

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
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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 _____

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 PETITIONS FOR STUDENT TRANSFERS

Effective date:

1.00 REGULATORY AUTHORITY AND PURPOSE

- 1.01 These rules shall be known as the Division of Elementary and Secondary Education Rules Governing Petitions for Student Transfers.
- 1.02 The Arkansas State Board of Education promulgated these rules pursuant to the authority granted to it by Ark. Code Ann. §§ 6-11-105, 6-18-307, 6-18-316, and 6-20-2304.
- 1.03 The purpose of this rules is to set out the process and procedures necessary for the State Board of Education to fulfill its responsibilities regarding legal transfers under Ark. Code Ann. §§ 6-18-307 and 6-18-316.

2.00 DEFINITIONS

- 2.01 “Resident district” means the public school district in which a student petitioning for a transfer is physically present and maintains a permanent place of abode for an average of no less than four (4) calendar days and nights per week for a primary purpose other than school attendance.
- 2.02 “Receiving district” means another public school district to which a student is petitioning for a transfer.

3.00 GENERAL PROVISIONS

- 3.01 The transfer of a student under this rule is prohibited when:
- 3.01.1 Either the resident district or the receiving district is under a desegregation-related court order; and
- 3.01.2 The transfer in question would violate the court order.
- 3.02 Each form filed with the Division of Elementary and Secondary Education reporting a legal student transfer must be accompanied by an affidavit signed by each member of both school district boards of directors stating that the transfer does not violate the prohibition in Section 3.01.
- 3.03 If the transfer fails to comply with Section 3.01, the division shall withhold from each district state aid in an amount equal to that to be generated by the student in question in the respective districts.

3.03.1 State aid shall be withheld from the resident district under Section 3.03 for the school year in which the transfer occurred.

3.03.1.1. If the resident district has received state aid for the student prior to the transfer, the state aid provided in the following school year shall be reduced by the amount of aid generated by the student in the year that the student was transferred.

3.03.2 State aid shall be withheld from the non-resident district under Section 3.03 for the initial school year in which the district would otherwise receive aid for that student and each subsequent year in which the requirements of Section 3.02 are unsatisfied.

3.04 A student who transfers under this rule may complete all remaining school years at the receiving district so long as the student continues to attend school in the district.

3.05 A student who transfers under this rule shall not be:

3.05.1 Denied participation in an extracurricular activity at the nonresident school district to which he or she transfers based exclusively on his or her decision to transfer to the nonresident school district; or

3.05.2 Disciplined in any manner based on the exercise of his or her right to transfer to another nonresident school district under this rule.

3.06 If a school district denies a legal transfer under this Rule or conditions a legal transfer on the acceptance of a tuition agreement, which has the effect of denying the petition, the school district shall notify the petitioner:

3.06.1 That the actions of the school board may be appealed to the State Board of Education by filing a petition for appeal with the Division of Elementary and Secondary Education in accordance with Section 6.02 of this rule.

3.06.2 That the appeal must be filed or postmarked within ten (10) days.

4.00 PETITIONS FOR LEGAL TRANSFERS

4.01 Upon the petition of a student in their resident district to transfer to a receiving district, the board of directors of the resident district may enter into an agreement with the board of directors of the receiving school district transferring the student to the receiving district for purposes of education.

4.01.1 Forms for use in transferring a student from one (1) school district to another shall be provided by the Division of Elementary and Secondary Education.

4.02 A transfer petition received by a school district under this section shall be placed on the agenda of the next regular monthly meeting of the school district board of directors or a specially called meeting of the school district board of directors, whichever occurs first.

4.02.1 A petition received less than five (5) days before the next school board meeting may be placed on the agenda for the following meeting.

4.03 At least five (5) days before a regular monthly meeting of a school district board of directors or a specially called meeting of a school district board of directors, whichever occurs first, the superintendent of the school district shall notify the school district board of directors regarding:

4.03.1 All transfer petitions received under this section; and

4.03.2 The superintendent's recommendation concerning each transfer petition received under this section, as required by Subsection 4.03.2.2 of this Rule.

4.03.2.1 If a student's transfer petition is recommended by a school district superintendent for denial, the school district superintendent shall provide a written explanation of the reasons for the recommendation to the:

4.03.2.1.a School district board of directors; and

4.03.2.1.b Parent, legal guardian, or person standing in loco parentis to the student.

4.03.2.2 The superintendent is required to recommend in writing that the school district board of directors:

4.03.2.2.a Approve the petition; or

4.03.2.2.b Deny the petition for reasons described in the recommendation.

4.04 Each transfer petition received by a school district under this section and placed on the agenda of a school district board of directors as required under this rule shall:

4.04.1 Be considered individually; and

4.04.2 Receive a separate vote by the school district board of directors.

4.04.3 In addition, the school board of directors shall provide a basis for the board action if:

4.04.3.1 The board denies the petition; or

4.04.3.2 The board conditions approval on acceptance of a tuition agreement.

4.05 A parent, legal guardian, person standing in loco parentis to a student, or a student who is eighteen (18) years or older who submits a petition for a transfer under this section shall be given at least five (5) minutes to present the student's case for a transfer to a school district board of directors.

