

**DIVISION OF ELEMENTARY AND SECONDARY EDUCATION
RULES GOVERNING THE EDUCATIONAL FREEDOM ACCOUNT
PROGRAM
August 1, 2023**

1.00 Purpose

- 1.01 The purpose of these rules is to establish guidelines for the initial implementation and operation of the Educational Freedom Account (EFA), established to provide children in the State of Arkansas with educational options to achieve success in their education.

2.00 Definitions

- 2.01 “Account holder” means the parent of a participating student, or a participating student who has attained the age of majority, who signs the EFA agreement and is responsible for complying with all of the requirements of the EFA.
- 2.02 “Agreement” means a contract signed by an applicant outlining their contractual obligations as the account holder of an EFA and the acceptable uses of EFA funds.
- 2.03 “Applicant” means a prospective participating student or the prospective participating student’s parent, when he or she is applying to the EFA Program on behalf of the student.
- 2.04 “Department” means the Arkansas Department of Education.
- 2.05 “Division” means the Division of Elementary and Secondary Education.
- 2.06 “Education Service Provider” means a business, nonprofit organization, or other entity, not to include a nonpublic or public school, which offers educational materials or services that are qualifying expenses reimbursable by EFA funds pursuant to Ark. Code Ann. § 6-18- 2503(11)(A).
- 2.07 “EFA” means an individual funding account that is managed by the Department of Education for the care of and in the name of a participating student.
- 2.08 “EFA funds” means money from one or more EFAs.
- 2.09 “EFA Program” means the Educational Freedom Account Program established pursuant to Arkansas Code Annotated § 6-18-2501, et seq.

- 2.10 “Foster care” means the placement of a child by the Department of Human Services into custodial care by a group home, group facility, or a relative or nonrelated caregiver on a twenty-four-hour-a-day basis.
- 2.11 “Nationally 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.
- 2.12 “Norming studies” means a series of statistical methods applied to the raw data collected from standardized tests to determine the reliability and validity of the data in calculating the norm-referenced scores.
- 2.13 “Office” means the Office of School Choice, as established within the Department.
- 2.14 “Parent” means either:
 - 2.08.1 A biological or adoptive parent;
 - 2.08.2 A legal guardian or custodian;
 - 2.08.3 A person standing in loco parentis to a participating student; or
 - 2.08.4 Another person with legal authority to act on behalf of a Participating Student
- 2.15 “Participating school or service provider” means a school or other service provider that is approved by the Department to receive EFA funds.
- 2.16 “Participating student” means an eligible student for whom an EFA has been approved and established.
- 2.17 “Standard Application Form” means the form created by the Department to be used by applicants seeking to establish an EFA on behalf of a Participating Student.
- 2.18 “State Board” means the Arkansas State Board of Education.
- 2.19 “Student with a disability” means a student who has been:
 - 2.19.1 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; or

3.00 Student Eligibility

- 3.01 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 EFA Program for the 2023-2024 school year if the prospective participating student is:
 - 3.01.1 A student with a disability as defined by Section 2.19 of these Rules.
 - 3.01.2 Considered homeless under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11431 et seq., as it existed on January 1, 2023;
 - 3.01.3 A student in foster care, as defined in Section 2.10 of these Rules, or has been in foster care and subsequently achieved permanency through adoption, reunification, or permanent guardianship;
 - 3.01.4 The student participated in the Succeed Scholarship Program, Ark. Code Ann. § 6-41-901 et seq., during the 2022-2023 school year;
 - 3.01.5 A child of active-duty military personnel, as identified by Title 10 or Title 32 of the United States Code;
 - 3.01.6 Is enrolling in kindergarten for the first time; or
 - 3.01.7 A student who was enrolled in the previous school year in a:
 - 3.01.7.a Public school that has a rating of “F” under Ark. Code Ann. §§ 6-15-2105 and 6-15-2106 and State Board of Education rules; or
 - 3.01.7.b Public school district classified as in need of Level 5 — Intensive support under Ark. Code Ann. §§ 6-15-2913 or 6-15-2915.

