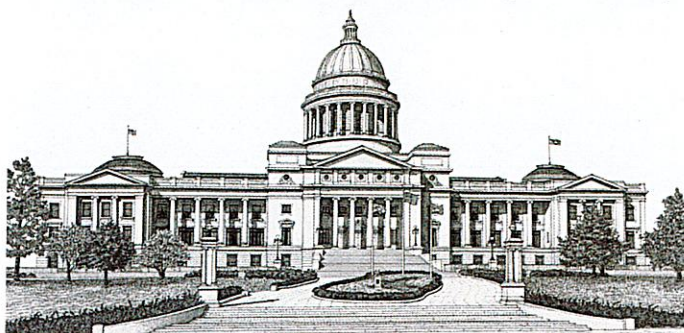


# ARKANSAS REGISTER

## Transmittal Sheet

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



Secretary of State

**Mark Martin**

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For Office

Use Only:

Effective Date \_\_\_\_\_ Code Number \_\_\_\_\_

Name of Agency Division of Elementary and Secondary Education

Department Department of Education

Contact Andres Rhodes E-mail andres.rhodes@ade.arkansas.gov Phone 501-682-4234

Statutory Authority for Promulgating Rules A.C.A. §§ 6-11-105; 6-11-132; 6-17-429

Rule Title: Tutoring Grants

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

12/20/2023

1/22/2024

3/14/2024

2/8/2024

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

LaBria Brown

LaBria.Brown@ade.arkansas.gov

3/20/2024

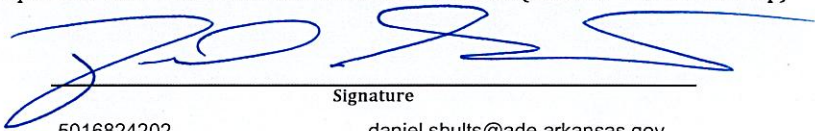
Contact Person

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

5016824202

daniel.shults@ade.arkansas.gov

Phone Number

E-mail Address

Deputy Legal Counsel

Title

3/20/2024

Date

**DIVISION OF ELEMENTARY AND SECONDARY EDUCATION RULES**  
**GOVERNING TUTORING GRANTS**  
Effective date: March 30, 2024

**1.00 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, 6-17-402, 6-17-429, 6-16-1601 et seq. and 25-15-201 et seq.

**2.00 LITERACY TUTORING GRANTS**

- 2.01 A literacy tutoring grant is up to a maximum of five hundred dollars (\$500) per eligible student per school year, that may be used for any of the following purposes designed to improve reading or literacy skills:
- 2.01.1 Online or in-person, tutoring services from a list of providers approved by the Division of Elementary and Secondary Education under section 2.05 of this section whose employees or contractors are trained in the science of reading and hold:
    - 2.01.1.1 Valid teaching certificates in either elementary education or reading; or
    - 2.01.1.2 Baccalaureate or graduate degrees in education, English, or another subject area indicative of expertise in reading and literacy.
  - 2.01.2 Evidence-based digital literacy applications or software programs from a list of division-approved programs that are in alignment with the science of reading.
- 2.02 “Eligible student” means any student enrolled in a public school or open-enrollment public charter school in kindergarten through grade three (K-3) who:
- 2.02.1 Is determined by the division not to meet the reading standard, as defined by the state board under section 2.02.1.1 or section 2.02.2;
    - 2.02.1.1 For the 2023-2024 school year, the reading standard for the purpose of identifying student eligibility for the literacy tutoring grant is defined as students achieving at or below the lowest tenth percentile (10%) for kindergarten, at or below the lowest fifteenth percentile (15%) for grade 1, and at or below the lowest twentieth percentile (20%) for grade 2 based on the current school year beginning-of-year literacy kindergarten through grade two (K-2) assessment scores, 25th percentile based on prior school year end of year

literacy assessments for students in grade 3, and current students in grade 3 that were not promoted.

