

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



Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

Notice of Rulemaking

Pursuant to Arkansas Code Annotated § 25-15-201 et seq., notice is hereby given that the Division of Elementary and Secondary Education is considering the DESE Rules Governing School Safety. A public hearing regarding these rules will be held on September 21, 2023, at 10:00 a.m. at the Arkansas Department of Education, Arch Ford Building, Four Capitol Mall, Little Rock, AR, 72201. Written comments regarding these proposed rules may be mailed to ADE Legal Services, Four Capitol Mall, Room 302A, Little Rock, AR, 72201. Comments also may be emailed to ADE.RulesComments@ade.arkansas.gov. A copy of the proposed rules can be found on the Division of Elementary and Secondary Education's website at: <https://dese.ade.arkansas.gov/Offices/legal/rules/pending>. Copies also may be obtained by contacting ADE's Office of Legal Services at the above address.

From: legalads@arkansasonline.com
To: [Shastady Wagner \(ADE\)](#)
Subject: Re: Notice of Rulemaking - DESE Rules Governing School Safety
Date: Wednesday, August 23, 2023 6:48:17 PM
Importance: High

You don't often get email from legalads@arkansasonline.com. [Learn why this is important](#)

Caution: This is an external email and may contain a suspicious subject or content. Please take care when clicking links or opening attachments. When in doubt, contact [ADE IT Services](#).

Will run Sat 8/26, Sun 8/27 and Mon 8/28.

Also, we're moving to electronic billing, and will need your agency's AP's first and last name, and e-mail address.

Thank you.

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

From: "Shastady Wagner, ADE" <Shastady.Wagner@ade.arkansas.gov>
To: "legalads" <legalads@arkansasonline.com>
Cc: "Andres Rhodes (ADE)" <Andres.Rhodes@ade.arkansas.gov>, "Stephen Reynolds, ADE" <Stephen.Reynolds@ade.arkansas.gov>
Sent: Wednesday, August 23, 2023 6:24:43 PM
Subject: Notice of Rulemaking - DESE Rules Governing School Safety

Good Afternoon,

Please see the attached notice of rulemaking. We need this ad to run for three consecutive days. Please confirm dates of publication.

Thank you,

Shastady Wagner
Attorney Supervisor
Arkansas Department of Education
4 Capitol Mall, Rm. 302A
Little Rock, AR 72201
(501)682-1958

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT _____
BOARD/COMMISSION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ **EMAIL** _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

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 no, please explain:

(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 reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

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

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

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

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

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

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

6. What is the total estimated cost by fiscal year to a state, county, or 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
RULES GOVERNING SCHOOL SAFETY
Effective [Insert Date]

1.00 REGULATORY AUTHORITY

1.01 The State Board of Education enacts these rules pursuant to its authority as set forth in Ark. Code §§ 6-10-121, 6-10-128, 6-11-105, 6-15-1302, 6-15-1303, 6-17-113, and 25-15-201 et seq.

2.00 DEFINITIONS

2.01 “Arkansas Center for School Safety” is the state school-safety clearinghouse administered by the Criminal Justice Institute (CJI) of the University of Arkansas System, through a partnership between CJI and the Arkansas Department of Education, Division of Elementary and Secondary Education (Division), and provides education, training, resources, and technical assistance to Arkansas educators and law enforcement professionals to assist them in meeting the school-safety needs of students in Arkansas public schools and providing them with a safe school environment.

2.02. “Division” means Division of Elementary and Secondary Education.

2.03 “Institutional Law Enforcement Officer” also means institutional police department.

