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 Arkansas Department of Education

Agency or Division Name Division of Elementary and Secondary Education

Other Subdivision or Department, If Applicable

Previous Agency Name, If Applicable

Contact Person Andres Rhodes

Contact E-mail andres.rhodes@ade.arkansas.gov

Contact Phone 501-682-4234

Name of Rule DESE Rule Governing Maternity Leave Cost Sharing

Newspaper Name Arkansas Democrat-Gazette

Date of Publishing May 10-12, 2024

Final Date for Public Comment June 10, 2024

Location and Time of Public Meeting Four Capitol Mall, Little Rock AR 72201 on May 31, 2024 at 10:00am

ARKANSAS DEPARTMENT OF EDUCATION
DIVISION OF ELEMENTARY AND SECONDARY EDUCATION
RULES GOVERNING MATERNITY LEAVE COST SHARING
Effective Date:

1.00 REGULATORY AUTHORITY AND PURPOSE

1.01 These rules shall be known as the Arkansas Department of Education Division of Elementary and Secondary Education Rules Governing Maternity Leave Cost Sharing.

1.02 These rules are enacted pursuant to the Arkansas State Board of Education's authority under Ark. Code Ann. §§ 6-11-105, 25-15-201 *et. seq*., and Act 237 of 2023.

1.03 The purpose of these rules is to outline the management of cost-sharing agreements required per Act 237 of 2023 in addition to developing the cost-sharing reimbursement processes and other related procedures regarding Maternity Leave Cost Sharing between the State of Arkansas and participating public school districts or open-enrollment charter schools.

2.00 DEFINITIONS

2.01 "Adoptive child" means a minor child who has been legally adopted by education personnel pursuant to the Revised Uniform Adoption Act. (See Ark. Code Ann. § 9-9-201, et seq.)

2.02 "Cost sharing" means joint, equal responsibility for the cost shared between the State of Arkansas and a public school district or open-enrollment public charter school that employs an individual considered education personnel under these rules;

2.03 "Cost sharing agreement" means the agreement entered into between a school district or open-enrollment public charter school and the Division regarding maternity leave cost sharing.

2.04 "Division" means Division of Elementary and Secondary Education.

2.05 "Education personnel" means an individual, as defined in Ark. Code Ann. § 21-4-414(d)(2) and consistent with the Governor's Executive Order entered on October

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19, 2023, who gives birth or adopts a child, and who is employed full-time by a public school district or open-enrollment public charter school in Arkansas for more than one (1) calendar year preceding the birth or adoption of the child;

2.05.1 For purposes of these rules, education personnel are employed full-time if the employee is in a position that requires, during the duration of a contract, an average of at least 30 hours per week of actual performance of duty during the annual school year or the employee is a full-time school bus driver who is employed by a school district to drive regular routes during the annual school year.

2.06 "eFinance" means the financial management system utilized by a school district for entering financial transactions.

2.07 "Maternity leave" means partially or fully-compensated time away from work within the first twelve (12) weeks immediately following the:

2.07.1 Birth of a biological child by education personnel as defined by Section 2.05 of these rules; or

2.07.2 Placement of an adoptive child in the home of education personnel as defined by Section 2.05 of these rules.

3.00 MATERNITY LEAVE COST-SHARING MANAGEMENT AND PARTICIPATION IN PROGRAM

3.01 For the 2023-2024 school year, a public school district or open-enrollment public charter school choosing to opt in to the program shall provide to the Division a signed cost-sharing agreement developed by the Division, within 30 days of the effective date of these rules. In subsequent years, districts must provide a signed cost-sharing agreement by July 1 for the school year beginning on that date.

4.00 REIMBURSEMENT REQUIREMENTS

4.01 Districts may claim reimbursement only for incurred non-federal costs to fill the position of the eligible employee, for up to twelve (12) weeks, while the eligible employee, as defined by Section 2.05 of these rules, is on approved paid maternity leave.

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4.02 In order to claim reimbursement pursuant to these rules, a public school district or open-enrollment public charter school must submit all final reports required by the cost sharing agreement via eFinance.

4.03 Reimbursement shall be calculated at the rate determined by the Division and based upon information submitted by each participating district.

4.04 All disbursements shall be issued by the Division no later than October 1.

4.05 Continuation of cost sharing shall be contingent upon available funding.

4.06 A public school district or open-enrollment public charter school may claim reimbursement for up to fifty percent (50%) of the total cost of the substitute staff for the period of time that an eligible employee is on maternity leave.

4.07.1 If a school district provides partial compensation to an eligible employee during maternity leave, the amount that the eligible employee's compensation is reduced shall not exceed the districts share of the cost sharing agreement.

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FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT Arkansas Department of Education
BOARD/COMMISSION State Board of Education
PERSON COMPLETING THIS STATEMENT Whitney James
TELEPHONE NO. (501) 682-0166 **EMAIL** Whitney.James@ade.arkansas.gov

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 ADE DESE Rules Governing Maternity Leave Cost Sharing

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	**Next Fiscal Year**
General Revenue_____	General Revenue_____
Federal Funds_____	Federal Funds_____
Cash Funds_____	Cash Funds_____
Special Revenue_____	Special Revenue_____
Other (Identify)_____	Other (Identify)_____
Total 0 _____	Total 0 _____

(b) What is the additional cost of the state rule?

Current Fiscal Year	**Next Fiscal Year**
General Revenue_____	General Revenue_____
Federal Funds_____	Federal Funds_____
Cash Funds_____	Cash Funds_____
Special Revenue_____	Special Revenue_____
Other (Identify)_____	Other (Identify)_____
Total 0 _____	Total 0 _____

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**
$ 0 _____	$ 0 _____

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**
$ 0 _____	$ 0 _____

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.

Jacob Oliva
Secretary

Stacy Smith
Deputy
Commissioner

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March 1, 2024

Proposed Rules Governing Maternity Leave Cost Sharing

Purpose

The Division of Elementary and Secondary Education ("Division") is seeking Governor's Office review and approval of the proposed new rules governing Maternity Leave Cost Sharing.

Background

Pursuant to Act 237 of 2023, Section 21, the Division shall promulgate rules governing maternity leave cost sharing.

Summary of Amendments

- The rules define the following terms: adoptive child, cost sharing, Division, education personnel, and maternity leave.
- The rules outline the procedures for cost sharing management, including the requirements that the Division and participating school districts must enter into a cost sharing agreement, the Division must, on an annual basis, determine the reimbursement rates for paid maternity leave expenses, and that the Division must annually monitor the effectiveness of the program.
- The rules provide a deadline for districts to opt in or out of the program.
- The rules list reimbursement requirements for both the Division and participating school districts. Reimbursement requirements include: limitations regarding the time period and days for which districts may claim reimbursement; the manner by which reimbursement reports are submitted; and the deadline for reimbursement by the Division.
- The rules clarify that the Division will determine reimbursement rates. The reimbursement rates will also be outlined in the cost sharing agreement between the Division and the participating district.

Recommendation

The Division of Elementary and Secondary Education recommends Governor's Office approval of these rules.

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.