4.00 Student Application

- 4.01 To apply to participate in the EFA Program, a parent shall fully complete the Standard Application Form available at the Department’s website and the Department’s offices at (4 Capitol Mall, Little Rock, AR 72201), beginning June 20, 2023, and ending August 1, 2023.
 - 4.01.1 The Standard Application Form may be submitted by mailing the application via the United States Postal Service to the Department, submitting the application to the Department via email or submitting the application online at the Department’s website

- 4.01.2 The Standard Application Form may only require the collection of such information and documentation as is necessary to establish the applicant's residency in the State of Arkansas and the applicant's eligibility pursuant to the criteria set in Section 3.01 of these Rules.
- 4.01.3 The Department may assist an applicant in completing the Standard Application Form as needed.
- 4.01.4 The Office of School Choice may determine eligibility of applications received after August 1, 2023, provided Program funds remain available. In such cases, account funding may be prorated to cover qualifying expenses for less than the full duration of the 2023-2024 school year.
- 4.02 The Office shall determine an applicant's eligibility to participate in the Program under Section 3.01 and notify the Applicant on a rolling basis as applications are received. The notification shall inform applicants how they may activate the account and the amount of EFA funding the Participating Student will receive. Priority for accepting student applications shall be made in the following manner:
 - 4.02.1 The Office shall approve all student qualifying applications pursuant to Section 3.01.4 of these Rules.
 - 4.02.2 The Office shall approve all other applications that meet one or more of the qualifying criteria in Section 3.01 of these Rules on a first-come, first-served basis.
 - 4.02.3 The Office shall continue to approve student applications that meet the qualifying criteria set by Section 3.01 of these Rules for the 2023-2024 school year and successive school years, as funding remains available and the conditions for eligibility are met by the applicant pursuant to Section 6 of these Rules.
- 4.03 Once a completed Standard Application Form has been approved by the Office, the applicant shall complete the enrollment procedures set by the Department to become enrolled in the EFA Program, including execution of an Agreement to participate in the Program as outlined in Section 5 of these Rules.

5.00 Agreement and Funds Transfer

- 5.01 Upon notification by the Department that an EFA may be established, the applicant shall sign an Agreement outlining the applicant's contractual obligations as the account holder upon enrolling in the EFA Program, including the acceptable uses of EFA funds and expense reporting requirements. The Agreement may be executed with a wet or electronic signature. The Agreement shall remain

in effect until one or more of the conditions for terminating eligibility are met under Section 6 of these Rules.

- 5.02 In the Agreement, the Department shall provide account holders with the following:
 - 5.02.1 A written explanation of qualifying expenditures for EFA funds, as outlined in Ark. Code Ann. § 6-18-2503(11)(A);
 - 5.02.2 A written explanation of the responsibilities of account holders, as outlined in Section 5.03 of these Rules;
 - 5.02.3 The following written explanation: “Participation in the EFA is a parental placement under 20 U.S.C. § 1412, Individuals with Disabilities Education Act (IDEA) if a child with a disability is enrolled in a non-public school. Parental placement of children with disabilities in a private school constitutes a waiver of procedural rights to a Free and Appropriate Public Education (FAPE) in connection with their private school enrollment, in accordance with 34 C.F.R. 300.148(a) and pursuant to 34 C.F.R. 300.137(a), while participating in the EFA program”; and
 - 5.02.4 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.
- 5.03 In the Agreement, the account holder shall:
 - 5.03.1 Agree not to enroll the participating student full-time in a public school while the student is participating in the EFA Program;
 - 5.03.2 Acknowledge that upon enrolling in the EFA Program, the parent waives the participating student’s entitlement to a free appropriate public education, including special education and related services, from their public school district of residence, so long as the child remains in the EFA Program; and
 - 5.03.3 Agree to use EFA Funds on behalf of the Participating Student strictly for qualifying expenditures, as outlined in Ark. Code Ann. § 6-18-2503(11)(A) during the 2023-2024 school year.
- 5.04 The Agreement shall:
 - 5.04.1 Be submitted to the Department, along with all required information, before the first EFA payment is disbursed, pursuant to Section 5.05 of these Rules; and

