

# ARKANSAS REGISTER

## Proposed Rule Cover Sheet



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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 \_\_\_\_\_

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Name of Rule \_\_\_\_\_

Newspaper Name \_\_\_\_\_

Date of Publishing \_\_\_\_\_

Final Date for Public Comment \_\_\_\_\_

Location and Time of Public Meeting \_\_\_\_\_

**DIVISION OF ELEMENTARY AND SECONDARY EDUCATION RULES GOVERNING  
PUBLIC SCHOOL POLICIES RELATING TO OVERNIGHT TRAVEL AND USE OF  
PUBLIC SCHOOL LAVATORIES**

Effective date:

**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, 6-21-120, and 25-15-201 et seq.

**2.00 DEFINITIONS**

2.01 "Immediate family" means a public school student's parent, brother, sister, or grandparent.

2.02 "Multiple occupancy restroom or changing area" means an area in a public school district or open-enrollment public charter school building that is designed or designated to be used by two (2) or more individuals at the same time and in which one (1) or more individuals may be in various stages of undress in the presence of other individuals.

2.02.1 "Multiple occupancy restroom or changing area" includes without limitation the following:

2.02.1.1 A restroom;

2.02.1.2 A locker room;

2.02.1.3 A changing room; and

2.02.1.4 A shower room.

2.03 "Sex" means the physical condition of being male or female, as defined in Arkansas Code § 6-21-120.

2.03.1 A public school district or open-enrollment public charter school may rely upon a public school student's sex as identified on his or her original birth certificate issued at or near the time of his or her birth.

**3.00 PRIVACY AND SAFETY IN PUBLIC SCHOOL RESTROOMS**

3.01 To ensure privacy and safety, each public school district and open-enrollment public charter school that serves students in prekindergarten through grade twelve (preK-12) in this state shall:

3.01.1 Require each multiple occupancy restroom or changing area to be designated as follows:

3.01.1.1 For the exclusive use by the male sex; or

3.01.1.2 For the exclusive use by the female sex; and

3.01.2 Provide a reasonable accommodation to an individual who is unwilling or unable to use a multiple occupancy restroom or changing area individuals designated for the individual's sex.

3.01.2.1 As provided in Arkansas Code § 6-21-120, a reasonable accommodation shall not include access to a restroom or changing area that is designated for use by members of the opposite sex to an individual while members of the opposite sex of the individual are present or may be present in the restroom or changing area.

3.02 The provision of Section 3.02 does not apply to an individual who enters a multiple occupancy restroom or changing area designated for use by the opposite sex when he or she enters for at least one (1) of the following circumstances:

3.02.1 For custodial, maintenance, or inspection purposes;

3.02.2 To render emergency medical assistance; or

3.02.3 To address an ongoing emergency, including without limitation a physical altercation.

3.03 A public school district or open-enrollment public charter school may adopt a policy that is necessary to accommodate individuals protected under the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, as it existed on January 1, 2023, or young children who are in need of physical assistance when using a restroom or changing facility that is located in a public school district or open-enrollment public charter school.

3.03.1 However, a public school district or open-enrollment public charter school that serves students in prekindergarten through grade twelve (preK-12) in this state shall not adopt a policy under this rule that is contrary to Arkansas Code § 6-21-120.

#### **4.00 OVERNIGHT TRIPS**

4.01 Except as provided in Arkansas Code § 6-21-120, a public school district or open-enrollment public charter school that sponsors or supervises an overnight trip involving a public school student shall ensure that a public school student attending the overnight trip either:

4.01.1 Shares sleeping quarters with a member or, if necessary, multiple members, of the same sex, as defined in Arkansas Code § 6-21-120; or

4.01.2 Is provided single-occupancy sleeping quarters.

4.02 A public school student attending an overnight trip may share sleeping quarters with a member of the opposite sex, as defined in Arkansas Code § 6-21-120, if the member of the opposite sex is a member of the public school student's immediate family.

4.03 A public school shall not allow a student who is under the age of eighteen (18) to participate in an overnight trip unless the student's parent, legal guardian or a person standing in loco parentis to the student provides written authorization to the school prior to the trip.

4.03.1 A student who is under the age of eighteen (18) may only share sleeping quarters with a member of the opposite sex pursuant to Section 4.02 if specifically stated in the written authorization required under Section 4.03.

#### **5.00 ENFORCEMENT**

5.01 An allegation of noncompliance with this rule shall be referred to the Professional Licensure Standards Board by filing a formal complaint.

5.01.1 Upon the board finding noncompliance with this rule, the following individuals, as applicable, shall be subject to a minimum fine of one thousand dollars (\$1,000), and may receive additional sanctions as determined by the board:

5.01.1.1 The superintendent of a public school district where the noncompliance occurred, if the superintendent is found specifically to be noncompliant with this rule;

5.01.1.2 The principal of a public school where the noncompliance occurred, if the principal is found specifically to be noncompliant with this rule;

5.01.1.3 The director or administrative head of an open enrollment public charter school where the noncompliance occurred, if the director or administrative head is found specifically to be noncompliant with this rule; or

5.01.1.4 A teacher or supervisor of a classroom or school-sponsored activity, if the teacher or supervisor is found specifically to be noncompliant with this rule.

