

Proposed Rulemaking

Title

Promulgated by:
Division of Elementary and Secondary Education

Title 6. Education

Chapter I. Division of Elementary and Secondary Education

Subchapter B. Student Enrollment and Choice

Part 35. Rule Governing the Arkansas Children's Educational Freedom Account Program

Subpart 1. Generally

6 CAR § 35-101. Purpose.

The purpose of this part is to establish guidelines for the implementation and operation of the Arkansas Children's Educational Freedom Account Program, established pursuant to the Arkansas Children's Educational Freedom Account Program, Arkansas Code § 6-18-2501 et seq., to provide Arkansas families with more educational options for their children as they seek educational solutions and curricula that fit the needs of their families.

6 CAR § 35-102. Definitions.

As used in this part:

(1) "Account holder" means the parent of a participating student, or a participating student who has attained the age of majority, who:

(A) Signs the EFA agreement; and

(B) Is responsible for complying with all of the requirements of the EFA;

(2) "Agreement" means a contract signed by an applicant outlining:

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- (A) His or her contractual obligations as the account holder of an EFA; and
- (B) The acceptable uses of EFA funds;

(3) "Applicant" means:

- (A) A prospective participating student; or
- (B) The prospective participating student's parent, when he or she is

applying to the Arkansas Children's Educational Freedom Account Program on behalf of the student;

(4)(A) "Core educational expenses" means goods and services that are primarily instructional in nature and directly necessary for a participating student's educational program, coursework, or required educational services:

(B) "Core Educational Expenses" includes the following:

(i) Tuition, fees, and basic supplies required for attendance by an eligible private school;

(ii) Tuition and fees for academic instruction provided by an educational service providers, tutoring services, or other providers of core educational instruction under this rule that is provided in a classroom setting;

(iii) Textbooks, workbooks, and curricular materials;

(iv) Consumables common to an academic classroom such as pencils, pens, paper, erasers, and notebooks;

(v) Costs of digital learning resources, including educational software, licensed applications, and online course content;

(vi) Fees for required testing, assessments, college and career readiness assessments, and approved standardized examinations; and

(vii) Special education services aligned to the student's individualized learning needs;

(5) "Course" means a discrete program of study that follows a predetermined syllabus or specification;

(6)(A) "Co-curricular course" means an academic or skill-based educational experience that may take place during or outside of the regular instructional day, and

that:

(i) Complements, reinforces, or extends the core instructional program;

(ii) Contributes to the student's academic development;

(iii) Includes structured content delivered in an instructional setting;

(iv) Is aligned with academic standards, educational goals, or subject-area competencies;

(v) Is not part of the required core curriculum;

(vi) Has a documented academic connection to a recognized subject area or educational standard;

(vii) Is delivered by an instructor, teacher, or provider with subject-matter knowledge or experience;

(viii) Includes instructional design, such as a syllabus, defined learning objective, or performance-based assessments;

(ix) Supports the student's academic goals as part of a homeschool education plan or non-public school curriculum; and

(x) Is offered by a public school within the State of Arkansas.

(B) "Co-curricular course" includes but is not limited to:

_____ (i) Fine arts courses including visual arts, music theory, instrumental instruction, vocal instruction, dance, and theater;

_____ (ii) Science, Technology, Engineering, and Mathematics (STEM) courses including robotics, coding, engineering design, applied sciences, and advanced mathematics;

_____ (iii) World languages that are not part of a student's core curriculum but are taught as an additional enrichment or proficiency course; and

_____ (iv) Career and Technical Education (CTE) courses including structured courses in business, agriculture, culinary arts, digital design, and other vocational pathways;

_____ (7) "Completed student application" means:

(A) A fully finished online application that includes all required fields

completed and all applicable documentation attached to the application for the Department of Education to determine the potential award status of an applicant; or

(B) A fully finished paper application that:

(i) Includes all required fields completed and all applicable documentation attached to the application for the department to determine the potential award status of an applicant; and

(ii) Bears a postmark indicating that it was placed in transit with the United States Postal Service or other common carrier before the application deadline;

(8) "Educational field trip" means a learning experience that:

(A) Takes place outside the traditional classroom setting that satisfies the following:

(i) Is designed to enrich a student's academic understanding in core or supplemental subject areas, including without limitation science, history, literature, the arts, civics, or career exploration;

(ii) Has a clear educational objective aligned with a specific area of study;

(iii) Takes place within the State of Arkansas;

(9)(A) "Education service provider" means an individual, business, nonprofit organization, or other entity that offers educational materials or services that are qualifying expenses reimbursable by EFA funds.

(B) "Education service providers" may include without limitation:

(i) Public school districts, in-person or virtual, providing services to students who are not enrolled full-time in the public school district;

(ii) Full-time student-facing providers, e.g., micro-schools, learning pods, full-time home school co-op, full-time home school instructional support group, and contracted educators, which provide the majority of a participating student's instructional time;

(iii) Part-time student-facing providers, e.g., part-time home school co-op, part-time home school instructional support group, tutors, educational therapists, and transportation providers; and

(iv) Vendors (entities that do not directly interface with students, such as retailers, curriculum providers, etc.).

(C) A public school district may participate as an education service provider to the extent that the public school district provides eligible services to a participating student who is not enrolled full-time in the public school district;

~~(5)(10)~~ "EFA" means an educational freedom account established for a participating student;

~~(6)(11)~~ "EFA funds" means money from one (1) or more EFAs;

~~(12)(A)~~ "Extracurricular activity" means a supervised, structured non-academic activity that:

~~(i)~~ Supports the personal, physical, social, or civic development of a student;

~~(ii)~~ Occurs outside the formal academic curriculum;

~~(iii)~~ Has an organized structure which includes a regular schedule, defined expectations, and facilitation by a responsible person or entity;

~~(iv)~~ Has a developmental purpose that promotes personal growth, discipline, physical health, teamwork, responsibility, or civic engagement;

~~(v)~~ Requires the student to actively and constantly participate in the activity; and

~~(vi)~~ Is conducted or overseen by a coach, instructor, mentor, or other adult with similar qualifications not to include the student's parent.

~~(B)~~ "Extracurricular activity" does not include sports that restrict or limit participation based on tryouts or ability. The following components of competitive sports are explicitly excluded and are not qualifying expenses:

~~(i)~~ Equipment costs; and

~~(ii)~~ Travel costs.

~~(C)~~ Examples of qualifying expenses for eligible activities include, without limitation, dues and registration fees for community or homeschool sports leagues that do not exclude students based on tryouts or ability.

~~(13)(A)~~ "Expelled" means dismissal from a participating school

for a period that exceeds ten (10) days for conduct in violation of the school's student discipline policies.

(B) "Expelled" does not mean dismissal from school based on the failure of the student to adhere to a system of beliefs or to engage in religious conduct.

(7)(14)(A) "Foster care" means the care of a child on a twenty-four-hour-a-day basis away from the home of the child's parent or parents.

(B) The care may be by a relative of the child, by a nonrelated individual, by a group home, by a residential facility, or by any other entity, and for whom the child welfare agency has placement and care;

(8)(15) "Home school" means a school provided by a parent or legal guardian, who has filed a notice of intent to home school, for his or her own child;

(9)(16) "Individualized education program (IEP)" means a written plan for each student with a disability identified pursuant to the Individuals with Disabilities Education Act (IDEA), that is developed, reviewed, and revised in accordance with IDEA and 34 C.F.R. §§ 300.320 – 300.324;

(17)(A) "Intentional misuse" means any deliberate action by an account holder to violate program rules or misappropriate EFA funds.

(B) Examples of intentional misuse include, without limitation:

(i) Submission of falsified documentation;

(ii) Submission of a falsified claim;

(iii) Use of funds in violation of a prior notice or warning issued by the Department; and

(iv) Use of funds for:

(a) A non-educational purpose;

(b) An explicitly prohibited purpose;

(c) Personal gain;

(10)(18)(A) "Learning pod" means a community of home school students, such as a home school co-op or support group, created by a voluntary association of parents, taught by instructors or facilitators, that provides part-time or full-time academic services, including without limitation core academic subjects of:

- (i) Mathematics;
- (ii) English language arts;
- (iii) Social studies; and
- (iv) Science.

(B) A learning pod is not a:

- (i) Micro-school;
- (ii) Daycare facility; or
- (iii) Private school;

~~(11)~~(19)(A) "Micro-school" means a tuition-based organization that serves a community of home school students simultaneously in the same space, and that maintains responsibility for employing instructors or facilitators to provide part-time or full-time academic services, including without limitation core academic subjects of:

- (i) Mathematics;
- (ii) English language arts;
- (iii) Social studies; and
- (iv) Science.