- 5.04.2 Be signed by the account holder and a designee of the Department prior to becoming effective.
- 5.05 After the Agreement is fully executed by the account holder and the Department, the Department shall make four (4) equal payments in quarterly installments from the participating student's EFA to the participating school or service provider. Payments shall only be suspended at such time as one or more criteria to terminate the Agreement are met under Section 6 of these Rules.
- 5.06 The total allocation to each participating student's EFA for the 2023-2024 school year shall be \$6,672, unless either:
 - 5.06.1 The total qualifying expenditures, as outlined in Ark. Code Ann. § 6-18-2503(11)(A), published by the participating school or service provider where a participating student is enrolled equal an amount less than \$6,672. Any excess funds allocated to the private school shall be refunded to the Department.
 - 5.06.2 The participating student is eligible under Section 3.01.4; in which case the allocation shall total the same amount awarded to the student as a Succeed Scholarship during the 2022-2023 school year.
- 5.07 The Department may withhold up to five percent (5%) of the funds allocated to each EFA for the purpose of the EFA Program administration.

6.00 Term of EFA Eligibility

- 6.01 For purposes of continuity of educational choice, a student who enrolls in the EFA Program shall remain eligible until the participating student meets one of the following criteria, whichever occurs first:
 - 6.01.1 Enrolls full-time in a public school.
 - 6.01.2 Graduates from high school. The student may continue in the EFA Program until such time as he or she receives a high school diploma or receives a passing score on all subtests of the General Educational Development (GED) test.
 - 6.01.3 Reaches twenty-one (21) years of age. The student may complete the school year in which he or she reaches the age of twenty-one (21), provided the student shall not be enrolled in the EFA Program past June 30 after reaching twenty-one (21) years of age.
- 6.02 Regardless of meeting one or more of the criteria listed in the previous subsection, the Department may immediately and permanently remove any participating student from eligibility for a EFA if the account holder fails to comply with the

terms of the Agreement in Section 5 of these Rules or any other applicable laws, rules or procedures, or if the account holder is found to have substantially misspent EFA Funds. The account holder may appeal the Department's decision pursuant to the procedures outlined in Section 9 of these Rules.

- 6.03 The account holder may remove the participating student from enrollment in a participating school or service provider and place the student in a public school. The account holder shall complete the procedures for withdrawal from the EFA Program set by the Department.

7.00 Participating Schools and Service Providers

- 7.01 A private school shall notify the Department of its intent to participate as a participating school or service provider in the EFA Program. Pursuant to Ark. Code Ann. § 6-18-2507, the Office shall certify a private school as a Participating School or Service Provider if the private school is located in the State of Arkansas and:

7.01.1 Complies with one of the following:

- 7.01.1.a 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; or

- 7.01.1.b Is an associate member of, or has applied for accreditation from, the Arkansas Nonpublic School Accrediting Association, Inc., or its successor, or another accrediting association recognized by the State Board. A private school that is not fully accredited while participating in the EFA Program shall report annually to the State Board, or its designee, the school's progress towards accreditation.

7.01.2 Meets one or more of the following criteria:

- 7.01.2.a Has been in operation for at least one (1) school year:

- 7.01.2.b 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

- 7.01.2.c 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.

