ARKANSAS REGISTER

Proposed Rule Cover Sheet

Secretary of State
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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 Daniel Shults

Contact E-mail daniel.shults@ade.arkansas.gov

Contact Phone (501) 682-4202

Name of Rule DESE Rules Governing Payments Under the Educational Freedom Account Program

Newspaper Name Arkansas Democrat-Gazette

Date of Publishing Dec. 27, 2024

Final Date for Public Comment Jan. 27, 2025

Location and Time of Public Meeting Four Capitol Mall, Jan. 14, 2025 at 10:00a.m.

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT Department of Education
BOARD/COMMISSION State Board of Education
BOARD/COMMISSION DIRECTOR Secretary Jacob Oliva
CONTACT PERSON Daniel Shults
ADDRESS 4 Capitol Mall, Little Rock AR, 72201
PHONE NO. (501) 682-4202 **EMAIL** daniel.shults@ade.arkansas.gov
NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING
Daniel Shults; Courtney Salas-Ford
PRESENTER EMAIL(S) daniel.shults@ade.arkansas.gov; courtney.salas-ford@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.

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1. What is the official title of this rule?
DESE Rules Governing Payments Under the Educational Freedom Account Program

2. What is the subject of the proposed rule? Educational Choice

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).

Arkansas Code 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?

This rule was promulgated as a stopgap rule to grant the Department authority to set out the process to continue to make payments pursuant to the Educational Freedom Account Program, ensuring continuity for students, parents, schools, and service providers until the permanent Rule Governing Educational Freedom Accounts was promulgated. That rule took effect on August 10, 2024, making this rule unnecessary. Accordingly, this rule should be repealed.

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: January 14, 2025

Time: 10:00a.m.

Place: Arkansas Department of Education Auditorium, 4 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. January 27, 2025

15. What is the proposed effective date for this rule? April 1, 2025

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 Department of Education
BOARD/COMMISSION State Board of Education
PERSON COMPLETING THIS STATEMENT Kalee Haywood
TELEPHONE NO. (501) 682-4251 **EMAIL** kalee.haywood@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 DESE Rules Governing Payments Under the Educational Freedom Account Program

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 $ 0.00

Next Fiscal Year

General Revenue_____
Federal Funds_____
Cash Funds_____
Special Revenue_____
Other (Identify)_____

Total $ 0.00

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

Current Fiscal Year

General Revenue_____
Federal Funds_____
Cash Funds_____
Special Revenue_____
Other (Identify)_____

Total $ 0.00

Next Fiscal Year

General Revenue_____
Federal Funds_____
Cash Funds_____
Special Revenue_____
Other (Identify)_____

Total $ 0.00

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
$ 0.00

Next Fiscal Year
$ 0.00

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
$ 0.00

Next Fiscal Year
$ 0.00

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

Dr. Sarah Moore
Stuttgart
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July 31, 2024

Proposed Rule Repeal – DESE Rule Governing Payments Under The Educational Freedom Account Program

PURPOSE
The Division of Elementary and Secondary Education is seeking the Governor's review of a proposed repeal of the DESE Rule Governing Payments Under the Educational Freedom Account Program.

BACKGROUND
Pursuant to Act 237 of 2023, the Division is charged with promulgating rules regarding the Educational Freedom Account Program, which is codified at Ark. Code Ann. § 6-18-2501, et seq.

KEY POINTS

- Repeals an unnecessary administrative rule which was incorporated into a prior rule.

DISCUSSION
This rule was promulgated as a stopgap rule to grant the Department authority to set out the process to continue to make payments pursuant to the Educational Freedom Account Program, ensuring continuity for students, parents, schools, and service providers until the permanent Rule Governing Educational Freedom Accounts was promulgated. That rule took effect on August 10, 2024, making this rule unnecessary. Accordingly, this rule should be repealed.

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

DIVISION OF ELEMENTARY AND SECONDARY EDUCATION RULES GOVERNING PAYMENTS UNDER THE EDUCATIONAL FREEDOM ACCOUNT PROGRAM

Effective date: March 30, 2024

1.00 CONTINUATION OF PAYMENTS

1.01 Once families and participating schools have been approved to participate in the Educational Freedom Account (EFA) program, the Department of Education shall continue to make quarterly payments on behalf of the approved students and families to the approved participating schools or service providers:

1.01.1 The department shall make four (4) equal payments in quarterly installments from the participating student's educational freedom account to the participating school or service provider.

1.01.1.1 A third-party payment processing vendor shall create and set up payment accounts for approved students and families as determined by the department.

1.01.1.2 Participating schools or service providers, or third-party vendors shall issue an itemized invoice to approved students and families for documentation of expense type, amount, and recipient.

1.01.1.3 Approved students and families shall verify and submit payment requests, identifying the participating school or service provider to receive payment, the payment amount, and the expense type.

1.01.1.4 Approved students and families shall include invoice for review and documentation during the payment submission process via the third-party payment processing vendor.

1.01.1.5 The third-party payment processing vendor shall remit payment to a participating school or service provider for authorized expenditures, unless an expenditure is not authorized by law, following a review and approval of expense request and documentation by the department.

1.02 Participating schools receiving EFA funds shall apply any scholarship awards, tuition rates, and tuition discounts toward an approved student's tuition, costs, and fees before EFA funds can be applied to any invoiced charges by the participating school.

1.03 This rule shall be effective until amended, repealed, or superseded by a rule promulgated by the department.

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 the following new administrative rules or amendments to the following administrative rules: DESE Rules Governing Distance and Digital Learning; DESE Rules Governing Grading and Course Credit; DESE Rules Governing Special Education and Related Services, Sec. 18.00 – Residential Placement; and DESE Rules Governing EFA Payment Processing.

Public comment hearings will be held for the forgoing rules on January 14, 2025 at 10:00am at the Arkansas Department of Education, Arch Ford Building, Four Capitol Mall, Little Rock, AR, 72201 in the ADE Auditorium. The public comment period for these rules ends on January 27, 2025. 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.