(B) A micro-school is not a:

- (i) Learning pod;
- (ii) Daycare facility; or
- (iii) Private school;

~~(12)~~(20) "Nationally recognized norm-referenced test" means a standardized test designed to compare and rank test takers in relation to one another as determined by comparing scores against the performance results of a statistically selected group of test takers, typically of the same age or grade level, who have already taken the exam;

 —(21) "Necessary" means:

(A) Directly and primarily supportive of a student's academic progress, developmental growth, or career readiness;

(B) Essential to achieving an identified learning objective or developmental milestone; and

(C) Reasonably connected to future readiness for enrollment, enlistment, or employment.

(22) "Ordinary" means commonly accepted within recognized educational or instructional environments, including academic and structured enrichment settings that support cognitive, social-emotional, or physical development.

(A) Ordinary does not include activities that are primarily recreational or hobby-based.

~~(13)~~(23) "Parent" means any one (1) of the following:

- (A) A biological or adoptive parent;
- (B) A legal guardian or custodian;
- (C) A person standing in loco parentis to a participating student; or
- (D) Another person with legal authority to act on behalf of a participating student;

~~(14)~~(24) "Participating school" means a private elementary school or private secondary school that:

(A) Offers enrolled students a full academic curriculum and full academic year experience; and

(B) Receives payments from EFA accounts to provide goods and services that are covered as qualifying expenses under subdivision ~~(26)~~(16) of this section;

~~(15)~~(25) "Participating student" means an eligible student approved to participate in the Arkansas Children's Educational Freedom Account Program;

~~(16)~~(26) "Qualifying expenses" means all ordinary and necessary expenses that an account holder can pay from an EFA on behalf of the participating student who is enrolled in private school or a home school under Arkansas Code § 6-15-501 et seq., including without limitation:

- (A) Tuition;
- (B) Fees;
- (C) Testing costs;
- (D) Costs associated with ~~required~~ school uniforms that are;

(i) Required by the school or program; and
(ii) Standardized by the dress code requirements of the school or program.

(E) Expenses determined to be necessary for the education of the child, including without limitation:

- (i) Supplies;
- (ii) Equipment; and
- (iii) ~~Access to technology; and~~

~~(iv)~~ Services provided by or at the participating school, when a student is enrolled in a private school;

(F) Instructional materials required for in-person or virtual instruction provided by a participating service provider or participating school;

- (G) Instructional services;
- (H) Tutoring services;
- (I) Curricula;

(J) Supplemental materials or supplies required by a course of study for a particular content area including without limitation;

- (i) Educational software;
- (ii) Learning applications;
- (iii) Curriculum platforms;
- (iv) Subscriptions for course-specific programs; and
- (v) Licenses for course-specific programs;

(K) ~~(i)~~ Fees for courses and associated assessments for college credit.

~~(ii) A participating student who enrolls in a concurrent enrollment course in their resident school district shall not be charged for the concurrent enrollment course unless the public school district also charges public school students or open enrollment public charter school students for the concurrent enrollment course;~~

(L) Fees for assessments related to admission to postsecondary educational institutions;

(M) Fees for courses and assessments for participation in career and

technical education, including without limitation career training;

(N) Fees for assessments to obtain industry-based credentials;

(O)(i) Fees for educational services provided by a licensed or accredited practitioner or participating service provider to a student with a disability;

(ii) Educational service provided under subdivision (26)(O)(i) of this section may be provided in a nontraditional setting that has been recommended and approved by a licensed or accredited practitioner or physician for a participating student who is a student with a disability;

(P) Fees for account management by participating service providers;

(Q)(i) Costs for technological devices used to meet educational needs.

(ii) Technological devices do not include:

~~(a)~~ Televisions;

~~(b)~~ Video game consoles or accessories;

~~(c)~~ Home theater equipment; ~~or~~

~~(d)~~ Audio equipment; or

(e) A telephone, cell phone, or other communication device unless the telephone, cell phone, or other communication device is:

(1) For a student with a disability who is unable to communicate through other means; or

(2) Required as a part of an academic accommodation as specified by a clinician.

(iii) When used to directly serve an educational purpose, technological devices include, without limitation:

(a) Text-to-speech tools;

(b) Screen readers;

(c) Adaptive input devices;

(d) Devices or software prescribed to support students with disabilities;

(e) Student industrial devices including laptop computers, desktop computers, Chromebooks, tablets, keyboards, styluses, mice, protective cases,

and chargers;

(f) Audio visual equipment for learning tools such as headphones, webcams, microphones, speakers, projectors, smart displays, and document cameras;

(g) Connectivity and remote learning tools such as Wi-Fi hotspots, modems, routers, signal boosters, and external storage devices; and

(h) Printing and scanning equipment such as printers, scanners, and multi-function devices used to complete or submit assignments;

~~(iii)~~(iv) Technological devices must be approved by the Department of Education or a licensed physician in the State of Arkansas to be a qualifying expense.

(iv)~~(a)~~ All technology purchases will be reviewed by the Department of Education for appropriateness and need.

(b) The Department of Education shall consider whether the same or similar devices were purchased by the same account holder in all prior years when determining appropriateness and need in order to prohibit unnecessary duplication of purchases.

~~(cb)~~ Personal devices including without limitation laptops, Chromebooks, or iPads with a cost of more than one thousand dollars (\$1,000) will not be allowed unless the A participating student ~~can~~ must demonstrate to the Department of Education's satisfaction that there is a specific private school requirement, institution of higher education requirement, or that the technology is deemed necessary for the participating student by a qualified professional in order to exceed one thousand dollars (\$1,000) in aggregate annual costs for technological devices;

(R) Transportation costs ~~from an approved service provider~~ directly to and from a participating school or provider;~~;~~

(i) ~~Not~~ to exceed the reimbursement rate adopted by the state for state employees; and

(ii) Not to exceed twenty-five percent (25%) of the funds allocated to a student's account in a fiscal year;

(S) Reasonable costs, not to exceed twenty-five percent (25%) of the

funds allocated to a student's account in a fiscal year, for extracurricular activities, physical education activities, or educational field trips that occur within the State of Arkansas;

_____ (T) Reasonable costs associated with co-curricular courses in the fine arts, music, or STEM fields if the co-curricular course is offered by a public school within the state; and

_____ ~~(S)(U)(i)~~ Fees and costs associated with a student enrolling in ~~for an~~ academic courses ~~at a participating student enrolls in at a~~ public school or open-enrollment public charter school, including without limitation the amount specified in Arkansas Code § 6-18-232 to be paid to the public school.

_____ ~~(ii)~~ A public school or an open-enrollment public charter school that enrolls a participating student in an academic course is eligible to receive an amount equal to one sixth (1/6) of the state foundation funding amount for each academic course in which the student is enrolled in the public school or open-enrollment public charter school, pursuant to Arkansas Code § 6-18-232;

~~(17)(27)~~ "Resident" means an individual physically residing in the State of Arkansas, including uniformed service members stationed and living in Arkansas who keep property outside of the State of Arkansas, as defined in Arkansas Code § 6-18-202;

~~(18)(28)~~ "School year" means the duration of school from July 1 through June 30;

~~(29)~~ "Standard application form" means the form used by the Department of Education for applicants seeking to establish an EFA on behalf of a participating student;

~~(19)(30)~~ "Student-facing" means a service provider in which the proprietor or other personnel directly interface with a participating student, either in-person or virtually, in the course of delivering an eligible good or service, e.g., tutors, transportation providers, and instructors; ~~and~~

~~(31)~~ "Student Growth and Development" means structured learning activities

that support a student’s well-being, their physical, or creative growth in ways that contribute to educational readiness and long-term success.

~~(20)~~(32) “Student with a disability” means a student who has been identified as having a disability consistent with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401 et seq., as it existed on January 1, ~~2023~~2025, as evidenced by:

(A) An individualized education program developed by a public school within three (3) years prior to the date the student applies for an EFA;

(B) Evaluation results from a public school district that indicate a disability, conducted within three (3) years prior to the date the student applies for an EFA; or

(C) Diagnosis of a disability under IDEA as determined by a qualified licensed provider specific to the student’s disability type.

(33) “Unintentional Misuse” means the use of EFA funds for non-allowable expenses without an intent to violate the provision of this part due to:

(A) Good faith error; or

(B) Genuine misunderstanding of the requirement and prohibition of this part.

