

# 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 Legislative 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.)

Signature

Phone Number

E-mail Address

Title

Date

**ARKANSAS DIVISION OF ELEMENTARY AND SECONDARY EDUCATION RULES  
GOVERNING ACT 1240 WAIVERS  
Effective Date: July 6, 2020**

**1.00 REGULATORY AUTHORITY**

1.01 The State Board of Education enacted these rules pursuant to its authority as set forth in Ark. Code Ann. §§ 6-11-105, 6-15-103, and 25-15-201 et seq.

**2.00 DEFINITIONS**

2.01 "Division" means the Division of Elementary and Secondary Education of the Arkansas Department of Education.

2.02 "State Board" means the State Board of Education.

**3.00 REQUESTS FOR WAIVER**

3.01 A district may petition the State Board of Education for all or some of the waivers granted to an open-enrollment public charter school.

3.01.1 Prior to requesting a waiver, the school district board of directors must adopt a resolution authorizing the request for the waiver.

3.02 Districts may only request waivers that enhance student learning opportunities, promote innovation, or increase equitable access to effective teachers.

3.02.1 Waivers requested for the sole purpose avoid violations of the Standards for Accreditation shall not be granted.

3.03 The petition shall include, without limitation:

3.03.1 The name of the open-enrollment public charter school that holds the waiver(s);

3.03.2 A list of the waiver(s) that the district seeks to have granted, including:

3.03.2.1 The proposed Standards for Accreditation;

3.03.2.2 The proposed Division Rules;

3.03.2.3 The proposed statutes of the Arkansas Code.

3.03.3 The proposed duration of the requested waiver(s);

- 3.03.4 A signed copy of the resolution adopted by the school district's board of directors authorizing the district to request the waiver;
- 3.03.5 Evidence of stakeholder involvement, including teachers and student families;
- 3.03.6 The grades, schools, and classes to which the proposed waiver(s) apply; and
- 3.03.7 A detailed rationale for the request, including but not limited to:
  - 3.03.7.1 How the waiver(s) enhance student learning opportunities, promote innovation, or increase equitable access to effective teachers;
  - 3.03.7.2 How students will be served; and
  - 3.03.7.3 How the district will monitor and evaluate the effectiveness of the waiver.
- 3.04 The petition must be submitted to the Division's Charter School Office on the approved request form.
  - 3.04.1 The request form shall be available on the Division's website.
- 3.05 A district may not request any of the following waivers:
  - 3.05.1 Monitoring compliance with Title 6 of the Arkansas Code, as determined by the Commissioner;
  - 3.05.2 Public school accountability under Title 6 of the Arkansas Code;
  - 3.05.3 High school graduation requirements as established by the State Board;
  - 3.05.4 Special education programs as provided by Title 6 of the Arkansas Code;
  - 3.05.5 Conducting criminal background checks for employees as provided by Title 6 of the Arkansas Code;
  - 3.05.6 Health and safety codes as established by the State Board and local governmental entities;
  - 3.05.7 Arkansas Qualified Teacher Requirements;

- 3.05.8 Ethical guidelines and prohibitions as established by Ark. Code Ann. §6-24-101 et seq., and any other controlling state or federal law regarding ethics or conflicts of interest; and
- 3.05.9 Reporting through the Arkansas Public School Computer Network applications as provided under Title 6 of the Arkansas Code.
- 3.06 A district may request a waiver of the requirements of Ark. Code Ann. § 6-16-102(a)(5), concerning recess, only if the district:
  - 3.06.1 Submits to the Division for approval of an alternative plan for recess that:
    - 3.06.1.1 Exceeds the required minimum amount of minutes combined for physical activity under Ark. Code Ann. § 6-16-132 and recess under Ark. Code Ann. § 6-16-102(a); and
    - 3.06.1.2 Provides for both structured and unstructured social time.
- 3.07 Districts shall have the opportunity to amend their request until fifteen (15) days prior to the State Board's consideration of the waiver request.
  - 3.07.1 If a District wishes to amend its request after the timeline in Section 3.07, it may only do so at the waiver hearing.

#### **4.00 HEARING**

- 4.01 All waiver requests shall be presented to the State Board of Education.
- 4.02 All persons, with exception of the attorneys representing the parties, who plan to provide testimony during the hearing must be sworn by the State Board Chair.
- 4.03 The District shall have twenty (20) minutes to present its case to the State Board for approval of the proposed waivers. The Chair may grant additional time if necessary.
  - 4.03.1 If the district intends to use a presentation, handouts, or any other document, it must provide copies to the Charter School Office no later than ten (10) business days prior to the hearing.
  - 4.03.2 If the district does not provide materials as required by Section 4.03.1, it may only use a presentation or present additional documents with the permission of the State Board.

- 4.04 Parties opposed to the proposed waivers, if any, shall have twenty (20) minutes to present their case to the State Board. The Chair may grant additional time if necessary.
  - 4.04.1 Any party in opposition that wishes to present or participate at the hearing must notify the Division's Charter School Office and the district requesting the waiver in writing no later than ten (10) business days prior to the hearing.
  - 4.04.2 If a party in opposition intends to use a presentation, handouts, or any other document, it must provide copies to the Charter School Office and to the district requesting the waiver no later than ten (10) business days prior to the hearing.
  - 4.04.3 A party in opposition that fails to provide notice as required by Sections 4.04.1 and 4.04.2 may only present or participate at the hearing with the permission of the State Board.
  - 4.04.4 If there are multiple individuals or groups who wish to speak in opposition, it is the responsibility of those individuals or groups to divide the twenty (20) minutes between themselves.
- 4.05 The District shall have five (5) minutes to respond to any arguments in opposition to the proposed waivers. The Chair may grant additional time if necessary.
- 4.06 The State Board will follow the presentations with discussion of the proposed waivers and may ask questions to any of the parties or to the Division, or both.
- 4.07 The State Board may ask questions at any time during the presentation by the District or the opposing parties.
- 4.08 The State Board may grant, in whole or in part, or deny, in whole or in part, the proposed waivers.
  - 4.08.1 The State Board may also take the matter under advisement until a future scheduled Board meeting.
  - 4.08.2 The State Board must make a decision within 90 days of receiving the waiver request.
- 4.09 Any waiver(s) granted to a district, in whole or in part, is valid for the duration requested by the district, unless the State Board votes otherwise.
  - 4.09.1 The waiver(s) shall not exceed the duration that the waiver is valid for the open-enrollment public charter school on which the request was based.

