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 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 Division of Elementary and Secondary Education Rules Governing the Educator Compensation Reform Program

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 ADE Auditorium, Four Capitol Mall, Little Rock, AR 72201 on May 31, 2024 at 1:30pm

Arkansas Division of Elementary and Secondary Education
Rules Governing the Educator Compensation Reform Program
Effective January 1, 2020

1.00 PURPOSE

1.01 These rules shall be known as the Arkansas Division of Elementary and Secondary Education ("Division") Rules Governing the Educator Compensation Reform Program.

1.02 The purpose of these rules is to provide the process and procedures necessary to calculate and allocate Educator Compensation Reform Program funds to eligible school districts.

2.00 AUTHORITY

2.01 The Arkansas State Board of Education promulgated these rules pursuant to the authority granted to it by Ark. Code Ann. §§ 6-11-105, 25-15-201 et seq., and Acts 170 and 877 of 2019.

3.00 DEFINITIONS

As used in these rules:

3.01 "Educator Compensation Reform Program fund" means a fund established within the Public School Fund, for the Division, made available to school districts to assist with the cost of increasing teacher salaries as required by Ark. Code Ann. § 6-17-2403.

3.02 "Foundation Funding" means the same as the definition set forth in Ark. Code Ann. § 6-20-2303(7) and is the amount set forth in Ark. Code Ann. § 6-20-2305(a)(2).

3.03 "Teacher" means an individual who is required to hold a teaching license from the Division and who is engaged directly in instruction with students in a classroom setting for more than seventy percent (70%) of the individual's contracted time, a guidance counselor, or a librarian.

3.03.1 "Teacher" also includes a nonlicensed classroom teacher employed in a position under a waiver from licensure.

4.00 IMPLEMENTATION

4.01 The Educator Compensation Reform Program ("Program") was established to provide additional funding to school districts currently below the minimum teacher salary schedule set forth in Ark. Code Ann. § 6-17-2403, and assist school districts in ensuring that all educators in public school districts receive

a minimum annual salary of $36,000 over a four-year period.

4.02 School districts that adhered to a teacher compensation schedule at or above $36,000 for a teacher with a bachelor's degree and zero (0) years of experience in the 2018-2019 school year shall not be eligible for funds under the Program.

4.03 School districts that implement a teacher compensation schedule at or above $36,000 for a teacher with a bachelor's degree and zero (0) years of experience prior to the 2022-2023 school year shall not be eligible to receive funding under the Program the year after the $36,000 minimum salary schedule becomes effective and thereafter.

4.04 Any public school district or open-enrollment public charter school that has or receives a waiver of the teacher minimum salary schedule during implementation of the Program shall not be eligible to receive Program funds and shall be responsible for repayment of any Program funds received prior to receiving the waiver.

4.05 School districts requesting Program funds shall provide information documenting eligibility for Program funds to the Division, including without limitation, the school district's plan for implementation of required salary increases and any anticipated or projected adjustments to staff, by completing and submitting the editable application form available on the Division's website at: http://dese.ade.arkansas.gov/divisions/fiscal-and-administrative-services/educator-compensation-reform-program.

5.00 CALCULATION

5.01 The number of all licensed full-time equivalents (FTEs) not paid with federal funds in each school district will be used to calculate the amount of Program funds a school district is eligible to receive.

5.02 The amount of Program funds a school district is eligible to receive each year shall be calculated as follows:

5.02.1 Subtract each school district's minimum teacher salary for the prior school year for a teacher with a bachelor's degree and zero (0) years of experience from the minimum salary indicated by the school district for the current year, up to $36,000.

5.02.2 Multiply the amount in 5.02.1 by the school district's 2017-2018 FTE count for licensed personnel not paid with federal funds.

5.02.3 Multiply the result from 5.02.2 by the current rate of Federal Insurance Contributions Act (FICA) tax and teacher retirement employer matching rate.

5.02.4 Add the result of 5.02.3 to the result of 5.02.2 to determine the total

amount necessary for the district to increase salaries and fringe.

6.0 DISBURSEMENT

6.01 School districts that qualify for Program funds will be notified of the amount the school district is eligible to receive.

6.02 The superintendent of a school district that receives Program funds shall certify acceptance of the funds, adherence to these rules, and expenditure of the funds for the specified purpose.

6.03 The Division shall disburse each school district's allocation of Program funds on or before February 15 each year of implementation, in accordance with the approved application form.

6.03.1 A school district may request that an adjustment be made to its disbursement of Program funds during implementation of the Program by submitting a new application form to the Division.

6.03.2 A request to change the disbursement of Program funds must be approved by the Commissioner of Education.

6.04 If funds are not sufficient to fully fund the Program, the Division shall distribute the available funding to eligible school districts on a pro rata basis.

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT Arkansas Department of Education
BOARD/COMMISSION State Board of Education
BOARD/COMMISSION DIRECTOR
CONTACT PERSON Andres Rhodes
ADDRESS 4 Capitol Mall, Little Rock, AR 72201
PHONE NO. 5016824234 **EMAIL** andres.rhodes@ade.arkansas.gov
NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING
Andres Rhodes; Daniel Shults
PRESENTER EMAIL(S) andres.rhodes@ade.arkansas.gov; daniel.shults@ade.arkansas.gov

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?
Division of Elementary and Secondary Education Rules Governing the Educator Compensation Reform

2. What is the subject of the proposed rule? Educator compensation

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.

This rule is being repealed.

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).

Ark. Code Ann. 6-11-105

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?

The underlying legislation through which this rule was promulgated was amended by Act 237 of 2023, Section 35. The legislation as amended is inconsistent with this rule. Additionally, the relevant provisions of the new legislation are incorporated into other Department rules. Therefore, this rule is no longer 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).

https://dese.ade.arkansas.gov/Offices/legal/rules/pending

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

If yes, please complete the following:

Date: May 31, 2024

Time: 1:30 p.m.

Place: ADE Auditorium, Four Capitol Mall, Little Rock, AR 72201

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. June 10, 2024

15. What is the proposed effective date for this rule? July 1, 2024

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 Arkansas Department of Education
BOARD/COMMISSION State Board of Education
PERSON COMPLETING THIS STATEMENT Stephen Reynolds
TELEPHONE NO. 501-682-4899 **EMAIL** stephen.reynolds@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 Division of Elementary and Secondary Education Rules Governing the Educator Compe

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

State Board of Education

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February 8, 2024

Proposed Rule Repeal – Rule Governing Educator Compensation Reform Program

PURPOSE
The Division of Elementary and Secondary Education is seeking the Governor's review of proposed rule repeal regarding rules governing the educator compensation reform program.

BACKGROUND
Pursuant to Acts 170 and 877 of 2019, the Division is charged with promulgating rules regarding the Educator Compensation Reform Program, which was codified at Ark. Code Ann. § 6-17-2403. The purpose of this rule is to provide guidelines which address the implementation, calculation, and disbursement of teacher compensation.

KEY POINTS

- Establishes guidelines for receiving increased compensation for teaching in school districts below the minimum teacher salary schedule
- Establishes guidelines for implementing, calculating, and disbursing the program funds

DISCUSSION
The underlying legislation through which this rule was promulgated was amended by Act 237 of 2023, Section 35. The legislation as amended is inconsistent with this rule. Additionally, the relevant provisions of the new legislation are incorporated into other Department rules. Therefore, this rule is no longer necessary.

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

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 10:00am: 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.