6 CAR § 35-103. Student eligibility.

~~—(a) An individual who is a resident of the State of Arkansas and the parent of a student who is eligible to enroll in a public elementary or secondary school may apply on behalf of a prospective participating student to participate in the Arkansas Children’s Educational Freedom Account Program for the 2024-2025 school year if the prospective participating student is:~~

~~——(1) A student with a disability as defined by 6 CAR § 35-102(20);~~

~~——(2) Considered homeless under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11431 et seq., as it existed on January 1, 2023;~~

~~——(3) A student in foster care, as defined in 6 CAR § 35-102(7), or who has been in foster care and subsequently achieved permanency through:~~

~~——(A) Adoption;~~

- ~~_____ (B) Reunification; or~~
- ~~_____ (C) Permanent custody or guardianship;~~
- ~~_____ (4) A student who participated in the Succeed Scholarship Program, Arkansas Code § 6-41-901 et seq. [repealed], during the 2022-2023 school year;~~
- ~~_____ (5) A child of active-duty uniformed services personnel, as identified by Title 10 or Title 32 of the United States Code;~~
- ~~_____ (6)(A) A student who:~~
 - ~~_____ (i) Was eligible to enroll in kindergarten in a private school for the first time during the 2023-2024 school year; or~~
 - ~~_____ (ii) Is enrolling in kindergarten for the first time in the 2024-2025 school year.~~
- ~~_____ (B) In order to be eligible to enroll in the Arkansas Children’s Educational Freedom Account Program under subdivision (a)(6)(A) of this section, a student must:~~
 - ~~_____ (i) Be at least five (5) years of age on or before August 1 of the school year in which a parent intends to enroll the student in kindergarten;~~
 - ~~_____ (ii) Turn six (6) years of age during the school year in which a parent intends to enroll the student in first grade; or~~
 - ~~_____ (iii) Meet alternate eligibility requirements set forth in Arkansas Code § 6-18-207 for entering kindergarten or first grade;~~
- ~~_____ (7) A student who was enrolled in the previous school year in a:~~
 - ~~_____ (A) Public school that has a rating of “D” or “F” under Arkansas Code §§ 6-15-2105 and 6-15-2106 and Division of Elementary and Secondary Education rules; or~~
 - ~~_____ (B) Public school district classified as in need of Level 5— Intensive support under Arkansas Code § 6-15-2913 or § 6-15-2915; or~~
- ~~_____ (8) A student with a parent, or a student, who is:~~
 - ~~_____ (A) A veteran as identified under Title 38 of the United States Code;~~
 - ~~_____ (B) In the uniformed services reserve components;~~
 - ~~_____ (C) A first responder as defined by Arkansas Code § 5-13-101; or~~
 - ~~_____ (D) A law enforcement officer.~~
- ~~_____ (b) Any individual who is both a resident of the State of Arkansas and the parent of~~

~~a student who is eligible to enroll in a public elementary or secondary school may apply on behalf of a prospective participating student to participate in the Arkansas Children's Educational Freedom Account Program for the 2025-2026 school year and all subsequent school years.~~

~~Beginning with the 2025-2026 school year, a student is eligible for an EFA if the student:~~

~~(1) Has a parent who is physically present in the State of Arkansas and maintains a permanent place of abode in the State of Arkansas for an average of no less than four (4) calendar days and nights per week for a primary purpose other than school attendance; and~~

~~(2) Is eligible to enroll in a public elementary or secondary school in this state.~~

6 CAR § 35-104. Student application.

(a)(1) To apply to participate in the Arkansas Children's Educational Freedom Account Program, a parent shall:

(A) Fully complete the standard application form available on the Department of Education's website; and

(B) Submit the application to the department during an application submission period ~~window~~ established by the department.

(2) The standard application form may be submitted via web portal available on the department's website.

(3) The standard application form shall include, at a minimum, information and documentation necessary to establish an applicant's:

(A) Residency in the State of Arkansas; and

(B) Eligibility pursuant to the criteria set in 6 CAR § 35-103.

(4) The department may assist an applicant in completing the standard application form as needed.

(5) The department may request additional information from an applicant at any time to verify eligibility.

~~(6) The standard application shall indicate whether he or she will attend a~~

private school or file a notice of intent to home school.

(7) The general application submission period for participation in the Educational Freedom Account (EFA) program for an upcoming school year shall:

(A) Open no sooner than February 1; and

(B) Close no later than June 1 preceding the applicable school year.

(8) The department shall approve completed applications received outside of the established application submission period if:

(A) Funding is available;

(B) The applicant is fully qualified pursuant to this part; and

(C) The applicant provides documentation demonstrating that the applicant is described by one of the following:

(i) The applicant has moved to the State of Arkansas from another state;

(ii) The applicant has moved from an area in the State of Arkansas that does not have a participating school within a reasonable distance for the student to attend to an area which does have a participating school within a reasonable distance for the student to attend;

(iii) The applicant is a foster parent or a child in foster care and the student's placement has occurred outside the application submission period;

(iv) The applicant, the applicant's parent, or the applicant's spouse is an active duty member of the uniform services of the United States and the applicant has moved due to that service; or

(v) The applicant, the applicant's parent, or the applicant's spouse is a law enforcement officer employed by the State of Arkansas and has moved due to a reassignment.

~~(b) For the 2024-2025 school year, pursuant to Arkansas Code § 6-18-2506(a)(3)(B)(ii), if the number of applications received by the department from eligible students exceeds the maximum number of students that may participate in the Arkansas Children's Educational Freedom Account Program or otherwise exceeds three percent (3%) of 2022-2023 total public school student enrollment, then the department~~

~~shall award accounts in the following order: Beginning with the 2025-2026 school year and each year thereafter, for any year in which funds are insufficient to fund all applications for new accounts under this part, priority shall be given according to the following schedule by category first and then by submission time of a completed student application:~~

~~(1) First priority shall be given to students who participated in the Arkansas Children's Educational Freedom Account Program during the previous school year;:~~

~~————(A) Participated in the Succeed Scholarship Program, Arkansas Code § 6-41-901 et seq. [repealed], during the 2022-2023 school year; or~~

~~————(B) Are otherwise students with a disability under 6 CAR § 35-102(20);~~

~~(2) Second priority shall be given in descending order to students who participated in the Succeed Scholarship Program during the 2022-2023 school year;:~~

~~————(3) Third priority shall be given to students with a disability as defined in 6 CAR § 35-102(27);~~

~~————(A)(4) Fourth priority shall be given to students Considered considered homeless under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11431 et seq., as it existed on January 1, 20232025;~~

~~————(B)(5) Foster children or formerlyFifth priority shall be given to students in foster care;~~

~~————(C)(6) Sixth priority shall be given to studentsChildren of active-duty uniformed services personnel as identified by Title 10 or Title 32 of the United States Code;~~

~~————(D) Children who were enrolled in a public school that has a rating of "D", a public school that has a rating of "F", or a public school district classified in need of Level 5 — Intensive support in the school year immediately preceding their application for an EFA; and~~

~~————(7) Seventh priority shall be given to students whose parent are active-duty military, veterans identified under Title 38 of the United States Code, or current or former members of the Arkansas National Guard;~~

~~_____ (8) Eighth priority shall be given to students who are or whose parents are law enforcement officers;~~

~~_____ (9) Ninth priority shall be given to students who are or whose parents are first responders;~~

~~_____ (10) Tenth priority shall be given to students who are enrolling in kindergarten or first grade for the first time;~~

~~_____ (11) Eleventh priority shall be given to all other students who are not described by any of the forgoing categories.~~

~~_____ (E) Children who:~~

~~_____ (i) Were eligible to enroll in kindergarten in a private school for the first time during the 2023-2024 school year; or~~

~~_____ (ii) Are enrolling in kindergarten for the first time in the 2024-2025 school year;~~

~~_____ (3) Third priority will be given in descending order to students who:~~

~~_____ (A) Are or who are children of:~~

~~_____ (i) Uniformed veterans as identified under Title 38 of the United States Code;~~

~~_____ (ii) Uniformed reservists;~~

~~_____ (iii) First responders; and~~

~~_____ (iv) Law enforcement officers; and~~

~~_____ (B) Are children who were enrolled in a public school that has a rating of "D";~~

~~_____ (4) Fourth priority will be given to students who have been in the Arkansas Children's Educational Freedom Account Program the longest after priority has been given to students identified in subdivisions (b)(1), (2), and (3) of this section; and~~

~~_____ (5)(A)(c) All additional applications shall subsequently be approved~~
be considered at the conclusion of the application submission period in the order of the category priority to which they belong and in the order in which the completed applications were in which they are received within a category until the maximum number of participating students is cumulatively reached.