- 4.09.2 The waiver(s) shall not be granted for a period of time exceeding five years.
- 4.09.3 If a district wishes to renew a waiver that is expiring, it must follow the procedure set out in Section 6.00 of these Rules.
- 4.10 The State Board may request annual reporting as a condition of approval of the proposed waiver(s).
- 4.11 The Division shall notify the Superintendent of the district in writing of the decision of the State Board.
- 4.12 All waivers granted under these Rules shall be posted to the Division's website.
- 4.13 The district must post all waivers granted under these Rules to the district's website under "State--Required Information" within thirty (30) days of the State Board's approval.

## **5.00 REVIEW AND REVOCATION OF WAIVERS**

- 5.01 The State Board may exercise its right to review waivers granted under Ark. Code Ann. § 6-15-103 and these Rules at any time.
  - 5.01.1 If the State Board chooses to conduct a review, it must give the district at least fifteen (15) business days' notice of its intent to review.
    - 5.01.1.1 The State Board must state the specific reasons for conducting the review and state any additional information the State Board required from the Division or the district.
  - 5.01.2 Following a review of the district's waiver(s), the State Board may modify or revoke the waiver(s) in whole or in part.

## **6.00 EXPIRATION OF WAIVERS**

- 6.01 If a Standard for Accreditation, Arkansas law, or Division rule is repealed, any waiver(s) of that standard, law, or rule expires on the date the repeal becomes effective.
- 6.02 If a Standard for Accreditation, Arkansas law, or Division rule is changed, it is the responsibility of the District to determine if the change necessitates a change in its waiver.
- 6.03 The Division shall advise district's by Commissioner's memo when laws, rules, or the Standards for Accreditation that impact waivers are changed.

- 6.04 If the open-enrollment public charter school on which the district based its request closes or gives up its waiver, the district may maintain the waiver until the end of the school year.
  - 6.04.1 The district may bring a new waiver request based on another open-enrollment public charter school if another open-enrollment public charter school holds the waiver.
  - 6.04.2 If no other open-enrollment public charter school holds the waiver, the waiver will expire at the end of the school year.
- 6.05 If a district wishes to renew a waiver that is expiring, it must submit an Extension Request Form.
  - 6.05.1 The request form shall be available on the Division's website.
  - 6.05.2 The district must submit the following in its extension request:
    - 6.05.2.1 The name of the open-enrollment public charter school that holds the waiver(s);
    - 6.05.2.2 A list of the waiver(s) that the district seeks to have extended;
    - 6.05.2.3 The proposed duration of the extension;
    - 6.05.2.4 The grades, schools, and classes to which the proposed extension applies, if different than the original request;
    - 6.05.2.5 An explanation of the benefit of the waiver for students, staff, the district, the community, or the State;
    - 6.05.2.6 A signed copy of the resolution adopted by the school district's board of directors authorizing the district to request to waiver extension;
    - 6.05.2.7 Evidence of support from district staff for the continuation of the waivers; and
    - 6.05.2.8 A detailed rationale for the request, including but not limited to:
      - 6.05.2.8.1 How the waiver(s) enhance student learning opportunities, promote innovation, or increase equitable access to effective teachers;

6.05.2.8.2 How students will be served; and

6.05.2.8.3 How the district will monitor and evaluate the effectiveness of the waiver.

6.05.3 If the district is requesting an extension of teacher licensure waivers, the district must also provide the following information:

6.05.3.1 The number of positions filled by a teacher employed under the waiver;

6.05.3.2 The number of teachers employed under the waiver that have obtained licensure; and

6.04.3.3 The number of teachers employed under the waiver that are actively engaged in a licensure pathway program.

6.05.4 The Extension Request Form must be received by the Charter School Office no later than forty-five (45) days prior to the expiration of the waiver.

6.05.4.1 A district may submit an extension request after the timeline set in Section 6.05.4.5, but the delay may result in a lapse in the waiver prior to extension.

6.06 All waiver expiration dates shall be posted to the Division's website.



**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT:** Arkansas Department of Education

**DIVISION:** Division of Elementary and Secondary Education, Public School Accountability

**PERSON COMPLETING THIS STATEMENT:** Mary Claire Hyatt

**PHONE NO.:** 501-683-0960 **FAX NO.:** 501-682-4249 **E-MAIL:** maryclaire.hyatt@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 1240 Waivers

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 \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_

Other (Identify) \_\_\_\_\_

Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_ 0 \_\_\_\_\_

Total \_\_\_\_\_ 0 \_\_\_\_\_

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

**Current Fiscal Year**

**Next Fiscal Year**

General Revenue \_\_\_\_\_

General Revenue \_\_\_\_\_

Federal Funds \_\_\_\_\_

Federal Funds \_\_\_\_\_

Cash Funds \_\_\_\_\_

Cash Funds \_\_\_\_\_

Special Revenue \_\_\_\_\_

Special Revenue \_\_\_\_\_

Other (Identify) \_\_\_\_\_

Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_ 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 \_\_\_\_\_

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.