5.02 A parent, legal guardian, or person standing in loco parentis of a public school student shall have a cause of action against a public school district or an open-enrollment public charter school if:

5.02.1 His or her public school student:

5.02.1.1 Encounters a member of the opposite sex in a public school district or open-enrollment public charter school multiple occupancy restroom or changing area that is designated for the public school student's sex if the member of the opposite sex received permission from the public school district or open-enrollment public charter school superintendent or the public school or open-enrollment public charter school building principal to use the multiple occupancy restroom or changing area; or

5.02.1.2 Is required by a public school district or open-enrollment public charter school superintendent or the public school or open enrollment public charter school building principal to share sleeping quarters with a member of the opposite sex who is not an immediate family member of the public school student; or

5.02.2 The public school district or open-enrollment public charter school is found to be noncompliant under Section 3.00 of this rule.

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH  
THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT \_\_\_\_\_  
BOARD/COMMISSION \_\_\_\_\_  
BOARD/COMMISSION DIRECTOR \_\_\_\_\_  
CONTACT PERSON \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
PHONE NO. \_\_\_\_\_ EMAIL \_\_\_\_\_  
NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING \_\_\_\_\_  
PRESENTER EMAIL(S) \_\_\_\_\_

**INSTRUCTIONS**

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, [miller-ricer@blr.arkansas.gov](mailto:miller-ricer@blr.arkansas.gov), for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, [garritym@blr.arkansas.gov](mailto:garritym@blr.arkansas.gov), for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

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1. What is the official title of this rule?  
\_\_\_\_\_
2. What is the subject of the proposed rule? \_\_\_\_\_
3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes      No

*If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).*

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes      No

4. Is this rule being filed for permanent promulgation? Yes No

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, what was the effective date of the emergency rule? \_\_\_\_\_

On what date does the emergency rule expire? \_\_\_\_\_

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes No

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes No

If yes, please provide the state statute and/or rule citation.

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes No

If yes, please list the rules being repealed.

If no, please explain.

8. Is this a new rule? Yes No

Does this repeal an existing rule? Yes No

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes No

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?  
Yes      No

If yes, please provide the year of the act(s) and act number(s).

11. What is the reason for this proposed rule? Why is it necessary?



12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

13. Will a public hearing be held on this proposed rule? Yes      No

If yes, please complete the following:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: \_\_\_\_\_

*Please be sure to advise Bureau Staff if this information changes for any reason.*

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. \_\_\_\_\_

15. What is the proposed effective date for this rule? \_\_\_\_\_

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

19. Is the rule expected to be controversial? Yes      No

If yes, please explain.

**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.

## SUMMARY OF NEW RULE

### **DIVISION OF ELEMENTARY AND SECONDARY EDUCATION RULES GOVERNING PUBLIC SCHOOL POLICIES RELATING TO OVERNIGHT TRAVEL AND USE OF PUBLIC SCHOOL LAVATORIES**

The DESE Rules Governing Public School Policies Relating to Overnight Travel and Use of Public School Lavatories are necessary in order to implement Act 317 of 2023 which requires rulemaking by the department.

The purpose of this rule is to provide guidelines for public school districts and open-enrollment public charter schools to provide for the privacy and safety of students during overnight trips and during the use of lavatories or multiple occupancy changing rooms. The rule defined terms including immediate family which is undefined in the Act. The rule also establishes that access to single-occupancy restrooms or changing areas is a reasonable accommodation and the provides minimum requirements for such an accommodation.

## POST-PUBLIC COMMENT

## 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 new administrative rules. Public comment hearings will be held for the following rules: DESE Rule Governing Public School Choice on April 17, 2024, at 10:00 a.m.; DESE Rule Governing Petitions for Student Transfers on April 17, 2024 at 1:00 p.m.; DESE Rule Governing Public School Policies Relating to Overnight Trips and Use of Public School Lavatories on April 18, 2024 at 10:00 a.m.; DESE Rule Governing the Student Protection Act on April 18, 2024 at 1:00 p.m.; DESE Rule Governing Educator Performance on April 19, 2024 at 10:00 a.m.; DESE Rule Governing Community Service on April 19, 2024 at 1:00 p.m.; DESE Rule Governing the Right to Read Act on April 19, 2024 at 3:00 p.m. All hearings will be held at the Arkansas Department of Education, Arch Ford Building, Four Capitol Mall, Little Rock, AR, 72201. The public comment period for these rules ends on April 24, 2024. 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](mailto: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 or via phone at (501) 683-1390.