~~_____~~ ~~(1B)~~ If the total number of applicants exceeds the number of students that can be funded, the department shall provide notice on its website and to participating schools that:

~~_____~~ ~~(iA)~~ ~~A maximum of three percent (3%) of the total 2022-2023 public school enrollment may participate in the program;~~

~~_____~~ ~~(ii)~~ The total number of applicants exceeds the number of students that can be funded in that given school year; and

~~_____~~ ~~(iii)~~ ~~(B)~~ Funding will be prioritized as set by this subsection.

~~(e)~~ ~~(d)~~ The department shall conduct an annual analysis to forecast the level of funds available for the EFA prior to the start of the application window.

~~(d)~~ ~~(e)~~ (1) The department shall:

(A) Notify applicants when their application is approved; and

(B) Inform parents of participating students how they may:

(i) Activate the account; and

(ii) Identify the amount of EFA funding the participating student will

receive.

(2) The department shall continue to approve eligible student applications as funding remains available and the conditions for continuing eligibility are met by the applicant pursuant to 6 CAR § 35-106.

~~(e)~~ ~~(f)~~ Once a completed standard application form has been approved by the department, the applicant shall complete the enrollment procedures set by the department to become enrolled in the Arkansas Children's Educational Freedom Account Program, including execution of an agreement to participate in the program as outlined in 6 CAR § 35-105.

6 CAR § 35-105. Agreement and funds transfer.

(a)(1) Upon notification by the Department of Education that an Arkansas Children's Educational Freedom Account Program application has been approved, the applicant shall sign an agreement outlining the applicant's contractual obligations as the account holder upon enrolling in the program, including the acceptable uses of EFA

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funds and expense reporting requirements.

(2) The agreement shall remain in effect until one (1) or more of the conditions for terminating eligibility are met under 6 CAR § 35-106.

(b) In the agreement, the department shall provide account holders with the following:

(1) A written explanation of qualifying expenditures for EFA funds, as defined in Arkansas Code § 6-18-2503(11) and this part;

(2) A written explanation of the responsibilities of account holders, as outlined in subsection (c) of this section;

(3) A written explanation:

(A) Of the applicability, to the extent they apply, of:

(i) 20 U.S.C. § 1412 of the Individuals with Disabilities Education Act (IDEA);

(ii) 29 U.S.C. § 794; and

(iii) The procedural rights to a free and appropriate public education (FAPE) to nonpublic institutions; and

(B) That participation in the program is a parental placement pursuant to 20 U.S.C. § 1412; and

(4) A written explanation of the respective duties of the department and, if applicable, of any vendor or other supplier the department has contracted with to administer all or part of the program.

(c) In the agreement, an account holder shall:

(1) Agree not to enroll a participating student full-time in a public school while the student is participating in the Arkansas Children's Educational Freedom Account Program;

(2) Acknowledge that:

(A) The federal requirement that students receive a free and appropriate public education applies to public schools and not to private schools; and

(B) Upon enrolling in the Arkansas Children's Educational Freedom Account Program, a participating student may no longer be entitled to a free

appropriate public education, including special education and related services, from their public school district of residence, as long as the child remains in the Arkansas Children's Educational Freedom Account Program;

(3) Agree to use EFA funds on behalf of the participating student strictly for qualifying expenditures as defined in Arkansas Code § 6-18-2503(11) and this part; and

(4) Further agree, unless otherwise enrolled full-time in a participating school, to use a substantial amount of the funds each year, as compared to other **eligible qualifying** expenses, for the benefit of the participating student to satisfy the compulsory attendance requirement in Arkansas Code § 6-18-201, providing an education in at least the subjects of:

- (A) English language arts;
- (B) Mathematics;
- (C) Social studies; and
- (D) Science.

(d) The agreement shall not become effective and the first EFA payment shall not be disbursed until the agreement is:

(1) Submitted to the department, along with any other information required by the department; and

(2) Signed by the account holder and a designee of the department.

(e)(1) After the agreement is fully executed by the account holder and the department, the department shall make payments in installments from the participating student's EFA to the participating school or service provider as provided for in 6 CAR § 35-111.

(2) Payments shall only be suspended if one (1) or more criteria to terminate the agreement under 6 CAR § 35-106 are met.

(3) If a student subsequently enrolls in a public school or is otherwise removed from the program, any of the student's remaining EFA funds that are unused will be returned to the EFA fund in accordance with 6 CAR § 35-111.

(f)(1) The total allocation to each participating student's EFA shall be from funds appropriated to the Arkansas Children's Educational Freedom Account Fund, or

otherwise made available for the Arkansas Children’s Educational Freedom Account Program, and distributed as an amount equal to ninety percent (90%) of the prior year's statewide foundation funding allotted per student under Arkansas Code § 6-20-2305.

(2)(A) Any excess funds allocated to the private school shall be refunded to the department.

(B) In the event a participating student withdraws from a private school and the school has received a ~~quarterly~~ disbursement on behalf of that student, the department will determine any excess funds that should be refunded to the state based on the number of weeks the student was enrolled at school prior to withdrawal.

(C) In the event a participating student withdraws from a private school and the school has not received a ~~quarterly~~ disbursement on behalf of that student, the department will determine any excess funds that should be refunded to the state based on the number of weeks the student was enrolled at school prior to withdrawal.

(3) A student who participated in the Succeed Scholarship Program, Arkansas Code § 6-41-901 et seq. [repealed], during the 2022-2023 school year shall continue to receive one hundred percent (100%) of the prior year's statewide foundation funding amount allotted per student under Arkansas Code § 6-20-2305 until:

(A) The participating student graduates from high school;

(B) The participating student receives a certificate of completion; or

(C) An event that requires an account to be closed under 6 CAR § 35-106 occurs.

(g)(1) The department may ~~withhold up to five percent (5%)~~ permit a vendor, pursuant to contract, to withhold up to two percent (2%) of the funds allocated to each EFA for the purpose of the Arkansas Children’s Educational Freedom Account Program administration.

(2) The specific amount withheld will be set by the contract procured with a third-party processing vendor.

(h) The department shall provide information on how much of these funds were spent, and for what purposes, in its annual legislative report.

(i) An EFA shall remain in force, and any unused funds shall roll over from quarter to quarter and from year to year until the:

(1) EFA has a balance of more than ~~twenty thousand dollars (\$20,000) or three (3) times the amount set forth in Arkansas Code § 6-18-2505(a), whichever is greater~~ eight thousand five hundred dollars (\$8,500) or the amount set forth in Arkansas Code § 6-18-2505(a), whichever is less;

(2) A parent withdraws his or her participating student from the program, or

~~(2)(3)~~ Agreement is terminated under 6 CAR § 35-106, which shall result in the department closing the account and any remaining funds being returned to the department.

6 CAR § 35-106. Term of EFA eligibility.

(a) For purposes of continuity of educational choice, a student who enrolls in the Arkansas Children's Educational Freedom Account Program shall remain eligible until the participating student:

(1) Enrolls full-time in a public school;

(2) Graduates with a high school diploma or receives a passing score on all subtests of a high school equivalency assessment under Arkansas Code § 6-16-118;

(3) Is expelled from a participating school; or

~~(3)(4)~~ (A) Reaches-Completes the school year in which the student reaches twenty-one (21) years of age.

(B) A student shall not be enrolled in the program past June 30 after reaching twenty-one (21) years of age.

(b) The ~~Department of Education~~ department may immediately remove any participating student from eligibility for an EFA if the:

(1) Account has been inactive for ~~two (2)~~ one (1) consecutive full school years;

(2) Participating student is no longer a resident of Arkansas; or

(3) Account holder submits written notification to the department to withdraw a participating student from the program and completes the procedures for withdrawal set by the department.

(c) The department may immediately remove any participating student from eligibility for an EFA if the department determines that the student or account holder:

(1) Fails to comply with the terms of the agreement in 6 CAR § 35-105 or any other applicable laws, rules, or procedures; ~~or~~

(2) Is found to have substantially intentionally misused EFA funds; or

(3) Is found to have committed fraudulent conduct.

(d)(1) The department may also remove a participating student who consistently fails to demonstrate academic achievement or growth on a valid and reliable assessment relative to the assessment's scale.

(2) When a participating student fails to demonstrate academic achievement or growth from year to year, the participating school or home school instructional provider shall implement an intervention plan for the student developed by the school or student's guardians.

(3) Participating schools enrolling students in intervention plans shall file annual reports with the department identifying the:

(A) Intervention plans for the school year; and

(B) Academic achievement and growth metrics expected to be met by the end of the school year.

