



Division of Elementary and Secondary Education

Transforming Arkansas to lead the nation in student-focused education

Jacob Oliva
Secretary

May 14, 2024

Stacy Smith
Deputy
Commissioner

Ms. Rebecca Miller-Rice
Rules Administrator
Bureau of Legislative Research
One Capitol Mall, Fifth Floor
Little Rock, AR 72201

**State Board of
Education**

**Re: For Legislative Council review: Division Of Elementary And Secondary
Education Rule Governing the Student Protection Act**

Dr. Sarah Moore
Stuttgart
Chair

Dear Ms. Miller-Rice:

Kathy Rollins
Springdale
Vice-Chair

Attached is a copy of proposed new Division and Elementary and Secondary Education Rules Governing the Student Protection Act. This filing also contains the Legislative Council questionnaire, financial impact statement, markup version of the rules, post-public comment summary, and public comments with division responses. The Division respectfully requests that these proposed rules amendments be placed on the ALC Administrative Rules Subcommittee agenda.

Adrienne Woods
Rogers

On February 14, 2024, the Governor's Office approved the attached administrative rule for public comment release. On March 14, 2024, the State Board of Education approved the rule for public comment release. The public comment period ran from March 22, 2024, to April 24, 2024. A public comment hearing was held April 18, 2024, at the Arch Ford Building, Four Capitol Mall, Little Rock, AR, 72201. Following public comment, no changes were made. On May 9, 2024, the State Board gave final approval for this rule.

Jeff Wood
Little Rock

Thank you for your assistance. If you have any questions or require further information, please do not hesitate to call me at (501) 682-4234.

Ken Bragg
Sheridan

Respectfully submitted,

Leigh Keener
Little Rock

/s/ Andres Rhodes
Chief Legal Counsel
Arkansas Department of Education

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH
THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT Arkansas Department of Education

BOARD/COMMISSION State Board of Education

BOARD/COMMISSION DIRECTOR Dr. Sarah Moore

CONTACT PERSON Andres Rhodes

ADDRESS Four Capitol Mall, Little Rock, AR 72201

PHONE NO. (501) 682-4234 EMAIL andres.rhodes@ade.arkansas.gov

NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING
Andres Rhodes; Brianne Franks

PRESENTER EMAIL(S) andres.rhodes@ade.arkansas.gov; brianne.franks@ade.arkansas.gov

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

1. What is the official title of this rule?
DESE Rules Governing the Arkansas Student Protection Act +
2. What is the subject of the proposed rule? Amendment to prohibit transactions with individuals or entities th
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.

[Ark. Code Ann. § 6-18-2201 et seq](#)

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes No

If yes, please list the rules being repealed.

If no, please explain.

[This is not a new rule.](#)

8. Is this a new rule? Yes No

Does this repeal an existing rule? Yes No

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes No

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

Ark. Code Ann. § 6-18-2201 et seq

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).

Act 653 of 2023.

11. What is the reason for this proposed rule? Why is it necessary?

The rule is necessary to amend the rule to add that public or open-enrollment public charter schools shall not offer or provide abortion referrals.

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: 4/18/2024

Time: 1:00 pm

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

Please be sure to advise Bureau Staff if this information changes for any reason.

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. 4/24/2024

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

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

[Abortion providers might comment on the amendment.](#)

19. Is the rule expected to be controversial? Yes No

If yes, please explain.

[Due to the nature of the subject, input from interested parties is anticipated.](#)

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT Department of Education

BOARD/COMMISSION State Board of Educaiton

PERSON COMPLETING THIS STATEMENT Brianne Franks

TELEPHONE NO. (501) 683-0960 **EMAIL** brianne.franks@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 the Arkansas Student Protection Act

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.

SUMMARY OF RULE AMENDMENT - DESE RULES GOVERNING STUDENT PROTECTION ACT

This rule is amended pursuant to Act 653 of 2023, to add a prohibition for public or open-enrollment charter schools from knowingly entering into any transactions with an individual or entity that offers or provides abortion referral, consistent with legislation.