2.04 “Public school district” means:

2.04.1 A geographic area that qualifies as a taxing unit for purposes of ad valorem property taxes under Ark. Code § 26-1-101 et seq. and Arkansas Constitution, Article 14, § 3, and is either:

2.04.1.1 Governed by an elected board of directors; or

2.04.1.2 Under the administrative control of the State Board of Education or the Commissioner of Education in place of an elected board of directors; or

2.04.2 An open-enrollment public charter school, as defined in Ark. Code § 6-23-103.

2.05 “School Resource Officer” means:

2.05.1 A sworn law enforcement personnel whose primary duties are not solely supervisory; and

2.05.2 An institutional law enforcement officer as described in Ark. Code § 6-13-1701 et seq.

2.06 “Superintendent” means:

2.06.1 A person responsible for oversight of all operations of the public school district as defined in these rules; or

2.06.2 Other educational entity.

3.00 SCHOOL SAFETY ASSESSMENT, EMERGENCY RESPONSE DRILLS, AND FLOOR PLANS

3.01 A public school district shall conduct a comprehensive school safety assessment every three (3) years to assess the safety, security, accessibility, and emergency preparedness of district buildings and grounds in collaboration with local law enforcement, fire, and emergency management officials.

3.01.1 A comprehensive school safety assessment shall be completed by more than one (1) individual, at least one of whom is not assigned to the facility be assessed.

3.01.2 A comprehensive school safety assessment shall include without limitation an assessment of the following:

3.01.2.1 Safety and security of the site and exterior of buildings;

3.01.2.2 Access control;

3.01.2.3 Safety and security of the interior of buildings;

3.01.2.4 Monitoring and surveillance, including without limitation type and extent;

3.01.2.5 Communication and information security;

3.01.2.6 Review of emergency operation plans; and

3.01.2.7 School climate and culture.

3.01.3 The initial comprehensive school safety assessment shall be conducted by August 1, 2024.

- 3.01.4 The superintendent shall submit written verification, as required by the Division, that the assessment has been completed and conducted in collaboration with local law enforcement, medical professionals, fire department, and emergency management officials.
- 3.01.5 The comprehensive school safety assessment shall be solely for the purpose of ensuring student safety.
- 3.01.6 Records reflecting the comprehensive school safety assessment shall not be a public record and shall not be available for public inspection under the Freedom of Information Act of 1967, § 25-19-101 *et seq.*
- 3.01.7 A public school district board of directors or governing body shall only conduct or discuss the results of the comprehensive school safety assessment in an executive session.
- 3.02 A public school district shall conduct an annual lockdown drill for a possible threat on campus at each school in the public school district.
- 3.02.1 As part of the public school district's planning for lockdown drills, the public school district shall:
- 3.02.1.1 Assess the plan and ability of the public school district to prevent and respond to a threat on campus;
 - 3.02.1.2 Identify the roles and responsibilities of each individual when an emergency occurs;
 - 3.02.1.3 Discuss the logistics of responding to an emergency on the school campus;
 - 3.02.1.4 Identify areas in which the emergency operation plan of the school may require modification, if necessary; and
 - 3.02.1.5 Collaborate with local law enforcement, medical professionals, fire department, and emergency management officials.
- 3.03 All public schools shall conduct tornado safety drills at least three (3) times per year.
- 3.03.3 For purposes of section 3.03 "public schools" include the Arkansas School for Mathematics, Sciences, and the Arts, the Arkansas School for the Deaf, the Arkansas School for the Blind, and juvenile detention centers.

3.04 Public schools located in areas susceptible to earthquakes shall conduct earthquake safety drills.

3.04.1 For purposes of section 3.04 “public schools” include the Arkansas School for Mathematics, Sciences, and the Arts, the Arkansas School for the Deaf, the Arkansas School for the Blind, and juvenile detention centers.

3.05 All public schools, private schools, and educational institutions shall conduct one fire drill each month during the school year.

3.06 Emergency response drills may be conducted during the instructional day or during noninstructional time periods as determined by the school district.

3.07 The superintendent, or designee, shall submit data required by the Division during the appropriate cycle to verify that drills were completed and submit written verification, as required by the Division, that collaboration with local law enforcement and emergency management officials occurred when required.

3.08 A public school district shall provide current floor plans and pertinent emergency contact information to appropriate first responders for each school in the district.

3.08.1 Public school district administration shall provide updated information annually and when substantial building modifications or changes are made.

3.08.2 The superintendent shall submit written verification, as required by the Division, that the floor plans and information were provided to appropriate first responders.