(4) In the event that a participating student with an intervention plan does not meet achievement or growth, the intervention plan shall be revised and the student's EFA account will be placed on probation and reviewed annually for a determination on whether the EFA will be closed.

~~(ee)~~ The account holder may appeal the department's decision to close an EFA or remove a student from eligibility pursuant to the procedures outlined in 6 CAR § 35-109.

6 CAR § 35-107. Participating schools and service providers.

(a)(1) A private school shall notify the Department of Education of its intent to become a participating school in the Arkansas Children's Educational Freedom Account Program.

(2) The department shall certify a private school as a participating school if the private school:

(A)(i) Offers in-person classroom instruction within the geographic limits of the State of Arkansas or is a school that operates exclusively as a virtual school and maintains a registered agent who is a resident of the State of Arkansas.

(ii)~~(a)~~ A school located outside the State of Arkansas that was approved under the Succeed Scholarship Program, Arkansas Code § 6-41-901 et seq. [repealed], shall only be considered approved for students who attended the school under the Succeed Scholarship Program [repealed] and continue to be enrolled.

~~(b)~~ The school shall not be approved for any new students;

(B) Complies with one (1) of the following:

(i) Meets accreditation requirements established by the State Board of Education, the Arkansas Nonpublic School Accrediting Association, Inc., or its successor, or another accrediting association recognized by the state board that meets the following minimum criteria:

~~(a)~~ Has been accrediting schools for at least three (3) years;

~~(b)~~ Requires as part of its accreditation process both a school self-study and an onsite review by a visiting team, or a virtual review for a fully virtual school, and makes the results available to the department; or

~~(c)~~ Periodically reviews participating schools' accreditation status, including an on-site visit and review at least every seven (7) years; or

(ii)~~(a)~~ Is an applicant for accreditation to or is an associate member of the Arkansas Nonpublic School Accrediting Association, Inc., or its successor, or another accrediting association recognized by the state board and files a report with the department detailing the school's progress towards accreditation annually by September 30.

~~(b)~~ However, a private school under subdivision (a)(2)(B)(ii)~~(a)~~ must be fully accredited by July 1 of the fourth year after applying for participation in the program.

~~(c)~~ A participating school that fails to attain accreditation within

four (4) years after being approved to participate in the program shall notify the department within thirty (30) days and will be deemed ineligible to participate in accordance with subsection (b) of this section;

(C) Meets one (1) or more of the following criteria:

(i) Has been in operation for at least one (1) school year;

(ii) Provides a statement by a certified public accountant confirming that the school is insured and has sufficient capital or credit to operate in the upcoming school year; or

(iii) Files with the department a surety bond or letter of credit for the amount equal to the account funds needed by the school for any quarter; and

(D)(i) Attests in writing to the following:

~~(a)~~ The private school does not discriminate on any basis prohibited by the Civil Rights Act of 1964, 42 U.S.C. § 2000d, as it existed on January 1, 2023;

~~(b)(1)~~ All private school personnel have cleared a background check every five (5) years and with fingerprinting documentation on file.

~~(2)~~ Participating schools must comply with subdivision (a)(2)(D)(i)~~(b)(1)~~ of this section by August 1 immediately preceding the school year;

~~(c)~~ The participating private school does not employ any individual who may reasonably pose a risk to the appropriate use of EFA funds if disbursed;

~~(d)~~ The private school only employs or contracts with teachers who hold at least a baccalaureate degree or have equivalent documented experience, as determined by the private school;

~~(e)~~ The private school holds valid occupancy of buildings as required by the relevant jurisdiction in which the private school is located; and

~~(f)~~ The private school operates according to its published disciplinary procedures that, at a minimum, outline the terms and conditions for when a student may be expelled.

~~(g) The private school administers assessments to participating~~

students pursuant to 6 CAR § 35-112; and

(h) The private school provides an education for participating students in at least the subjects of:

(i) English language arts;

(ii) Mathematics;

(iii) Social studies; and

(iv) Science.

(ii) Participating schools shall cooperate with the department when complaints are made alleging the participating school has violated any of the attestations made in subdivision (a)(2)(D)(i) of this section.

(b) A private school will be ineligible to participate in the Arkansas Children’s Educational Freedom Account Program if the participating private school:

(1) Loses its accreditation status after having been previously approved under subdivision (a)(2)(B)(i) of this section;

(2) Is ineligible or unable to continue the accreditation process, as determined by the accrediting association, after being approved under subdivision (a)(2)(B)(ii) of this section;

(3) Violates the terms of subdivision (a)(2)(D) of this section;

(4) Fails to cooperate with the department pursuant to subdivision (c)(4) of this section; or

(5) Fails to comply with all applicable state laws and rules governing private schools, or with all applicable health and safety laws and rules.

(c)(1) A participating private school shall notify the department within thirty (30) days after losing accreditation or taking any action rendering the school ineligible to participate in the Arkansas Children’s Educational Freedom Account Program pursuant to subsection (b) of this section.

(2) The department will suspend the processing of invoices submitted by a private school upon receipt of notice required under subdivision (c)(1) of this section.

(3)(A) A private school may apply for reinstatement if it returns to compliance with the requirements of subsection (a) of this section.

(B) The department shall:

(i) Determine whether the private school is in compliance with the requirements of subsection (a) of this section; and

(ii) Issue a formal notice of its determination to the private school and to families of students participating in the Arkansas Children's Educational Freedom Account Program at the private school.

(4) A private school applying for reinstatement under this section shall provide documentation to the department of the private school's efforts to return to compliance with subsection (a) of this section.

(5)(A) The private school may:

(i) Request a hearing before the state board; or

(ii) Waive its hearing and instead submit evidence to the department.

(B) Upon receipt of the evidence, the department shall issue a decision on the private school's reinstatement in writing to the private school.

(C) A private school may appeal a final decision by the department to the state board.

(d)(1) The department shall publish on its website a service provider application form by which education service providers shall be accepted for review on a rolling basis throughout the year.

(2) An applying education service provider shall attest to the following:

(A) The education service provider does not discriminate on any basis prohibited by the Civil Rights Act of 1964, 42 U.S.C. § 2000d, as it existed on January 1, 2023;

(B) The education service provider:

(i) Is not an individual who may reasonably pose a risk to the appropriate use of EFA funds if disbursed; and

(ii) Does not employ any individual who may reasonably pose a risk to the appropriate use of EFA funds if disbursed;

(C) The education service provider acknowledges whether it offers student-facing services and whether it offers full-time enrollment to participating

students; and

(D)(i) All ~~personnel-employees~~ of student-facing education service providers have cleared a background check every five (5) years and have fingerprinting documentation on file.

(ii) Virtual direct instructional providers, for whom fingerprinting is not required by Arkansas law, are exempt from the fingerprinting requirement in subdivision (d)(2)(D)(i) of this section.

(iii) Education service providers shall comply with any applicable fingerprinting and background check requirements by August 1 or within thirty (30) days of being approved as providers during a school year.

(3) In addition to the requirements in subdivision (d)(2) of this section, all full-time student-facing applicant providers, ~~including and~~ parents of home school students, shall further attest that they will comply with the following requirements if applicable:

(A) Administer assessments to participating students pursuant to 6 CAR § 35-11~~12~~; and

(B) Provide an education for participating students in at least the subjects of:

(i) English language arts;

(ii) Mathematics;

(iii) Social studies; and

(iv) Science.

(4) As part of the service provider application form, all full-time student-facing applicant providers shall provide ~~additional~~ details on the provider's ~~resources~~, services, ~~educational program, or curriculum~~, as required by the department.

(5) The department's approval of education service providers shall further be based on a review and confirmation that the following requirements are satisfied:

(A) The education service provider supplies the department with current and complete contact information;

(B) An education service provider that offers therapies or diagnostic services to a student with a disability is licensed or accredited by the appropriate state

or national governing body;

~~(C) An education service provider who only provides professional services submits to the department a list of all services offered along with corresponding prices or rates, which the department may make available to the public and therapists and tutors (specialists services);~~

~~(D)~~(C) An education service provider who only provides products as a vendor through the marketplace need not provide a list of all products offered so long as all of its products that may be considered eligible-qualifying expenses are listed, with the price of the item, on the marketplace; and

~~(E)~~(D)(i) The student-facing education service provider supplies proof of one (1) of the following credentials for any employee or individual that provides instructional or tutoring services:

~~(a)~~ Holds an Arkansas standard or provisional professional teaching license or is otherwise qualified through a department-recognized alternative route program;

~~(b)~~ Meets the requirements set by a tutoring organization accredited by an accrediting association recognized by the state board;

~~(c)~~ Is employed in a teaching or tutoring capacity at an accredited institution of higher education; or

~~(d)~~ Holds a baccalaureate or graduate-level degree.