- 2.02.2 Beginning in 2024-2025, is determined to be at risk for reading difficulties according to results of cut scores determined by the state board on the high-quality literacy screener required under the statewide student assessment system; or
- 2.02.3 Has received a good cause exemption for promotion to grade four (4).
- 2.03 Subject to available funding, priority for literacy tutoring grants will be given to the following in descending order of priority:
  - 2.03.1 Students who were retained the previous year;
  - 2.03.2 Students in the lowest fifteen percent (15%) of the reporting category in kindergarten through grade three (K-3);
  - 2.03.3 The remaining lowest quartile (25%) of grade 3;
  - 2.03.4 The remaining lowest quartile (25%) of grade 2;
  - 2.03.5 The remaining lowest quartile (25%) of grade 1;
  - 2.03.6 The remaining lowest quartile (25%) of kindergarten.
- 2.04 The division shall provide for an online application process that allows eligible students to register for and procure literacy tutoring services.
  - 2.04.1 The division shall make payments to the service provider.
    - 2.04.1.1 A third-party payment processing vendor shall create and set up payment accounts for eligible students.
    - 2.04.1.2 Service providers, or third-party vendors shall issue an itemized invoice to eligible students for documentation of expense type, amount, and recipient.
    - 2.04.1.3 Eligible students and families shall verify and submit payment requests, identifying the service provider to receive payment, the payment amount, and the expense type.
    - 2.04.1.4 Eligible students shall include invoices for review and documentation during payment submission process via the third-party payment processing vendor.

- 2.04.1.5 The third-party payment processing vendor shall remit payment to service providers for authorized expenditures, unless an expenditure is not authorized by law, following review and approval of expense request and documentation by the division.
  - 2.04.2 The division shall maintain a waitlist for students who are unable to receive literacy tutoring grants in the event that more funding becomes available to support the program.
  - 2.04.3 Subject to additional funding, eligible students on the waitlist will be awarded literacy tutoring grants according to the priority schedule under section 2.03 on a first-come, first-served basis.
- 2.05 Providers of supplemental educational services may apply to be an approved provider.
  - 2.05.1 The division shall review and evaluate provider applications based on the provider's:
    - 2.05.1.1 Capacity to provide literacy tutoring services to students in kindergarten through grade three (K-3);
    - 2.05.1.2 Tutor qualifications as defined in section 2.01;
    - 2.05.1.3 Alignment to the science of reading; and
    - 2.05.1.4 Evidence of student outcomes and data collection methods.
- 2.06 Approved providers shall be evaluated by the division for initial and continued eligibility for payments to ensure the effectiveness of a literacy tutoring grant program in improving eligible students' reading abilities, using one or more of the following criteria:
  - 2.06.1 Results from literacy assessment data that demonstrates positive learning gains in literacy or reading results, consisting of:
    - 2.06.1.1 State-approved literacy screeners or other assessments using data collected by the division; or
    - 2.06.1.2 An assessment used by the tutoring provider that collects both baseline data and at least one additional assessment following the baseline data collection.
    - 2.06.1.3 A provider submitting their own assessment for evaluation must provide to the division:

- 2.06.1.3.a The assessment used;
  - 2.06.1.3.b A description of what the assessment measures and how it aligns to the science of reading; and
  - 2.06.1.3.c Aggregate performance data.
- 2.06.1.4 The division may request student-level data from providers as determined necessary to evaluate program effectiveness;
- 2.06.2 Evidence of positive and statistically significant learning gains in literacy that is conducted by a third-party researcher; or
- 2.06.3 Evidence of parent satisfaction with student literacy gains as a result of literacy tutoring services as measured by a valid and reliable survey.
- 2.06.4 Approved providers must annually submit to the division the information required under section 2.06.
- 2.07 A provider that fails to provide the information required under section 2.06 or that is found to be ineffective due to failure to demonstrate improvement in eligible students' reading abilities for two (2) consecutive years shall be ineligible to participate in the literacy tutoring grant program.
  - 2.07.1 In addition to measuring effectiveness, the division may audit approved providers to ensure that eligible students who received literacy tutoring grants received the services and materials for which grant funds were spent.
  - 2.07.2 Providers will be removed from the approved provider list immediately if the provider is found to be ineffective, not in alignment with the provider approval rubric, or if evidence of fraud or student harm is discovered.
  - 2.07.3 A provider removed from the approved list may re-apply to be on the approved provider list for the following school year but must provide additional evidence, aligned to evaluation criteria, to demonstrate that all requirements are met.
- 2.08 On an annual basis the division will collect and report to the state board on the following:
  - 2.08.1 The number of students eligible for literacy tutoring grants;

- 2.08.2 The number of eligible students who applied for literacy tutoring grants;
- 2.08.3 The number of eligible students who spent any amount of grant funding from the literacy tutoring grant;
- 2.08.4 The number of eligible students who spent the full amount of grant funding from the literacy tutoring grant;
- 2.08.5 The total amount of grant funding available, the total amount awarded from the application process, and the total amount expended;
- 2.08.6 The total amount of grant funding expended on approved literacy tutoring providers, overall and by provider; and
- 2.08.7 Student outcomes data provided by approved literacy tutoring providers, by provider.
- 2.08.8 The report under section 2.08 shall contain data under sections 2.08.1 through 2.08.4 for the overall program and data organized by grade, by school and district, and by the priority order in section 2.03.

### **3.00 HIGH IMPACT TUTORING GRANTS**

- 3.01 “High-impact tutoring” means tutoring that is aligned with tutoring quality standards, including without limitation tutoring that is:
  - 3.01.1 Data-driven with student results, characteristics, and progress guiding decision making.
  - 3.01.2 Provided in groups of four (4) or fewer students or one-on-one (1-1);
  - 3.01.3 Provided:
    - 3.01.3.1 For a minimum of three (3) times per week, at least thirty (30) minutes a session; or
    - 3.01.3.2 A comparable model that provides direct tutoring based on specific skills needed;
  - 3.01.4 Provided by a consistent tutor or consistent set of tutors that sustain strong relationships with students;
  - 3.01.5 Implemented during the school day; and

- 3.01.6 Supplemental to core academic instruction and not a replacement for such instruction. Supplemental instruction may include small group instructional time where students might otherwise be working independently.
- 3.02 A public school district or an open-enrollment public charter school may annually apply for a high-impact tutoring grant to establish or expand a tutoring program that meets the definition of high-impact tutoring in section 3.01 and that drives strong outcomes for students.
- 3.03 The Division of Elementary and Secondary Education shall establish a timeline for a public school district or open-enrollment public charter school to apply for the program.
- 3.04 A public school district or open-enrollment public charter school applying for funding under this section must provide a detailed plan in its application for how its tutoring program is, or will be with respect to a prospective program:
  - 3.04.1 Data-driven with student results, characteristics, and progress guiding decision making.
  - 3.04.2 A program that uses assessments throughout the school year to monitor student progress.
  - 3.04.3 Provides tutoring in small groups of four or fewer students, or one-on-one (1-1);
  - 3.04.4 Uses a consistent tutor or a consistent set of tutors to provide tutoring to eligible students throughout the school year;
  - 3.04.5 Provides tutoring:
    - 3.04.5.1 For a minimum of three times per week, at least 30 minutes a session; or
    - 3.04.5.2 A comparable model that provides direct tutoring based on specific skills needed;
  - 3.04.6 Implements tutoring during the school day. The tutoring is related to core academic instruction and supplements not supplants that core academic instruction; and
  - 3.04.7 Uses trained tutors, as defined by the approved provider, to provide the tutoring.