7.01.3 Attests in writing to the following:

- 7.01.3.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;
 - 7.01.3.b All private school personnel who are allowed direct contact with participating students have cleared a background check and fingerprinting process;
 - 7.01.3.b.1. Participating schools have until May 30, 2024, to comply with the fingerprinting requirement for all school employees.
 - 7.01.3.c The private school does not employ any individual who may reasonably pose a risk to the appropriate use of EFA Program funds if disbursed;
 - 7.01.3.d The private school only employs or contracts teachers who hold at least baccalaureate degrees or have equivalent documented experience, as determined by the Department;
 - 7.01.3.e The private school holds valid occupancy of buildings as required by the relevant municipality in which the private school is located; and
 - 7.01.3.f The private school operates according to its published disciplinary procedures that, at a minimum, outline the terms and conditions when a student may be expelled.
- 7.02 A private school will be ineligible to participate in the EFA Program if:
- 7.02.1 When approved under Section 7.01.1 of these Rules, the private school loses its accreditation status;
 - 7.02.2 When approved under Section 7.01.2 of these Rules, the private school is ineligible or unable to continue the accreditation process, as determined by the accrediting association;
 - 7.02.3 The private school violates the terms of Section 7.01.3 of these Rules;
 - 7.02.4 The private school fails to adhere to the tenets of its published disciplinary procedures before expelling a Participating Student; or

- 7.02.5 The private school fails to comply with all applicable state laws and rules governing private schools, and with all applicable health and safety laws and rules.
- 7.03 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 EFA Program pursuant to Section 7.02 of these Rules. A private school may apply for reinstatement if it returns to compliance with Section 7.01 of these Rules.
- 7.03.1. The Department shall determine whether the private school is not in compliance with Section 7.01 of these rules. The Department shall issue a formal notice of its determination to the private school.
- 7.03.2 A private school applying for reinstatement under this section shall provide documentation to the Department of the private school's efforts to come back into compliance with Section 7.01 of these rules. The private school may request a hearing before the state board or may elect to waive its hearing and submit evidence to the Department.
- 7.03.3 Upon receipt of the evidence, the Department shall issue a decision on the private school's reinstatement in writing to the private school.
- 7.04 The Office's approval of a Participating School or Service Provider shall serve as statewide approval of such provider for purposes of the EFA Program. A listing of each participating school and service provider's name, the qualifying materials, services offered, and any relevant credentials shall be available on the Department's website, in a format easily accessible to the public.
- 7.04.1 Private schools who were approved under the Succeed Scholarship program outside of the State of Arkansas may continue to receive funds for participating Succeed Scholarship students for the remainder of the Participating Students' remaining eligibility.
- 7.05 Participating schools and service providers shall not refund, rebate, or share EFA funds directly with account holders. Funds shall only be refunded to the EFA of a participating student from which the expenditure was made.
- 7.06 The Department may suspend or terminate a participating school or service provider from participating in the EFA Program if the Department determines the school has failed to comply with the requirements of the Act or these Rules.
- 7.07 Nothing shall be construed to expand the regulatory authority of the Department to impose additional regulations on participating schools and

service providers beyond those expressly set out in these Rules to enforce the requirements of the EFA Program.

7.07.1 A participating school or service provider shall not be required to alter its creed, practices, admissions policy, or curriculum to receive approval from the Department or to accept payments from an EFA.

8.00 Monitoring and Compliance

8.01 During the 2023-2024 school year, the Department shall:

8.01.1 Conduct or contract with an unaffiliated auditor to conduct a random audit of EFAs to ensure monies were used only for expenses that were approved or allowed at the time the expense was made.

8.01.2 Maintain a copy of the audit plan and all associated audit reports.

8.02 During the 2023-2024 school year, the Department shall conduct or contract with an unaffiliated auditor to conduct a random financial audit of participating schools and service providers. If selected, to satisfy the requirements of this subsection, a participating school or service provider shall submit to an auditor chosen by the Department, a financial audit of the entity conducted by a certified public accountant within six (6) months of the most recently completed fiscal year. The audit shall include a statement that the report is free of material misstatements and fairly represents the Participating School's or Service Provider's maximum total tuition and fees.