(ii) The department may, on a case-by-case basis, approve providers whose employees do not, or an individual who does not, have one (1) of the credentials set out above if:

~~(a)~~ The individual has a prior teaching experience of not fewer than three (3) years which demonstrates special skills, knowledge, or expertise that qualifies the individual to provide instruction on a specific subject; or

~~(b)~~ Evidence is found that the individual has subject matter expertise in their field or can otherwise demonstrate possession of, or a satisfactory plan to acquire, the necessary skills, knowledge, or resources to teach a particular course or tutor in a particular subject area.

(6) The department may conduct site visits to education service providers.

(e)(1) The department's approval of a school or education service provider shall serve as statewide approval of such provider for purposes of the Arkansas Children's Educational Freedom Account Program.

(2) A list of each participating school and service provider's name, ~~qualifying materials, services offered, and any relevant credentials~~ shall be available on the department's website in a format easily accessible to the public.

(3) If a service provider is approved for only some of the services it offers, this limitation shall be noted on the list.

(f) Private schools that were approved under the Succeed Scholarship Program [repealed] outside of the State of Arkansas may continue to receive funds for participating Succeed Scholarship students for the remainder of the participating students' eligibility but shall not:

(A1) Admit new students; or

(B2) Otherwise participate in the Arkansas Children's Educational Freedom Account Program.

(g) To provide proof of financial viability to repay any funds that may be owed to the department, an education service provider that receives a minimum of one hundred thousand dollars (\$100,000) in EFA funds shall file a surety bond with the department named as obligee in an amount equal to the aggregate value of payments expected to be received during the school year.

(h)(1) Participating schools and service providers shall not charge an account holder tuition or fees for any services on behalf of a participating student in an amount that is different than the amount otherwise charged on behalf of a student who does not participate in the Arkansas Children's Educational Freedom Account Program, but may apply discounts to tuition and fees that are generally available to students regardless of their participation in the Arkansas Children's Educational Freedom Account Program.

(2) 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 are applied to any invoiced charges by the participating school.

(3) The department shall monitor tuition and fee increases from participating private schools and ~~providers annually~~ micro-schools.

(4) The department may ask participating private schools and providers for rationale for increases in tuition or fee amounts.

(5) The department may prohibit a participating private school or provider from participating in the Arkansas Children's Educational Freedom Account Program if the department determines that tuition or fee increases are unreasonable or arbitrary.

(i)(1) Participating schools and service providers shall not refund, rebate, or share EFA funds directly with account holders.

(2) In the event that a participating school or service provider receives funds distributed from an EFA to which it is not entitled, the participating school or service provider shall remit the funds to the EFA from which the funds were originally disbursed.

(3) If a participating school or service provider is required to return funds to an EFA that has been closed, the participating school or service provider shall remit the funds to the department directly.

(4)(A) The department may require a participating school or service provider to remit funds if the department identifies funds distributed to the participating school or service provider to which the participating school or service provider is not entitled.

(B) The participating school or service provider shall remit the funds within ten (10) business days of receipt of written notice by the department that the entity is required to refund a payment.

(C) When required to refund a payment, a participating school or service provider may also:

(i) Provide documentation or written justification showing that the participating school or service provider was entitled to the refunded payment if the vendor believes the department acted in error; and

(ii) Submit a claim with the Arkansas State Claims Commission if the

participating school or service provider believes that the entity is entitled to funds that it was required to refund under this part.

(j) The department may suspend or terminate a participating school or service provider from participating in the Arkansas Children’s Educational Freedom Account Program if the department determines the school has failed to comply with the requirements of the Arkansas Children’s Educational Freedom Account Program, Arkansas Code § 6-18-2501 et seq., or this part pursuant to the following:

(1) For a private school only, disqualification under the terms of subsection (b) of this section;

(2) For an education service provider only, failure to comply with any of the criteria detailed in subsection (d) of this section or with all applicable health and safety laws and rules;

(3) Demonstration of a gross or persistent lack of academic competence as determined by the department based on a student’s academic achievement and growth;

(4) Intentional or substantial misrepresentation of information to the department or to account holders;

(5) Failure to refund any overpayments to the department within thirty (30) days of receiving a written request, including a request by electronic mail; or

(6) Repeated failure to provide participating students with promised educational goods or services, as determined by the department over the course of the program.

(k)(1) Nothing shall be construed to expand the regulatory authority of the department to impose additional rules on participating schools and service providers beyond those expressly set out in this part to enforce the requirements of the Arkansas Children’s Educational Freedom Account Program.

(2)(A) A participating school or service provider shall not be required to alter its creed, practices, admissions policy, or curriculum to:

(i) Receive approval from the department; or

(ii) Accept payments from an EFA.

(B) However, the participating school shall not discriminate against a

student or applicant in a way that would violate subdivision (d)(2)(A) of this section.

(l)(1) An accrediting association seeking recognition by the state board shall file a petition for recognition with the state board.

(2) The state board shall vote on whether to approve a petition within ninety (90) days from the day the petition is filed.

(3) The petition shall include information necessary to determine that the petitioner satisfies the requirements of subdivision (a)(2)(B)(i) of this section.

6 CAR § 35-108. Monitoring and compliance.

(a) The Department of Education shall:

(1) Conduct a random audit of EFAs to ensure funds were used only for expenses that were approved or allowed at the time the expense was made; and

(2) Maintain a copy of the audit plan and all associated audit reports.

(b)(1) The Department of Education shall conduct a random financial audit of participating schools and service providers.

(2) If selected, a participating school or service provider shall submit to a financial audit conducted by a certified public accountant within six (6) months of the most recent fiscal year.

(3) The auditor shall include in the report a statement that the report:

(A) Is free of material misstatements; and

(B) Fairly represents the participating school or service provider's maximum total tuition and fees.

(c)(1) The Department of Education shall establish an anonymous fraud reporting service.

(2) Individuals may notify the Department of Education of any alleged violation by an account holder or participating school or service provider of state laws, rules, or procedures relating to the Arkansas Children's Educational Freedom Account Program.

(3)(A) The Department of Education shall conduct an inquiry into any report of fraud or make a referral for an investigation to the Attorney General or the Secretary of the Department of Inspector General.

(B) Individuals making a report of fraud shall be informed that their reports of fraud must be credible, and, at a minimum, be backed by some reasonable suspicion of wrongdoing.

(C) If an account holder or participating school or service provider is found to have violated any state laws, rules, or procedures related to the program, they shall be ineligible to participate in the program and any unspent EFA funds shall be returned to the Department of Education.

(d) The Department of Education may contract with a third party to:

- (1) Conduct the audits; or
- (2) Establish an anonymous fraud reporting service.

(e) The Department of Education shall forward to Arkansas Legislative Audit:

(1) All audits conducted under this section that identify a potential misuse of EFA funds; and

(2) Any reports of fraud, substantial misuse of account funds, or both that the Department of Education investigated or referred for investigation to the Attorney General or the secretary.

6 CAR § 35-109. Appeals process.

(a) The following determinations may be appealed to the State Board of Education:

(1) An applicant may appeal the Department of Education's determination that the student does not qualify for priority status under 6 CAR § 35-104(b);

(2) An account holder may appeal:

(A) A final determination that the account holder has **substantially intentionally** misused EFA funds; or

(B) The removal of the participating student from the Arkansas Children's Educational Freedom Account Program;

(3) A prospective participating school or service provider may appeal the department's determination that the prospective participating school or service provider is not eligible to participate in the program; and

(4) A participating school or service provider may appeal the department's

suspension or termination of the participating school or service provider from the program.

(b)(1) All appeals shall be submitted using the appeal forms provided on the department's website.

(2) If an appeal is not submitted on the appropriate appeal form, the appeal shall be denied.

(c)(1) Appeals shall be submitted to the department within thirty (30) calendar days of the adverse decision by the department.

(2) The day that the department sends notice of its determination will not count as part of the thirty (30) calendar days.

(3) If the deadline to submit an appeal falls on a weekend or state holiday, the appeal shall be considered timely submitted if it is received by the next business day after the weekend or state holiday.

(4) If an appeal is not timely submitted, the appeal shall be denied.

(d)(1) The state board shall hear the appeal at its next scheduled meeting if the appeal is received at least fourteen (14) calendar days before the meeting date.

(2) If the appeal is received less than fourteen (14) calendar days before the meeting date, the hearing will be held at the following state board meeting.

