who have been trained to perform scoliosis screening by a Certified Scoliosis Screening Instructor, or individuals who can document completion of a Scoliosis Screening Workshop within the past five years and demonstrate competence to a Certified Scoliosis Screening Instructor

3.03 "Scoliosis" means a lateral curvature of the spine, resembling an S-curve or C-curve.

3.04 "Scoliometer" means an instrument that measures the degree of rotation of a deformity of the back found on a routine scoliosis screening.

3.06 “Scoliosis Screening Procedure” means the procedure used to examine a child for scoliosis. It consists of evaluating the child in six positions. The forward bend technique is included in three of these positions.

3.07 “Forward Bend Technique” means a technique used to determine the presence or absence of an abnormality of the spine. It involves observing the person being screened from the rear, front, and side while the person is bending forward.

#### **4.00 SCREENING PROGRAM**

4.01 Parental notification shall be done at least seven days prior to screening.

4.02 Screeners shall be licensed physicians, individuals trained by a Certified Scoliosis Screening Instructor to perform scoliosis screening, or individuals who can document completion of a Scoliosis Screening Workshop within the past five years and demonstrate competence to a Certified Scoliosis Screening Instructor. School health personnel, volunteers, and other school employees who are not classroom teachers shall screen if they have been trained in scoliosis screening by a Certified Scoliosis Screening Instructor (CSSI)

4.03 Girls shall receive a scoliosis screening in the sixth grade and the eighth grades. Boys shall receive a scoliosis screening in the eighth grade.

4.04 The Scoliosis Screening Procedure shall be used as the first stage of screening. If the Scoliosis Screening Procedure indicates positive findings for possible scoliosis, the Scoliometer shall be used as the second stage of screening.

4.05 Refer a child with an abnormal screening and/or scoliometer reading of  $\geq 7^\circ$  to a licensed physician. It is highly recommended that a child with a scoliometer reading of  $> 8^\circ$  be referred to an orthopedist.

4.06 A Certified Scoliosis Screening Instructor or School Health Nurse shall contact the parents of a child who fails the screening by letter, telephone call, or in person to:

4.05.1 Explain the findings;

4.05.2 Define and discuss scoliosis;

4.05.3 Discuss the need for referral to a licensed physician.

4.07 The School shall provide a Scoliosis Screening Report to the parent to take to the

licensed physician.

4.08 The School shall schedule students, who were not screened because of absence, within 90 days after the missed screening. Any reason for exclusion from the screening shall be documented. The School shall recontact the parents of students who failed the screening and were referred, but then missed that appointment. This contact shall be made by letter, telephone call, or in person at least one additional time to discuss the importance of follow-up.

4.09 No child shall be screened if its parent or guardian objects to the screening in writing stating as the basis of the objection that it is contrary to the parent's or guardian's religious beliefs."

## **5.00 TRAINING PROGRAM**

The Arkansas Department of Health shall provide an Instructor Training Course in Scoliosis Screening. This workshop shall be designed to teach the principles and proper technique for scoliosis screening. Any graduate of this course shall be a Certified Scoliosis Screening Instructor and is qualified to teach persons to be scoliosis screeners. The certification shall be valid for a period of five years, after which time an update course in Scoliosis Screening shall be required for recertification. Recertification shall be again for a five year period and this cycle shall continue.

## **6.00 RECORDS**

6.01 The Arkansas Department of Health, the Arkansas Department of Education, and private health care providers shall maintain confidentiality of those individuals screened as authorized by law.

6.02 The Arkansas Department of Education shall collect statistics on Scoliosis Screening activities in the state. The following information shall be reported annually:

6.02.1. The target population eligible for screening

6.02.2. The number of children screened

6.02.3. The number of children referred

6.02.4. The number of children seen by a physician

6.02.5. The number of children diagnosed with scoliosis by a physician.

(Note: Each category shall be listed by grades and by sex.)

These findings shall be made available to the Arkansas Department of Health on an annual basis for purposes of program evaluation

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Division of Elementary and Secondary Education  
**DIVISION** Learning Services  
**PERSON COMPLETING THIS STATEMENT** Taylor Dugan  
**TELEPHONE NO.** 501-682-1958 **FAX NO.** 501-682-4249 **EMAIL:** taylor.dugan@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** DESE Rules Governing Scoliosis Screening

1. Does this proposed, amended, or repealed rule have a financial impact?  
Yes \_\_\_\_\_ No X\_\_\_\_\_
  
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 \_\_\_\_\_ X\_\_\_\_\_ 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 \_\_\_\_\_ X\_\_\_\_\_ 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.
3. 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**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_

Cash Funds \_\_\_\_\_  
 Special Revenue \_\_\_\_\_  
 Other (Identify) \_\_\_\_\_  
 Total \_\_\_\_\_