4.06 A school district board of directors may adopt a resolution that delegates its authority to approve a petition for a transfer received under this section to:

4.06.1 The school district superintendent; or

4.06.2 An individual member of the school district board of directors.

4.06.3 If a school district board of directors has adopted a resolution delegating its authority to approve a petition for a transfer under this rule, a petition that has been approved shall not be required to be heard at a meeting of the school district board of directors.

4.06.4 If a school district board of directors has adopted a resolution delegating its authority to approve a petition for a transfer under this rule, the petition must be approved within ten (10) business days.

4.06.4.1 If a petition is not approved within ten (10) business days, it shall be scheduled for consideration by the school district board of directors pursuant to Section 4.02.

4.06.4.2 A petition may be approved by the official authorized to approve petitions under this subsection after the petition has been added to an agenda in which case no action shall be taken by the school district board of directors related to that petition.

4.07 A school district board of directors shall not delegate its authority to deny a petition for a transfer received under this section.

4.08 If a petition for a transfer received under this rule is denied, the parent, legal guardian, person standing in loco parentis to a student, or a student who is

eighteen (18) years or older who submitted a petition for a transfer may appeal the decision of the school district board of directors to the State Board of Education.

4.08.1 An approval of a petition which is conditioned on the acceptance of a tuition agreement constitutes a denial of the petition for the purposes of appeal.

4.08.2 The failure of a school district to comply with the requirements of Section 4.02 constitutes a denial of the petition for the purposes of appeal.

4.08.3 An appeal must be filed in accordance with Section 6.02 of this Rule.

4.09 After a petition for a transfer has been approved by a school district board of directors of the resident district and a school district board of directors of the receiving district, copies of approved transfers shall be filed by the receiving district with the:

4.09.1 Office of the county clerk;

4.09.2 Administrative offices of the respective school districts; and

4.09.3 Arkansas Department of Education's Office of School Choice using the address below:

Arkansas Department of Education
Attn: Office of School Choice
Four Capitol Mall
Little Rock, AR 72201

4.10 Upon approval of a petition to transfer by a resident district, the receiving district may also enter into a tuition agreement with either the resident district or the parent, legal guardian, or person standing in loco parentis to the transferring student involved whereby the resident district or the parent, legal guardian, person standing in loco parentis to a student, or a student who is eighteen (18) years or older will make tuition payments to the receiving district to compensate the receiving district for local taxes not received on behalf of the transferring student.

4.10.1 The annual amount of the tuition shall not exceed the average amount of local property tax per pupil collected in the receiving district in the preceding year.

4.11 Student petitions for transfers granted under this rule which include a tuition agreement shall be reviewed at the end of four (4) years by the school districts involved to determine whether a tuition agreement, if one exists, should be renewed.

- 4.12 Student petitions for transfers granted under this rule constitute an independent agreement between the resident district and the receiving district and are not subject to the provisions and limitations of other student transfer laws.

5.00 TRANSFER TO ADJOINING SCHOOL DISTRICT

- 5.01 The parent, legal guardian, person standing in loco parentis to a student, or a student who is eighteen (18) years or older whose place of residence is at least fifteen (15) miles from a school in the resident district and whose place of residence is within seven (7) miles of a school in an adjoining district may petition the board of directors of the resident district for a transfer to the adjoining district if the adjoining district has agreed in writing to accept transfer of the child.

5.01.1 The minimum distances prescribed by this rule shall be computed using highways that could reasonably and safely be traversed by school buses.

- 5.02 A copy of such written agreement by the receiving district shall be filed with any such petition.

- 5.03 If several parents, legal guardians, persons standing in loco parentis to a student combined with or a students who are eighteen (18) years or older students in a particular area meet the requirements prescribed in this rule, those persons may jointly petition the board of directors of the resident district for transfer of their students to the adjoining district.

- 5.04 When any individual or joint petition under Section 4.00 is filed with the board of directors of any school district, the board of directors shall within thirty (30) days after the date of the filing of the petition either grant or deny the transfer.

- 5.05 If the board of directors denies the petition, the petitioners may appeal to the State Board of Education.

6.00 APPEALS BEFORE THE STATE BOARD

- 6.01 A parent, legal guardian, person standing in loco parentis to a student, or a student who is eighteen (18) years or older, whose petition for a transfer under this rule is denied may request a hearing before the State Board of Education to reconsider the petition for transfer.