(e) Any appeal shall be held in an open hearing, and the decision of the state board shall be in an open session.

(f) The following procedures shall apply to state board hearings:

(1) All persons wishing to testify before the state board shall first be placed under oath by the Chair of the State Board of Education;

(2) The department shall have up to fifteen (15) minutes to present its case to the state board;

(3) The appealing party shall have up to fifteen (15) minutes to present its case to the state board;

(4) The chair may allow additional time if necessary;

(5) The state board may ask questions of any party at any time during the hearing;

(6) The state board shall then discuss, deliberate, and vote upon the matter;

(7) The state board will grant or deny the appeal based upon the totality of the evidence presented;

(8) The state board may announce its decision immediately after hearing all arguments and evidence, or it may take the matter under advisement and announce its decision at a later date provided that all discussions, deliberations, and votes upon the matter take place at a public hearing; and

(9) The state board shall provide a written decision within fourteen (14) days of announcing its decision.

6 CAR § 35-110. Procurement and contracting.

In compliance with all state procurement laws and procedures, the Department of Education retains the authority to contract with a vendor or other supplier for the purpose of administering all or part of the Arkansas Children’s Educational Freedom Account Program, including but not limited to:

(1) Implementing a system to collect and compile response data from the standard application form;

(2)(A) Managing a secure payment system for account holders to use as the primary method to direct EFA funds to participating schools and service providers by electronic funds transfer, automated clearinghouse transfer, or other commercially viable, cost-effective, parent-friendly, and easy-to-use online product.

(B) The secure payment system shall make the EFA fund balance readily accessible to the account holder through a technology interface with real-time or near real-time balance information and transaction history, including:

(i) Transaction date;

(ii) The amount deposited or spent; and

(iii) The name of the participating school or service provider;

(3) Providing account holders with telephone-operated customer service or real-time operated online chat response to answer questions related to the secure payment system and access to participating schools and service providers available

beyond conventional business hours;

(4) Establishing and maintaining an online anonymous fraud reporting service and an anonymous telephone hotline for reporting program fraud, pursuant to 6 CAR § 35-108(c);

(5) Compiling the information necessary for the legislative report regarding the implementation of the EFA, to be submitted annually no later than September 30 pursuant to Arkansas Code § 6-18-2510;

(6) Reviewing applications and expenses; and

(7) General administration and management of the program.

6 CAR § 35-111. Payments under the program.

(a)(1) Once families and participating schools have been approved to participate in the Arkansas Children’s Educational Freedom Account Program, the Department of Education shall continue to make ~~quarterly~~ payments to the EFA on behalf of the approved students and families to pay for ~~eligible-qualifying~~ expenses invoiced by participating schools or service providers with the exception of ~~qualifying reimbursable expenses preapproved expenditures as defined in subdivision (a)(2)(F) of this section~~, which can be paid at the time of services rendered or goods purchased.

(2)(A) The department shall make payments in installments from the participating student’s EFA to the participating school or service provider.

(B) Participating schools or service providers, or third-party vendors, shall issue an itemized invoice to approved students and families for documentation of expense:

(i) Type;

(ii) Amount; and

(iii) Recipient.

(C) Approved students and families shall verify and submit payment requests, identifying the:

(i) Participating school or service provider to receive payment;

(ii) The payment amount; and

(iii) The expense type.

(D) Approved students and families shall include invoices for review and documentation during the payment submission process.

(E)(i) Payment shall be made to the participating school or service provider for authorized expenditures following review and approval of the expense request and documentation by the department.

(ii) ~~A parent of a participating student~~The following individuals may not receive payment from their student's EFA account unless it is reimbursement for a ~~preapproved eligible-qualifying~~ expense.:

~~(a) Parents of a participating student; and~~

~~(b) An individual residing at the same address as a participating student.~~

(F)(i) A parent of a participating student may ~~only~~ be reimbursed for ~~preapproved eligible-qualifying~~ expenses. ~~to include the following:~~

~~(a) Course and testing fees;~~

~~(b) Curriculum;~~

~~(c) Online course tuition and fees;~~

~~(d) Tutoring fees;~~

~~(e) Therapy fees; and~~

~~(f) Transportation.~~

~~(a) Reimbursement requests related to transportation shall be submitted using a specific form available on the division's website.~~

~~(b) If it is the first year a student participates in the program, parents may not request reimbursement for expenses prior to July 1.~~

~~(c) If the parent requests reimbursement from an education service provider that is not on the list of preapproved education service providers, the parent shall provide sufficient documentation to allow the Department to determine whether the goods or services provided are qualifying expenses under this part.~~

~~(d) A parent of a participating student may only be reimbursed for a qualifying expense that is not a core educational expense if the parent receives~~

approval from the Department before the expense is incurred.

(e) The requirement of subsection (a)(2)(F)(i)(d) shall only apply to expenses submitted more than six (6) months following the effective date of this subsection.

(ii)(a) The family parent seeking to procure a service or resource through reimbursement shall submit a preapproval request to the division for one (1) of the preapproved eligible expenses.

(b) Once approved, the family may:

(1) Incur the cost; and

(2) Submit that includes a receipt, invoice, or proof of payment that is itemized and describes the services or resources provided, for services that match the preapproved expense.

(G)(i) When the Department denies an expense or reimbursement request, the account holder may request an individual expense reevaluation under § 35-113(a) of this part.

(H)(i) When a specialist approves or denies an expense on behalf of the Department that is not a core educational expense under this part, the specialist shall document the justification for approval or denial of that expense.

(I)(i) A specialist reviewing an expense pursuant to this part shall first determine whether the good or service in question has been previously placed on a list of goods and services that do not qualify for payment under this part.

(ii) The list of goods and services that do not qualify for payment under this part shall:

(a) Be adopted by the Department no less than 30 days from the date this provision is promulgated;

(b) Except as provided in subsection (a)(2)(I)(ii)(a), be expanded to include additional items only if the good or service to be included is;

(1) Subject to a final denial by the Assistant Commissioner under § 35-113(a)(2);

(2) Designated for inclusion on the list by the Assistant

Commissioner; and

(3) Approved for inclusion on the list by a committee of not less than five qualified individuals appointed by the Secretary of Education;

(c) Not include any item eligible for payment under this part;

(d) Be made available to program participants.

(b) In the event an account holder, parent, or participating student is found to be ineligible to participate in the program or in the event the participating student enrolls in a public school:

(1) The account will be frozen; and

(2) Any EFA funds within the account shall be returned to the department.

(c)(1) In the event that EFA funds are pending payment to a participating school or service provider for an authorized expenditure at the time the account holder, parent, or participating student are found to be ineligible, the participating school or service provider shall remit the funds to the EFA from which the funds were originally disbursed.

(2) Funds remitted back to the EFA from a participating school or service provider under subdivision (c)(1) of this section shall also be returned to the department in accordance with subsection (b) of this section.

(3) The participating school or service provider shall remit the funds within ten (10) business days of receipt of written notice by the department that the entity is required to refund a payment.

(4) When required to refund a payment, a participating school or service provider may also:

(A) Provide documentation or written justification showing that the participating school or service provider was entitled to the refunded payment if the vendor believes:

(i) The department acted in error; and

(ii) Services were already rendered; and

(B) Submit a claim with the Arkansas State Claims Commission if the participating school or service provider believes that the entity is entitled to funds that it

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was required to remit under this part.

6 CAR § 35-112. Program evaluation.

(a) The participating school, parent, or service provider that is responsible for the majority of a student’s academic instruction, shall administer the following to all participating students who are enrolled on a full-time basis in kindergarten through tenth grade (K-10):

(1) An examination identified by the State Board of Education that is required for students attending public schools; or

(2)(A) A nationally recognized norm-referenced test approved by the state board that:

(i) Measures, at minimum, achievement in literacy and mathematics; and

(ii) Provides information that compares the performance of students against the performance of a sample of students from across the country.

~~————(B) The Department of Education shall provisionally approve a test for use in the 2023-2024 school year if the participating school or service provider administered the test to students during one (1) or more of the previous three (3) school years.~~

(b)(1) Each participating private school, and homeschool parent, ~~or service provider that is responsible for the majority of a student’s academic instruction~~ shall provide the following information to the department annually by June 30:

(A) A list of participating students who have taken an examination or norm-referenced test pursuant to subsection (a) of this section, the name of the assessment taken, and the achievement results for each student; and

(B) A list of participating students who are exempt from standardized testing due to the nature of the student’s disability, pursuant to subsection (c) of this section, and the alternate assessment results or summary of portfolio information provided for each student.

