

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

**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 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.

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.

6.00 EXCLUSIONS

6.01 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).

6.02 The provisions of this rule shall not apply to coaches or athletic personnel, when addressing student athletes participating in athletic activities a reasonable time before, during, or immediately after, an athletic event so long as;

6.02.1 The coach or athletic personnel is addressing student athletes either in preparation of an athletic event or during the athletic event;

6.02.2 No person is in a state of undress at any time, and

6.02.3 A school employee of the same sex as the student athletes is present.

MARKUP DRAFT

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

Jacob Oliva
Secretary

May 7, 2024

Stacy Smith
Deputy
Commissioner

Proposed Rule – Governing Public School Policies Relating to Overnight Travel and Use of Public School Lavatories

**State Board of
Education**

PURPOSE

Pursuant to Act 317 of 2023 and the authority of Ark. Code Ann. § 6-11-105, the Division is charged with promulgating rules regarding overnight trips for public schools and open-enrollment public charter schools. Act 317 is codified at Ark. Code Ann. § 6-10-317. 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.

Dr. Sarah Moore
Stuttgart
Chair

Kathy Rollins
Springdale
Vice-Chair

BACKGROUND

The Rule implements legislation designed to ensure public school students are not required to be in a state of undress in front of a person that is genetically of the opposite sex.

Adrienne Woods
Rogers

KEY POINTS

- Each public school district and open-enrollment public charter school is required to designate multiple occupancy restrooms or changing areas as either for the exclusive use of the male or female sex.
- Establishes that access to single-occupancy restrooms or changing areas is a reasonable accommodation and the guidelines for such an accommodation.
- Creates exemptions for coaches and personnel providing services required by an IEP.

Randy Henderson
Blytheville

Lisa Hunter
White Hall

DISCUSSION

This rule is being promulgated to implement Act 317 of 2023 and to ensure that Arkansas Public Schools comply with the requirements of the Act. Following the first public comment period, language was added which provides the rule does not apply to coaches addressing student athletes before, during, or after an athletic event so long no person is in a state of undress and a school employee of the same sex as the student athlete is present. Language was also added which provides the rule does not apply to personnel providing service required by an Individualized Education Program.

Jeff Wood
Little Rock

Ken Bragg
Sheridan

Leigh Keener
Little Rock

RECOMMENDATION

The Division of Elementary and Secondary Education recommends Governor's Office approval of this rule.

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 on the DESE Rule Governing Public School Policies Relating to Overnight Trips and Use of Public School Lavatories on May 22, 2024 at 1:30 p.m. Public comment hearings will be held for the following rules on May 31, 2024 at 10am: the DESE Rule Governing Professional Development; the DESE Rule Governing Arkansas Governor's School; the DESE Rule Governing Background Checks; the ADE, Office of Early Childhood Rules Governing Better Beginnings, Arkansas's Tiered Quality Rating and Improvement System; the DESE Rule Governing the Code of Ethics for Arkansas Educators; the DESE Rule Governing Dyslexia Screenings and Interventions; the DESE Rule Governing Educator Licensure; the DESE Rule Governing Emergency Response Equipment and Training in Arkansas Public Schools; the DESE Rule Governing Fiscal Assessment and Accountability Program; the DESE Rule Governing the Maternity Leave Cost Sharing Program; the DESE Rule Governing the Requirements and Procedures for Obtaining an Arkansas Birth through Prekindergarten Teaching Credential; and the DESE Rule Governing Water Safety Information Provided by Public Schools. Public comment hearings will be held for the repeal of the following rules on May 31, 2024 at 1:30pm: the DESE Rule Governing the Educator Compensation Reform Program; the DESE Rule Governing Eligibility of Participating School Districts in the Traveling Teacher Program; the DESE Rule Governing Incentives for Teacher Recruitment and Retention in High-Priority Districts; the DESE Rule Governing Reimbursement by School Districts for Election Expenses; the DESE Rule Governing School Board Zones and Rezoning; the DESE Rule Governing School District Duty to Report Student Criminal Acts; the DESE Rule Governing the Succeed Scholarship Program; and DCTE Rule Governing Methods of Administration of Career and Technical Education Programs. 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 June 10, 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.

Re: Notice of Rulemaking

Legal Ads <legalads@arkansasonline.com>

Wed 5/8/2024 11:42 AM

To: Daniel Shults (ADE) <Daniel.Shults@ade.arkansas.gov>

Cc: LaBria Brown (ADE) <LaBria.Brown@ade.arkansas.gov>; Legal <legal@ade.arkansas.gov>

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

Notice will run Fri 5/10, Sat 5/11, and Sun 5/12.

Sunday will be invoiced separate from Fri/Sat.

Thank you.

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

From: "Daniel Shults (ADE)" <Daniel.Shults@ade.arkansas.gov>
To: "LaBria Brown, ADE" <LaBria.Brown@ade.arkansas.gov>, "Legal Ads" <legalads@arkansasonline.com>
Cc: "Legal" <legal@ade.arkansas.gov>
Sent: Wednesday, May 8, 2024 11:27:16 AM
Subject: RE: Notice of Rulemaking



ARKANSAS
DEPARTMENT OF EDUCATION

Daniel Shults
Deputy Legal Counsel
Arkansas Department of Education
4 Capitol Mall, Suite 302
Little Rock, Arkansas 72201
Office: (501) 682-4202
Cell: (501) 647-5939
Email: daniel.shults@ade.arkansas.gov

From: LaBria Brown (ADE) <LaBria.Brown@ade.arkansas.gov>
Sent: Wednesday, May 8, 2024 9:57 AM
To: Legal Ads <legalads@arkansasonline.com>
Cc: Legal <legal@ade.arkansas.gov>; Daniel Shults (ADE) <Daniel.Shults@ade.arkansas.gov>
Subject: Notice of Rulemaking

Good morning,

Please find the attached Notice of Rulemaking for several Division of Elementary and Secondary Education administrative rules and confirm receipt. Please run for three consecutive days, from Friday, May 10, 2024, through Sunday, May 12, 2024. Please let me know if you have any questions.