- 6.02 An appeal before the State Board of Education shall be requested in writing and shall be received or postmarked no later than ten (10) calendar days after the parent, legal guardian, person standing in loco parentis to a student, or a student

who is eighteen (18) years or older (hereafter “appealing party”) receives a notice of rejection of the petition under this rule and shall be delivered or mailed to:

Arkansas Department of Education
Attn: Legal Services
Four Capitol Mall
Little Rock, AR 72201

6.02.1 The State Board of Education may wave the deadline to file an appeal if the notice of rejection does not inform the petitioner of the right to appeal and the deadline to file an appeal or the petitioner makes a good faith attempt to file a timely appeal.

6.03 Contemporaneously with the filing of the written appeal with the Division of Elementary and Secondary Education’s Legal Services, the appealing party must also provide a copy of the written appeal to the superintendent of each school district.

6.04 In its written appeal, the appealing party shall state his or her basis for appealing the decision of the receiving district.

6.05 The appealing party shall submit, along with its written appeal:

6.05.1 The original petition for a transfer sent by a parent or eligible student to each school district; and

6.05.2 The denying school district’s reasons for denying the transfer if provided by to the appealing party.

6.06 Upon receipt of the written appeal, the division shall notify each district of the appeal.

6.06.1 Each district may submit, in writing, any additional information, evidence, or arguments supporting its rejection of the student’s application by mailing such a response to the department. Such a response shall be postmarked no later than ten (10) days after the district receives notice of the appeal. Any response shall be mailed to:

Arkansas Department of Education
Attn: Legal Services Unit
Four Capitol Mall
Little Rock, AR 72201

6.07 The division shall notify the appealing party and each district of the date, time, and location of the hearing before the state board.

- 6.08 Prior to the hearing, the appealing party may submit supporting documentation that the transfer would be in the best educational, social, or psychological interest of the student.
- 6.09 If the state board overturns the determination of either district on appeal, the state board shall notify the appealing party, the nonresident district, and the resident district of the basis for the state board's decision.
- 6.10 The state board shall either grant or deny an appeal filed pursuant to Section 5.05 not more than forty-five (45) days after the day the appeal is received.

7.00 STATE BOARD HEARING PROCEDURES

- 7.01 All persons wishing to testify before the State Board of Education shall first be placed under oath by the Chairperson of the State Board.
- 7.02 Each party that wishes to participate in the hearing may take up to fifteen (15) minutes to present its case, beginning with the nonresident school district, followed by the resident school district, and then the appealing party.
- 7.02.1 The chair of the state board may allow the parties additional time to present their cases.
- 7.03 The state board, at its discretion, shall have the authority to require any person associated with the application to appear in person before the state board as a witness during the hearing.
- 7.03.1 The state board may accept testimony by affidavit, declaration, deposition transcript, or hearing transcript.
- 7.04 The state board will resolve the appeal based upon the totality of evidence presented.
- 7.05 On appeal, the school district denying a petition bears the burden of justifying its decision to deny a family's petition and must overcome that burden with a clear and convincing reason for that decision.
- 7.06 When hearing an appeal, the State Board may take one of the following actions:
- 7.06.1 Affirm denial of a petition by the school district board of directors;
- 7.06.2 Overturn the school district board of directors and grant the transfer petition; or

7.06.3 Table the petition for consideration at a future meeting to be held not more than forty-five (45) days from the date of the initial hearing.

7.06.4 In addition, the State Board may reduce or eliminate any tuition agreement obligation attached to a legal transfer on appeal under this rule.

7.07 The consideration of a petition under this Rule shall be conducted in an open meeting.

7.08 The State Board shall provide a written decision to the Division of Elementary and Secondary Education, the appealing party, the nonresident district, and the resident district within fourteen (14) days of announcing its decision under this section.

8.00 EFFECT OF A BOARD-TO-BOARD TRANSFER

8.01 The ruling of the state board shall be the final administrative ruling on the petition.

8.02 A transfer resulting from an appeal granted by the State Board of Education is effective upon the receipt by the receiving district of the written decision of the state board.

8.03 The transfer of a student under this rule:

8.03.1 Places the responsibility for the education of the student on the receiving district; and

8.03.2 Permits the receiving district to count a student who transfers under this rule for purposes of average daily membership for state and federal aid purposes.

8.04 The transfer of a student under this rule does not transfer the local tax money from a resident district.

**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, 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, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

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 PETITIONS FOR STUDENT TRANSFER

The DESE Rules Governing Petitions for Student Transfer are necessary in order to implement Act 731 of 2023 which makes legal transfers subject to appeal to the State Board of Education if one or both districts fail to approve the transfer.

Prior to the Act, legal transfers were a mechanism that School Districts and parents could use to allow a student to move from one district to another at any time; however, transfers were only possible if both districts agreed. The Act brings the State Board of Education into the process for the first time and gives the Board the ultimate authority over all petitions, making it necessary for a rule to be promulgated which governs this process.

The rule also provides additional details regarding the withholding of state aid funds. Withholding is required under A.C.A. §6-18-317 when a district fails to certify to DESE that the resident or receiving district is not under a desegregation order or that the transfer complies with any existing order.

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. 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.