8.03 The Department shall establish or contract for the establishment of an anonymous online fraud reporting service and an anonymous telephone hotline for reporting fraud. Individuals may notify the Department of any alleged violation by an account holder or participating school or service provider of state laws, rules, or procedures relating to the EFA Program. The Department shall conduct an inquiry into any report of fraud or make a referral for an investigation to the Arkansas Attorney General or the Secretary of the Arkansas Department of the Inspector General. 8.04 The Department shall forward to Arkansas Legislative Audit:

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

8.04.2 Referrals of all cases involving fraud and/or substantial misuse of account funds for investigation to the Arkansas Attorney General or the Secretary of the Arkansas Department of the Inspector General.

9.00 Appeals Process

9.01 The following determinations can be appealed:

- 9.01.1 An applicant may appeal the Office's determination that the student is not eligible for the EFA Program.
- 9.01.2 An account holder may appeal an official determination that the account holder has misspent EFA funds or the removal of the participating student from the EFA Program.
- 9.01.3 An applicant school may appeal the Office's determination that a private school is not qualified to be a participating school or service provider.
- 9.01.4 A participating school or service provider may appeal the Department's suspension or termination of the Participating School or Service Provider from the EFA Program.
- 9.02 All appeals shall be submitted on the appeal forms provided on the Department's website. If an appeal is not submitted on the appropriate appeal form, the appeal shall be denied.
- 9.03 Appeals shall follow the following two-step process:
 - 9.03.1 Step one appeals shall be reviewed by the Department. Step one appeals must be submitted to the Department within fourteen (14) calendar days of the Department electronically sending the determination that is being appealed. The day that the Department sends the determination will not count as part of the foregoing fourteen (14) calendar days. The Secretary of Education or the Secretary's designee shall make a determination and issue an electronic notification to the appealing party within forty-five (45) calendar days of receiving the step one appeal.
 - 9.03.2 If the Secretary of Education or the Secretary's designee denies the step one appeal, the appealing party may file a step two appeal. Step two appeals shall be reviewed by the State Board. Step two appeals must be submitted to the Department within thirty (30) calendar days of the Department electronically sending the step one determination. The day that the Department sends the step one determination will not count as part of the foregoing thirty (30) calendar days.
- 9.04 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.
- 9.05 If an appeal is not timely submitted, the appeal shall be denied.
- 9.06 The State Board shall hear the appeal at its next scheduled meeting, so long as the appeal is received seven (7) calendar days before the meeting date.

- 9.07. Any appeal shall be held in an open hearing, and the decision of the State Board shall be in an open session.
- 9.08 The following procedures shall apply to State Board hearings for a step two appeal:
 - 9.08.1 All persons wishing to testify before the State Board shall first be placed under oath by the Chairperson of the State Board.
 - 9.08.2 The Department, and when appropriate, the Office, shall have up to twenty (20) minutes to present its case to the State Board. The Chairperson of the State Board may allow additional time if necessary.
 - 9.08.3 The appealing applicant, account holder, Participating School, or Service Provider shall have up to twenty (20) minutes to present its case to the State Board. The Chairperson of the State Board may allow additional time if necessary.
 - 9.08.4 The State Board may pose questions to any party at any time during the hearing.
 - 9.08.5 The State Board shall then discuss, deliberate, and vote upon the matter.
 - 9.08.6 The State Board will grant or deny the appeal based upon the totality of evidence presented.
 - 9.08.7 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. The State Board shall provide a written decision to the applicant, account holder, Participating School, or Service Provider within fourteen (14) days of announcing its decision under this section.

10.00 Procurement and Contracting

- 10.01 In compliance with all state procurement laws and procedures, the Department retains the authority to contract with a vendor or other supplier for the purpose of administering all or parts of the Program, including but not limited to:
 - 10.01.1 Implementing a system to collect and compile response data from the Standard Application Form.

10.01.2 Compiling the legislative report regarding the implementation of the Educational Freedom Account, to be submitted no later than September 30, 2024, pursuant to Ark. Code Ann. § 6-18-2510.