3.09 Information provided under this section is not a public record and is not available for public inspection under the Freedom of Information Act of 1967, § 25-19-101 et seq.

4.00 SCHOOL RESOURCE OFFICERS

4.01 A school district board of directors, or entity authorized to act on behalf of an open-enrollment public charter school, that accepts a school resource officer shall either enter into a memorandum of understanding (MOU) with the local law enforcement agency with jurisdiction or adopt policies and procedures if the school district has an institutional police department, that governs the school resource officer.

4.01.1 The MOU shall be based on the model MOU created by the Division and the Arkansas Center for School Safety, and include without limitation:

4.01.1.1 The financial responsibilities of each party;

- 4.01.1.2 The chain of command;
- 4.01.1.3 The process for the selection of school resource officers;
- 4.01.1.4 The process for the evaluation of school resource officers;
- 4.01.1.5 The training requirements for school resource officers; and
- 4.01.1.6 The roles and responsibilities of school resource officers, including without limitation:
 - 4.01.1.6.1 Clarification of the school resource officer's involvement in student discipline;
 - 4.01.1.6.2 The use of physical restraints or chemical sprays;
 - 4.01.1.6.3 The use of firearms on the public school campus or at school-sponsored events; and
 - 4.01.1.6.4 Making arrests on the public school campus or at school-sponsored events.

4.01.2 The superintendent shall submit written verification, as required by the Division, specifying the adoption of an MOU or policies and procedures as they pertain to school resource officers.

4.02 A school resource officer assigned to a public school or open-enrollment public charter school campus during the instructional day or employed by a public school district shall complete:

- 4.02.1 A forty-hour basic school resource officer training program developed and provided, or approved, by the Arkansas Center for School Safety, within eighteen (18) months of being assigned or employed by the public school district;
- 4.02.2 A training in youth mental health as required by the State Board of Education, within eighteen (18) months of being assigned or employed by the public school district, and once every four (4) years thereafter;
- 4.02.3 A sixteen-hour school resource officer refresher training developed and provided, or approved, by the Arkansas Center for School Safety, within five (5) years of receiving the initial basic school resource officer training described in 4.02.1, and once every five (5) years thereafter; and

- 4.02.4 Twelve (12) hours of public school-specific continuing education developed and provided, or approved, by the Arkansas Center for School Safety, annually.
- 4.03 The forty-hour basic school resource officer training required by 4.02.1 shall address, without limitation, the roles and responsibilities of school resource officers in public schools, laws that are specific to public schools and students in public schools, and adolescent behavior and development.
- 4.04 The youth mental health training required by 4.02.2 and the school resource officer refresher training required by 4.02.3 shall count towards the twelve (12) hours of public school-specific continuing education required by 4.02.4 for the years during which those trainings are completed.
- 4.05 A school resource officer who is assigned by a public school district for only extracurricular activities is exempt from these training requirements.
- 4.06 A public school district superintendent and public school principal who accept a school resource officer shall complete a one-hour training developed and provided, or approved, by the Arkansas Center for School Safety, within nine (9) months of accepting or employing the school resource officer.
- 4.07 Public school district personnel directly responsible for supervising a school resource officer shall complete a one-hour school resource officer roles and responsibilities training developed and provided, or approved, by the Arkansas Center for School Safety, within one (1) year of accepting or employing the school resource officer and every two (2) years thereafter.
- 4.08 Training received by a licensed educator under 4.03 and 4.04 may count toward the professional development required for renewal of an educator's license by the Division's Rules Governing Professional Development.
- 4.09 The Arkansas Center for School Safety shall monitor compliance with the continuing education and training requirements required by law and these rules.
- 4.09.1 A public school district that accepts a school resource officer shall comply with requests for information from the Arkansas Center for School Safety or Division for purposes of ensuring compliance with applicable law or rules.
- 4.09.2 A school resource officer who fails to complete any training required under this section shall be unable to serve as a school resource officer until the training required is complete.

4.09.3 A school resource officer shall not be assigned to a public school district in which the superintendent, principal, or supervising personnel, have not completed the training required.

