

ARKANSAS REGISTER

Transmittal Sheet

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



Secretary of State

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Division of Elementary and Secondary Education

Department Arkansas Department of Education

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Statutory Authority for Promulgating Rules A.C.A. 6-21-120

Rule Title: DESE Rules Governing Public School Policies Relating to Overnight Travel and Use of Public School Lavatories

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

May 10, 2024

June 10, 2024

August 22, 2024

August 8, 2024

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

Daniel Shults

daniel.shults@ade.arkansas.gov

8/22/2024

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

501-682-4202

daniel.shults@ade.arkansas.gov

Phone Number

E-mail Address

Deputy Legal Counsel

Title

8/23/2024

Date

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

Effective Date: September 2, 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, 6-21-120, 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.
- 2.02.2 A multiple occupancy changing area which is designed for dual use as a changing area and as a team meeting venue is not a “multiple occupancy changing area” under this rule when:
- 2.02.2.1 The meeting venue is being used to address student athletes participating in athletic activities a reasonable time before, during, or immediately after, an athletic event;
- 2.02.2.2 No person is in a state of undress at any time while the room is used as a meeting venue; and
- 2.02.2.3 An adult person of the same sex as the student athletes is present.

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 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 3.01 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.

3.03.2 The provisions of this rule shall not apply to nurses, paraprofessionals, or other personnel providing services required by a student's Individualized Education Program (IEP).

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.

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.