11.00 Program Evaluation

11.01 Pursuant to Ark. Code Ann. § 6-18-2509(a)(1), participating schools and service providers shall administer the following to all participating students who are enrolled on a full- time basis during the 2023-2024 school year:

11.01.1 An examination identified by the State Board that is required for students attending public schools; or

11.01.2 A nationally norm-referenced test that measures, at minimum, achievement in literacy and mathematics and provides information that compares the performance of students against the performance of a sample of students from across the country. The Department 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 or more of the previous three (3) school years.

11.02 A participating student who is determined by a participating school or service provider to need an exemption to standardized testing due to the nature of the student's disability, pursuant to Ark. Code Ann. § 6-18-2509(a)(2), is not subject to the requirement of Section 11.01.

11.02.1 The participating school or service provider in which a student is enrolled full-time, or otherwise the parent of a participating student, shall allow an exempt participating student to take an alternate assessment approved by the State Board or prepare a portfolio that provides information on the participating student's progress to his or her parent.

11.03 Each participating school or service provider that enrolls one (1) or more participating students shall provide the following information to the Department no later than June 30, 2024, and each June 30 thereafter on an annual basis:

11.03.1 A list of participating students who have taken an examination or norm-referenced test pursuant to Section 11.01 of these Rules, and the achievement results for each student; and

11.03.2 A list of participating students who are exempt from standardized testing due to the nature of the student's disability, pursuant to Section 11.02 of these Rules, and the alternate assessment results or summary of portfolio information provided for each student.

- 11.03.3 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 AP tests taken by Participating Students.
- 11.04 The Department shall approve the use of a nationally norm-referenced test for participating students, if it meets the following criteria:
- 11.04.1. The assessment has norming studies that show dates of the studies, definition of the populations sampled, the procedure used to draw the samples, sample sizes, participation rates, and any weighting or smoothing procedure used to make the sample data better represent the population. Norming studies must have been conducted within the last ten (10) years, with five (5) years being preferable;
 - 11.04.2. The assessment is internally consistent and reliable and must be reported for content sub-domains (e.g., mathematics, reading) at a minimum score of 0.80, and that reliability data be reported for each grade level;
 - 11.04.3. For any open-ended, constructed-response items, rater agreement information (e.g., exact rater agreement rates, intraclass correlations, or kappa coefficients) is reported;
 - 11.04.4. The standard error of measurement and conditional standard error of measurement (at various test score levels) are reported;
 - 11.04.5. The test developer includes a clear description of the construct to be measured, the purpose of the test, intended interpretation of the scores/other test results, and intended test-taking population;
 - 11.04.6. Documentation includes conceptual, empirical, and theoretical evidence that the test meets its intended purposes and support the intended interpretations of test results for the intended populations; and
 - 11.04.7. Documentation includes evidence that each test is aligned with rigorous content standards and serves as an adequate measure of K-12 student achievement in core academic areas.
- 11.05 The Department shall administer a survey to account holders to assess their satisfaction with the Department's administration of the EFA Program and their experience with participating schools and service providers. The survey shall collect no more than one (1) response from each account holder, beginning no later than February 1, 2024, and ending no sooner than March 31, 2024.

Emergency Clause

Whereas Act 237 of 2023 requires that the State of Arkansas through the Department of Education to administer the Educational Freedom Account program through rules promulgated by the State Board of Education no later than the beginning of the 2023-2024 school year; and

Whereas, the emergency promulgation of the Rules Governing The Educational Freedom Account Program is necessary for the Department to prepare for the implementation of the program before the 2023-2024 school year begins; without which the State cannot efficiently administer the program, empower parents, or hold participating schools accountable. The rules are specifically necessary to ensure processes for determining the eligibility of students and service providers, conducting account and program audits, and enrolling participating students before the 2023-2024 school year begins.

THEREFORE, the State Board of Education hereby determines pursuant to Ark. Code Ann. § 25-15-204 that immediate peril to the welfare of the State, specifically students and parents, will result without emergency promulgation of these Rules.