4.10 Each public school district shall provide to school resource officers, commissioned school security officers, and institutional law enforcement officers regular specialized training, including specific training on roles and responsibilities associated with each position.

4.10.1 Responsibilities of school resource officers, commissioned school security officers, and institutional law enforcement officers shall not include involvement with student disciplinary action, as defined in § 6-18-501 et seq.

5.00 SCHOOL SAFETY EXPERT

5.01 A public school district shall have a school safety expert review and advise on architectural plans for a public school facility before the new construction of the public school facility.

5.02 The requirements for a school safety expert shall be established by the Commission for Arkansas Public School Academic Facilities and Transportation by rule.

6.00 STUDENT MENTAL HEALTH

6.01 Each public school district shall support student mental health on a timeline to be established by the Division by:

6.01.1 Supporting access to training in youth mental health for all school personnel, including contractors, who regularly interact with students;

6.01.2 Requiring all school staff, including contracted service providers that regularly interact with students, to complete mental health awareness training; and

6.01.3 Establishing a behavioral threat assessment team, which shall:

6.01.3.1 Follow best practices for team composition and process; and

6.01.3.2 Require that all team members receive basic and advanced behavioral threat assessment training through the Arkansas Center for School Safety of the Criminal Justice Institute,

or another organization or entity approved by the State Board of Education.

7.00 PROMOTION OF STUDENT SAFETY AND SECURITY

7.01 Each public school district shall work with local law enforcement to improve school safety and security by:

7.01.1 Developing plans to increase the presence of uniformed law enforcement on all public school campuses at all times when school staff and children are attending class or during a major extracurricular activity;

7.01.2 Implementing and expanding strategies to promote reporting, which shall include anonymous reporting of:

7.01.2.1 Suspicious activity and behavior; and

7.01.2.2 Threats;

7.01.3 Forming district safety and security teams to review district emergency operations plans and security policies and procedures;

7.01.4 Training school nurses and staff in efforts that enhance the emergency medical response within public schools, including without limitation:

7.01.4.1 Training concerning opioid overdose; and

7.01.4.2 Bleeding control training;

7.01.5 Establishing and maintaining a comprehensive, common communication plan to be utilized by:

7.01.5.1 School officials.

7.01.5.2 Students; and

7.01.5.3 Parents, legal guardians, or persons standing in loco parentis to a student;

7.01.5.4 Law enforcement; and

7.01.5.5 Other relevant stakeholders;

7.01.6 Establishing systems that enable direct communication with local law enforcement, which may include without limitation:

7.01.6.1 Emergency alert systems;

7.01.6.2 Radios for school officials that are programmed with law enforcement frequencies; and

7.01.6.3 School camera systems that can be accessed in real time by law enforcement;

7.01.7 Reviewing and updating cybersecurity policies and procedures annually; and

7.01.8 Closing and locking all exterior and interior doors during school hours except for transition times.

7.01.8.1 At no time may a person be impeded from building egress in compliance with the Arkansas Fire Prevention Code and the standards for accessible design under the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., as it existed on January 1, 2023.

8.00 DUTY TO REPORT

8.01 Whenever the principal or other person in charge of a public school has personal knowledge or has received information leading to a reasonable belief that any person has committed or has threatened to commit an act of violence or any crime involving a deadly weapon on school property or while under school supervision, the principal or person in charge shall immediately report the incident or threat to the superintendent of the school district and the appropriate local law enforcement agency.

8.01.1 As used in this section:

8.01.1.1 “Act of violence” means any violation of Arkansas law where a person purposely or knowingly causes or threatens to cause death or serious physical injury to another person; and

8.01.1.2 “Deadly weapon” means:

8.01.1.2.1 A firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious physical injury; or

8.01.1.2.2 Anything that in the manner of its use or intended use is capable of causing death or serious physical injury.

8.01.2 The report shall be by telephone or in person immediately after the incident or threat and shall be followed by a written report within three (3) business days.