- 3.05 A public school district or open-enrollment public charter school that receives an award under this section must launch and deliver high-impact tutoring services in accordance with the timeline established by the division.
- 3.06 The high-impact tutoring pilot program will provide a maximum grant award determined annually by the division based on available funding.
- 3.07 A public school district or open enrollment public charter school applying for a grant award under this section must specify in its grant application criteria for which students are eligible for its high-impact tutoring program and how those students are selected.
  - 3.07.1 The public school district or open-enrollment public charter school must consider without limitation the academic performance of student groups across grades and subjects within a public school district or open-enrollment public charter school and student assessment results, including standards-aligned or nationally normed student assessment results, as part of its eligibility and selection process.
- 3.08 The division shall post a list of each public school district or open-enrollment public charter school that receives funding and each public school district or open-enrollment public charter school's high-impact tutoring program plan on its website.
- 3.09 A public school district or open-enrollment public charter school receiving grant funding under this rule must comply with all state and federal laws with respect to the use of grant funds and may spend tutoring program funds on:
  - 3.09.1 Contracting with vendors which provide high-impact tutoring from a division-approved provider list;
  - 3.09.2 Hiring or contracting for tutors or providing stipends or other incentives to paraprofessionals, retired teachers, community organizations to ensure maximum tutoring capacity;
  - 3.09.3 Covering administrative expenses; and
  - 3.09.4 Covering costs associated with tech-enabled tutoring solutions, such as licenses, software, and related devices.
- 3.10 A public school district or open-enrollment public charter school receiving grant funding under this rule must provide a funding match to support the high-impact tutoring program funding awarded by the division.

- 3.10.1 The division may allow an in-kind match from the district or open-enrollment public charter school to meet the requirement set forth in section 3.10.
- 3.11 A public school district or open-enrollment public charter school receiving funds for a high-impact tutoring program under this rule must implement the approved tutoring program plan with fidelity ensuring that eligible students receive the specified dosage of high-impact tutoring services.
  - 3.11.1 A public school district or open-enrollment public charter school that does not implement its approved program with fidelity may be ineligible for future grant funds.
- 3.12 A provider that fails to submit information required under this rule or that is found to be ineffective due to failure to demonstrate improvement in eligible students for two (2) consecutive years shall be ineligible to participate in the high-impact tutoring grant program.
- 3.13 A public school district or open-enrollment public charter school that is found to be ineligible for grant funds after receiving funds from the division shall return grant funds to the division.

#### **4.00 HIGH-IMPACT TUTORING PROVIDERS**

- 4.01 The Division of Elementary and Secondary Education shall maintain an approved list of high-impact tutoring providers that participating districts and open-enrollment public charter schools may use.
- 4.02 Criteria that may be considered for providers include, but are not limited to:
  - 4.02.1 Provider experience in providing high-impact tutoring services;
  - 4.02.2 Types of student performance data collected;
  - 4.02.3 Evidence of impact on student outcomes;
  - 4.02.4 Grade levels and content areas served;
  - 4.02.5 Tutor experience, training, and content expertise;
  - 4.02.6 Per student costs;
  - 4.02.7 Tutoring models used whether those models are in-person, fully virtual, or a hybrid model; and
  - 4.02.8 Alignment to high-impact tutoring as defined in section 3.01.