Cash Funds \_\_\_\_\_  
 Special Revenue \_\_\_\_\_  
 Other (Identify) \_\_\_\_\_  
 Total \_\_\_\_\_

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

**Current Fiscal Year**

**Next Fiscal Year**

General Revenue \_\_\_\_\_ 0  
 Federal Funds \_\_\_\_\_ 0  
 Cash Funds \_\_\_\_\_ 0  
 Special Revenue \_\_\_\_\_ 0  
 Other (Identify) \_\_\_\_\_ 0  
 Total \_\_\_\_\_ 0

General Revenue \_\_\_\_\_ 0  
 Federal Funds \_\_\_\_\_ 0  
 Cash Funds \_\_\_\_\_ 0  
 Special Revenue \_\_\_\_\_ 0  
 Other (Identify) \_\_\_\_\_ 0  
 Total \_\_\_\_\_ 0

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

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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

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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 \_\_\_\_\_ X

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.



SUMMARY

**ARKANSAS DEPARTMENT OF EDUCATION DIVISION OF ELEMENTARY AND  
SECONDARY EDUCATION AND ARKANSAS DEPARTMENT OF HEALTH  
RULES GOVERNING SCOLIOSIS SCREENING**

Act 843 of 2019 required the Arkansas Department of Education to promulgate rules that were previously promulgated by the State Board of Health. Therefore, in coordination with the Department of Health, these rules are virtually identical to the Department of Health's previous rules for scoliosis screening. The Department of Health's staff approved this draft on November 25, 2019. I have attached a copy of the Department of Health's rules.

## Notice of Rulemaking

Pursuant to Arkansas Code Annotated § 25-15-201 et seq., notice is hereby given that the Arkansas State Board of Education and the Division of Elementary and Secondary Education are considering revisions to the following DESE Rules and are releasing them for public comment: Student Discipline and School Safety; Special Education and Related Services, Sec. 11.00 Discipline Procedures; Special Education and Related Services, Sec. 18.00 Residential Placement; Background Checks; The Arkansas Better Chance Program; and Scoliosis Screening.

A public hearing regarding these amended rules will be held on February 12, 2020, at 1:30 p.m. at the Arkansas Department of Education Auditorium, Four Capitol Mall, Little Rock, AR 72201. Written comments regarding these proposed rules may be mailed to the Office of Legal Services at Four Capitol Mall, Room 301A, Little Rock, AR 72201. Comments also may be emailed to [ADE.RulesComments@arkansas.gov](mailto:ADE.RulesComments@arkansas.gov). A copy of the proposed rules can be found at the Department's website at: <http://www.arkansased.org/divisions/legal/rules/pending>. Copies also may be obtained by contacting ADE's Office of Legal Services at the above address or via phone at (501) 682-4227.

## Taylor Dugan (ADE)

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**From:** Courtney Salas-Ford (ADE)  
**Sent:** Monday, February 3, 2020 10:51 AM  
**To:** Taylor Dugan (ADE)  
**Subject:** FW: Request for publication  
**Attachments:** Notice of Rulemaking .doc

On 2/3/20, 10:30 AM, "legalads@arkansasonline.com" <legalads@arkansasonline.com> wrote:

Thank you. Will run in listed counties on Fri 2/7 and Sat 2/8, but will run in all 75 counties on Sun 2/9.

Gregg Sterne, Legal Advertising  
Arkansas Democrat-Gazette  
legalads@arkansasonline.com

----- Original Message -----

From: "Courtney Salas-Ford (ADE)" <Courtney.Salas-Ford@arkansas.gov>  
To: legalads@arkansasonline.com  
Sent: Monday, February 3, 2020 9:50:14 AM  
Subject: Re: Request for publication

Let's do the counties listed below on 2/7-8, and statewide on 2/9. Does that work?

On 2/3/20, 9:45 AM, "legalads@arkansasonline.com" <legalads@arkansasonline.com> wrote:

Which county or counties does this need to appear in?

The following counties in Arkansas are the only ones that receive daily (Monday – Saturday) delivery of the printed edition of the Arkansas Democrat-Gazette:

Benton  
Boone\*  
Carroll\*  
Crawford  
Franklin  
Johnson  
Logan  
Madison  
Newton\*  
Scott  
Sebastian  
Washington

(\* - will no longer receive printed newspapers Mon.-Sat. beginning 2/17)

Sunday is now the only day that the printed newspaper is delivered to all 75 counties in Arkansas.

Thank you,

Courtney Salas-Ford  
Deputy General Counsel  
Division of Elementary and Secondary Education  
Arkansas Department of Education  
Four Capitol Mall, Rm. 301-A  
Little Rock, AR 72201  
(501) 682-4752