8.01.3 The principal shall notify any school employee or other person who initially reported the incident that a report has been made to the appropriate law enforcement agency.

8.01.4 The superintendent, or his or her designee, shall notify the local school district board of directors of any report made to law enforcement pursuant to these rules.

8.02 Upon receipt of a report from the prosecuting attorney, required to be provided within thirty (30) calendar days after receipt of the file, the principal shall notify any school employee or any other person who initially reported the incident that a report has been received from the prosecuting attorney.

8.03 Any person who purposely fails to make a report as required by Ark. Code § 6-17-113 and these rules shall be guilty of a Class C misdemeanor.

8.03.1 Purposely failing to report a violent act requires proof that:

8.03.1.1 The person had personal knowledge that an act of violence or any crime involving a deadly weapon has been committed or threatened;

8.03.1.2 A reasonable person would have reported the act or threat; and

8.03.1.3 The person who failed to report had a conscious object to disregard his obligation to report.

9.00 SCHOOL SAFETY FUNDS

9.01 It is the intent of the General Assembly that funds set aside for school safety grants be disbursed by the Division to public school districts, open-enrollment charter schools, and other educational entities, to aid in implementing the recommendations of the Governor's School Safety Commission as set forth in the 2018 and 2022 Final Reports and providing a safe school environment for students and staff.

9.02 Any funds allocated by the General Assembly for school safety grants or otherwise provided through a grant to a public school district, open-enrollment charter school, or educational entity, by the Division, for the purpose of school safety, shall be disbursed pursuant to the process and eligibility requirements

established by the Division and in accordance with applicable state and federal laws and rules.

9.03 The process for disbursement and eligibility requirements established shall adhere to the following:

9.03.1 Funding should be made available to each public school district, open-enrollment charter school, and private school with at least fifty (50) students.

9.03.2 The amount of funding available to each public school district, open-enrollment charter school, and private school, shall be based, at least in part, on student enrollment, taking into consideration the varying sizes of districts and schools.

9.03.3 All funds shall be provided on a reimbursement basis for eligible expenses incurred during the fiscal year in which the funds are made available.

9.03.4 Eligible expenses shall include the purchase of materials, equipment, or services, to meet the recommendations of the Governor's School Safety Commission or enhance existing safety measures that meet the recommendations of the Commission.

9.03.4.1 The Division shall prioritize, by category, level, or similarity, all recommendations of the Commission that should be completed by a public school district, open-enrollment charter school, or educational entity.

9.03.4.2 Expenses for a safety measure not included in the recommendations of the Commission, shall only be eligible for reimbursement upon approval from the Commissioner of Education.

9.03.5 The superintendent, as defined in these rules, must provide written assurance that higher priority recommendations are complete, or in process to be completed, before receiving funds for subsequent priority recommendations or safety measures not included in the recommendations of the Commission.

9.04 Subject to appropriations, any funds set aside by the General Assembly for school safety grants shall follow the procedure for eligibility and disbursement as set out in 9.03 and in accordance with applicable state and federal law and rules.

SUMMARY OF PROPOSED NEW RULES **GOVERNING SCHOOL SAFETY**

These rules will govern the requirements for public school districts and open enrollment public charter schools to complete the comprehensive school safety assessment and how compliance will be verified.

These rules also govern the requirements for public school districts and open enrollment public charter schools that accept school resource officers (SROs) and the training requirements for SROs and school staff.

To promote student safety and security, districts and charters shall support mental health by ensuring all school personnel, including contractors, that interact with students receive training in youth mental health awareness.

Districts and charter will also be required to have a plan to increase the presence of uniformed law enforcement officers in schools, implement a reporting system, for district safety and security teams, train school nurses and staff in emergency medical response, establish a common communication plan, establish direct communication with local law enforcement, review and update cybersecurity policies and procedures, and ensure all school doors remain locked but do not impede egress during school hours.

Lastly, these rules govern the responsibility of principals to report student criminal acts and the eligibility and disbursement of school safety grant funds.

The proposed new rules incorporate the provisions of Acts 622 and 648 of 2021 and Act 237 of 2023.