## **5.00 DATA COLLECTION AND REPORTING**

- 5.01 A public school district or open-enrollment public charter school receiving grant funding for the high-impact tutoring pilot program under this rule must annually report the following information to the Division of Elementary and Secondary Education using the division’s template:
  - 5.01.1 The number of unique students who participated in the high-impact tutoring program, and related student metrics including tutoring subject, grade level, attendance, dosage, prior performance on the state assessment, and demographic information;
    - 5.01.1.1 For purposes of this section, “dosage” means the actual number of student-level sessions for students identified to participate.
  - 5.01.2 How the public school district or open-enrollment public charter school maintained consistent access for participating students to non-core academic instruction;
  - 5.01.3 How program grant funding was used by the public school district or open-enrollment public charter school and a summary of other resources, if any, used to provide high-impact tutoring;
  - 5.01.4 The academic achievement results or other criteria used to identify eligible students in the high-impact tutoring program; and
  - 5.01.5 The impact on student academic and non-academic outcomes associated with the public school district or open-enrollment public charter school’s program including interim assessments or other outcomes metrics; and
  - 5.01.6 Any additional private, federal, or local funds that the public school district or open-enrollment public charter school used to support high-impact tutoring.
  - 5.01.7 A public school district or open-enrollment public charter school who chooses to use a provider from the approved provider list must submit the information required by section 5.01 with respect to the provider.
- 5.02 The division will annually report the following district-level data to the State Board of Education and the General Assembly:
  - 5.02.1 Data regarding participating public school or open-enrollment public charter school students' access to high-impact tutoring and program

implementation, including by geography, grade span, and subject. The data shall be based on program requirements, including without limitation:

- 5.02.1.1 How data required under this subdivision has changed over time;
- 5.02.1.2 The number of students who received high-impact tutoring.
- 5.02.1.3 The dosage and attendance of students who received high-impact tutoring in the program; and
- 5.02.1.4 The number of students eligible for high-impact tutoring;
- 5.02.2 Data on achievement and growth outcomes from participating students; and
- 5.02.3 Program successes and challenges.

**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.



# Division of Elementary and Secondary Education

*Transforming Arkansas to lead the nation in student-focused education*

## **Department of Education written findings pursuant to**

### **Ark. Code Ann. 25-15-204(e)(4) – DESE Rules Governing Tutoring Grants**

**Jacob Oliva**  
Secretary

**Stacy Smith**  
Deputy  
Commissioner

**State Board of  
Education**

**Dr. Sarah Moore**  
Stuttgart  
Chair

**Kathy Rollins**  
Springdale  
Vice-Chair

**Adrienne Woods**  
Rogers

**Randy Henderson**  
Blytheville

**Lisa Hunter**  
White Hall

**Jeff Wood**  
Little Rock

**Ken Bragg**  
Sheridan

**Leigh Keener**  
Little Rock

1. Rule's basis and purpose: This rule is required by Act 237 of 2023 and seeks to implement a literacy tutoring grant program and a high-impact tutoring grant program created by Act 237. Without this rule, the Department cannot efficiently administer the program or hold participating schools and providers accountable. The rule is specifically necessary so that the Department of Education can ensure processes for determining the eligibility of students, school districts, and service providers, conducting account and program audits, disbursing payments, and enrolling participating students.
2. Problem that the rule seeks to address: This rule is required by statute and addresses the directive in the law for the Department to administer both programs. This rule establishes a process:
  - for determining the eligibility of students for the literacy tutoring grant program, including the awarding of grants to eligible students;
  - providing the Department with authority to disburse grant funds establishing the authority for the division to claw back misused funds;
  - for conducting high impact tutoring program audits, including determining continuing eligibility for school districts and other providers; and
  - enrolling participating students.
3. Description of the factual evidence that justifies the agency's need for the proposed rule and describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs: This rule is required by Arkansas law and the rule will allow the Department to implement and administer the program.
4. There are no less costly alternatives to the rule: this rule is required by Arkansas law.
5. No existing rules have created or contributed to the problem the agency seeks to address with the proposed rule.
6. The Department is required by statute to annually provide a report to the General Assembly. This required report must include: data regarding participating public school students' access to high-impact tutoring and program implementation, data on achievement and growth outcomes from participating public school students, program successes and challenges; recommendations for policy changes in future years in order to ensure every child in Arkansas can access high-impact tutoring as needed, and an overview of actions taken to support every participating public school district and open-enrollment public charter school to ensure that high-impact tutoring is available to every eligible child in Arkansas. The Department plans to use this data to adjust program administration to ensure the most cost-effective outcome while maintaining program effectiveness.