POST-PUBLIC COMMENT

The Department received one public comment that is attached, and no changes were made based on that comment.

**DIVISION OF ELEMENTARY AND SECONDARY EDUCATION
RULES GOVERNING THE ARKANSAS STUDENT PROTECTION ACT
Effective May 2, 2022**

1.0 REGULATORY AUTHORITY

- 1.1** These Rules shall be known as the Division of Elementary and Secondary Education Rules Governing the Arkansas Student Protection Act.
- 1.2** These Rules are enacted pursuant to the Arkansas State Board of Education’s authority under Ark. Code Ann. § 6-18-2201 *et seq.*

2.0 DEFINITIONS

- 2.1** “Abortion” means the act of using or prescribing an instrument, medicine, drug, device, or other substance or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. “Abortion” does not include an action taken with the intent to:
- 2.1.1 Save the life of the mother;
 - 2.1.2 Save the life or preserve the health of the unborn child;
 - 2.1.3 Remove a dead unborn child caused by spontaneous abortion; or
 - 2.1.4 Remove an ectopic pregnancy.
- 2.2** “Abortion referral” means the act of recommending a pregnant woman to a doctor, clinic, or other person or entity for the purpose of obtaining or learning about obtaining an abortion.
- 2.3** “Affiliate” means an individual or entity that, directly or indirectly, owns, controls, is controlled by, or is under the common control of another person or entity, in whole or in part, or a subsidiary, parent, or sibling entity.
- 2.4** “Division” means the Division of Elementary and Secondary Education.
- 2.04** “Transaction” means a formal or informal agreement, contract, or arrangement of any kind between a public school or open-enrollment public charter school and a private entity, regardless of whether the private entity or the public school or open-enrollment public charter school receives anything of value in return.

3.0 PROHIBITED TRANSACTIONS AND ENFORCEMENT

3.1 A public school or open-enrollment public charter school shall not knowingly enter into any type of transaction with an individual or entity that:

3.01.1 Performs abortions;

3.01.2 Induces abortions; ~~or~~

3.01.3 Provides abortions; or

3.01.4 Offers or provides abortion referrals.

3.2 Each public school and open-enrollment public charter school shall promulgate policies for the implementation of these Rules and Ark. Code Ann. § 6-18-2201 *et seq.*

3.3 A public school or open-enrollment public charter school that knowingly violates these Rules and Ark. Code Ann. § 6-18-2201 *et seq.* shall, at the direction of the Division or the State Board of Education, appear before the State Board at its next regularly scheduled meeting, for the purpose of determining:

3.3.1 Why these Rules and Ark. Code Ann. § 6-18-2201 *et seq.* were violated;
and

3.3.2 How to prevent a violation of these Rules and Ark. Code Ann. § 6-18-2201 *et seq.* in the future.

**DIVISION OF ELEMENTARY AND SECONDARY EDUCATION RULES
GOVERNING THE STUDENT PROTECTION ACT
PUBLIC COMMENTS AND RESPONSES**

Commenter Name: Aaron Randolph, Cabot School District, Superintendent, April 15, 2024

Comments: Submitted Electronically

Section 3.01.4 (p. 2) expands the definition with whom districts cannot enter into transactions. The definition of “transaction” includes even the most informal arrangement where the district does not even have to receive any benefit as a result of it. (2.04, p. 1). This could be interpreted as even a guest speaker in a classroom or a chaperone on a field trip. Our CTE department includes agreements with MEMS, Cabot Fire Department, and a practice in the Unity Health network. All of these could be included as a group that would likely share an “abortion referral,” which can be simply directing where a pregnant woman could learn about abortions. (2.2, p. 1)

Division Response: **Comment considered; no changes made. The concerns addressed by this comment are governed by statutory provisions.**