(2)(A) Information provided to the department may only be released in compliance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §

1232g.

(B) Pursuant to Arkansas Code § 6-15-503, information provided in a notice of intent to home school:

(i) Is confidential and not subject to the Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq.; and

(ii) May be used only for statistical and recordkeeping purposes as required by law.

(3) If the school is a high school, the number of participating students who graduated from high school in a given year and the number of Advanced Placement, International Baccalaureate, Advanced International Certificate of Education, or other college-level tests taken by participating students.

(c)(1) A participating student who is determined by a participating school or service provider to need an exemption to standardized testing due to the existence of a significant cognitive disability is not subject to the requirement of subsection (a) of this section.

~~_____ (2) A testing exemption may only be granted if the participating student meets all four (4) criteria listed in the Arkansas Alternate Assessment Decision-Making Tool as determined by a certified special education teacher or by an approved education service provider that provides therapies or diagnostic services to a student with a disability.~~

~~_____ (2) A testing exemption may be granted for a participating student only when the student is determined to be unable to participate in a standardized assessment due to a disability as determined by:~~

~~_____ (A) A certified special education teacher; or~~

~~_____ (B) An approved education service provider qualified to make the determination and that delivers therapeutic or diagnostic services to students with disabilities.~~

~~_____ (3) An exempt participating student's school shall:~~

~~_____ (A) Take an alternate assessment approved by the state board; or~~

~~_____ (B)~~

(A) Provide an alternate assessment approved by the state board; or

(B) Prepare a portfolio that provides information on the participating student's progress to the student's parent to his or her parent.

(d) The department shall administer a survey to account holders to assess their satisfaction with the department's administration of the Arkansas Children's Educational Freedom Account Program and their experience with participating schools and service providers, including but not limited to the following:

(1) Satisfaction with program service and communication;

(2) Satisfaction with the quality of private schools or education service providers; and

(3) Satisfaction with value of service provided for money expended, and any concerns with increases to, or misrepresentation of, tuition or fees for service providers.

(e) The survey shall:

(1) Collect no more than one (1) response from each account holder; and

(2) Be conducted between January 1 and May 31 of each school year.

(f) Survey results may be shared with the public at an aggregated school level unless the school has fewer than fifteen (15) students participating in the program.

6 CAR § 35-113. Program Integrity.

(a)(1) A program participant may request an individual expense reevaluation of a denied expense.

(A) In order to receive an individual expense reevaluation, the program participant must provide additional documentation or clarifying information addressing the issue which was the basis for the denial.

(B) The expense must be resubmitted in the manner proscribed by the department no less than fifteen (15) days from the date the denial of the expense is provided in order to be considered.

(C) If the expense is not a core educational expense, the program participant may be required to supply additional information prior to consideration for an individual expense reevaluation.

(D) An individual expense reevaluation shall be conducted in consultation with a supervisor.

(2) If the individual expense reevaluation is denied, the program participant may seek a final review of the expense.

(A) A final review must be requested, in a manner designated by the Department, no less than fifteen (15) days from the date the program participant is informed the individual expense reevaluation resulted in a second denial of the requested expense.

(B) Final approval or denial of an expense shall be with the approval of the assistant commissioner or director overseeing the program.

(C) The Department shall provide its final determination in writing.

(b)(1) In order to protect the integrity of the program, all suspected instances of misuse of program funds shall be reviewed by the department and may be subject to the following measures:

(A) Audit;

(B) Investigation; and

(C) Collection of additional documentation.

(2) Any program participant that fails to cooperate with the department's review of a suspected misuse of program funds shall be subject to immediate suspension of payments and removal from the program.

(3) When determining what action to take following a determination that a misuse of funds has occurred, the department shall consider the severity, frequency, and nature of the violation.

(4) When the department determines a misuse of funds has occurred that appears to be unintentional, the account shall remain active, and the department may take the following action:

(A) Provide a written warning that instructs the program participant on the nature of the misuse and state that repeated misuse of funds may result in termination from the program;

(B) Require repayment of funds as a condition of continued participation

in the program; and

(C) Designate account transactions for additional scrutiny.

(5) When the department determines a misuse of funds has occurred that is intentional;

(A) The account shall be immediately suspended and, subject to the process set out in this part, the person or persons responsible for the misuse of funds removed from current and future participation in this program; and

(B) The participants shall be notified of the amount he or she is required to repay.

(b)(1) When the department determines that a misuse of program funds has occurred, the department shall give notice to the account holder using the electronic mail address provided in the application process that includes the following:

(A) A clear description of the transaction in question;

(B) The applicable rule or statute allegedly violated;

(C) The action taken to address the misuse of funds;

(D) Instructions on how to request the Department conduct a reevaluation including how to provide additional documents or information to support the request.

(E) In the case of a determination of removal from the program, instruction on how to file an appeal under 6 CAR § 35-109.

(c) Upon receipt of a notice under this subsection, the parent or account holder shall have then (10) business days to respond by

(1) Submitting a request for a reevaluation with documentation demonstrating that the expense was allowable under this part; or

(2) Agreeing to repay the disallowed amount in full on terms approved by the department.

(d) The department shall review all submitted materials and issue a written determination within fifteen (15) business days of receipt.

(1) If the department reaches a final determination that a program participant is removed, or if no response to the notice is received, the program participant subject to removal shall be sent a written notice informing that person of the action taken and

notifying the person of the appeal process and relevant deadlines under 6 CAR § 35-109.

(2) If the program participant agrees to repay program funds, a written agreement shall be signed that sets out the terms of repayment.

(e) If the department determines that an intentional misuse of funds has occurred, the department may take steps necessary to recover those funds including through a collection process or civil litigation.

(f) The department shall refer suspected instances of fraud or criminal conduct for criminal prosecution.

6 CAR § 35-114. Ordinary Expense—Criteria.

(a) An expense shall be considered ordinary if all of the following are satisfied:

(1) Appropriateness: The item or service is ordinarily used in a recognized academic, instructional, or student growth and developmental context;

(2) Reasonableness: The cost and frequency are typical when compared to similar educational or developmental purchases; and

(3) Alignment: The expense aligns with recognized curricular, developmental, or career-preparation practices, including coursework, technical training, accredited programs, or structured enrichment activities.

(b) In determining whether an expense is ordinary, the Department shall consider the following:

(1) Whether the item or service is ordinarily used in an academic, instructional, or structured developmental setting (and not primarily recreational or hobby-based);

(2) Whether the expense is reasonable and typical in cost and frequency compared to similar educational purchases; and

(3) Whether the expense aligns with recognized curricular, developmental, or career-preparation practices.

6 CAR § 35-115. Necessary Expense—Criteria.

(a) An expense shall be considered necessary if all of the following are satisfied:

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(1) Educational support: The expense contributes directly to the student's academic learning, developmental growth, or career-readiness skills;

(2) Justification: The educational or developmental value is clear, demonstrable, and comparable to similar allowable options;

(3) Objective-oriented: The expense is essential for meeting a documented learning objective, developmental milestone, or career-preparation goal; and

(4) Future readiness: The expense meaningfully prepares the student for enrollment, enlistment, or employment, either directly or by strengthening foundational skills necessary for future success.

(b) In determining whether an expense is necessary, the Department shall consider the following:

(1) Whether the expense directly supports the student's academic, developmental, or career-readiness progress;

(2) Whether the cost is justified by its educational or developmental value;

(3) Whether the item is essential to achieving a documented learning objective, developmental milestone, or career-training goal (not merely personal interest or recreation); and

(4) Whether the expense prepares the student in a meaningful and demonstrable way for enrollment, enlistment, or employment.

6 CAR § 35-117. Implementation and Administration.

(a) All expenses are subject to review. Expenses shall not be approved or denied based solely on itemized lists, except where specifically prohibited or required by statute or rule.

(b) Expenses shall be evaluated in context, with consideration for the student's age, grade, and developmental needs.

(c) The Department shall apply a future-readiness lens to interpret expenses in light of their contribution to enrollment, enlistment, or employment.

(d) Expenses that are primarily recreational, hobby-based, or personal-skill-focused

shall not be approved unless directly tied to a structured instructional program with clear academic or career-preparation objectives.

(e) Decisions shall be guided by consistency, fairness, and transparency, with internal documentation of approval standards and rationale.

(f) Expenses that function primarily as an improvement of real property, a fixture to real property, or general household furnishings are not ordinary and necessary even if they can be used incidentally in support of a program participant's education.

(g) Nothing in this section shall be construed to expand regulatory authority over participating schools or providers beyond requirements expressly set out in rule.