

## **Title 6. Education**

### **Chapter I. Division of Elementary and Secondary Education**

#### **Subchapter F. Student Screening and Medical**

#### **Part 157. Rules Governing Nutrition and Physical Activity Standards and Body Mass Index for Age Assessment Protocols in Arkansas Public Schools**

##### **Subpart 1. Generally**

###### **6 CAR § 157-101. Purpose.**

The purpose of this part is to establish the requirements and procedures for governing nutrition and physical activity standards and body mass index for age assessment protocols in Arkansas public schools.

###### **6 CAR § 157-102. Definitions.**

(a) For the purpose of this part, the following terms mean:

(1)(A) "A la carte" means individually priced food or beverage items provided by the nonprofit school food service program.

(B) These items may or may not be part of the reimbursable meal.

(C) A la carte items must meet federal Smart Snacks requirements;

(2) "Alliance for a Healthier Generation Smart Snacks Calculator" means a tool developed by the Alliance for a Healthier Generation to assist schools in identifying products that meet the federal nutrition standards for Smart Snacks;

(3) "Child Health Advisory Committee" means a state-level committee that was established by Arkansas Code § 20-7-133 to:

(A) Develop nutrition and physical activity standards; and

(B) Make policy recommendations to the:

(i) State Board of Education; and

(ii) State Board of Health;

(4)(A) "Body mass index (BMI)" means:

(i) Weight in pounds; divided by

(ii) Height in inches squared; multiplied by

(iii) 703.

(B) **Metric.** Weight in kilograms divided by height in meters squared;

(5) "BMI for age assessment" means:

(A) Calculating the height and weight as in the definition for BMI; and

(B) Applying the Centers for Disease Control and Prevention growth charts for age and gender;

(6) "BMI for age assessment protocols" means a detailed plan designed to describe appropriate procedure for assessment;

(7) "Body mass index percentile for age" means an indicator to assess the size and growth patterns of individual children based on the Centers for Disease Control and Prevention's BMI-for-age growth charts for boys and girls;

(8)(A) "Breastfeeding education and practices" means age-appropriate education for students regarding the nutritional benefits of breastmilk.

(B) Breastfeeding practices include the implementation of support and space made available in public school facilities for breastfeeding mothers;

(9) "Carpenter's square" means an instrument for ensuring a level reading of height;

(10) "Child nutrition programs" means the federal child nutrition programs operated by Arkansas public schools, including public charter schools, which include the National School Lunch Program, the School Breakfast Program, the After-School Snack Program, the Special Milk Program, and the Summer Feeding Program as established by the:

(A) Richard B. Russell National School Lunch Act, 42 U.S.C. § 1751 et seq.; and

(B) Child Nutrition Act of 1966, 42 U.S.C. § 1771 et seq.;

(11) "Community Health Nurse Specialist (CHN)" means Department of Health nurses located at educational cooperatives;

(12)(A) "Competitive foods" means foods and beverages sold or made available to students that compete with the school's operation of the child nutrition programs, including but not limited to food and beverages sold or provided:

(i) In a vending venue (machines, ice chests, cabinets) in school stores; or

(ii) As part of school fundraisers to students on school premises during the school day.

(B) **Note.** This definition complies with the federal definition of “competitive food” found in 7 C.F.R. § 210.11(a)(2).

(C) **Provided competitive food and/or beverages — Smart Snacks.** Compliant food and/or beverages that are provided free of charge to a student or group of students by:

(i) School administrators or school nonlicensed or licensed staff (principals, coaches, teachers, club sponsors, etc.);

(ii) Students or student groups;

(iii) Parents or parent groups; or

(iv) Any other person, company, or organization associated with the school site.

(D) **Sold competitive food and/or beverages — Smart Snacks.** Compliant food and/or beverages that are for sale to a student or group of students by:

(i) School administrators or school nonlicensed or licensed staff (principals, coaches, teachers, club sponsors, etc.);

(ii) Students or student groups;

(iii) Parents or parent groups; or

(iv) Another person, company, or organization associated with the school site;

(13) “Confidential” means information marked or intended for a specific person or persons;

(14) “Designee” means a person approved or designated by a school district;

(15) “DESE” means the Division of Elementary and Secondary Education of the Department of Education;

(16) “Digital scale” or “scale” means a digital instrument for measuring weight;

(17) "Elementary school" means a campus with a designated local education agency (LEA) number containing any combination of grades kindergarten through six (K-6);

(18) "Health & Wellness School Improvement Plan" means a school-level plan that outlines goals and objectives related to the nutrition and physical activity environment for students and staff;

(19)(A) "Healthy, Hunger-Free Kids Act of 2010" means the federal law, Pub. L. No. 111-296, that updated the meal patterns and nutrition standards for the National School Lunch and School Breakfast Programs, including access to drinking water and updated nutrition standards for all food products sold and marketed on school grounds to align them with the Dietary Guidelines for Americans.

(B) The Healthy, Hunger-Free Kids Act of 2010 also updated policies regarding school Wellness Committees and the content, implementation, evaluation, and public reporting of wellness policies;

(20) "Healthy nutrition environment" gives students consistent, reliable health information and ample opportunity to use it;

(21) "Height" means a standing measurement in inches or meters;

(22) "High school" means a campus with a designated LEA number containing any combination of grades nine through twelve (9-12);

(23) "Junior high school" means a campus with a designated LEA number containing any combination of grades seven through nine (7-9);

(24) "Local school wellness policy" means a written document that guides an LEA or school district's efforts to create supportive school nutrition and physical activity environments;

(25) "Middle school" means a campus with a designated LEA number containing any combination of grades five through eight (5-8);

(26) "Physical activity" means any bodily movement produced by skeletal muscles that results in energy expenditure;

(27) "Physical and built environment" means infrastructure and spaces designed to promote physical activity (i.e., walking trails, sidewalks, indoor and outdoor fitness facilities, open recreational spaces such as playgrounds and soccer fields);

(28) "Physical education" means a planned, sequential kindergarten through grade twelve (K-12) curriculum that provides cognitive content and learning experiences in a variety of activity areas, including:

- (A) Basic movement skills;
- (B) Physical fitness, rhythms, and dance;
- (C) Team games, dual and individual sports;
- (D) Tumbling and gymnastics; and
- (E) Aquatics;

(29) "Private" means not openly or in public;

(30)(A) "Recess" means supervised, unstructured social time during which public school students may communicate with each other.

(B) Recess shall occur outdoors when weather and other relevant conditions permit and include, without limitation, opportunities for free play and vigorous physical activity regardless of whether it occurs indoors or outdoors;

(31) "Regular basis" means a regularly repeated or continuing occurrence at a specific school site, for example:

- (A) Every day;
- (B) On a particular day each week; or
- (C) Repeated on a defined schedule;

(32) "Reimbursable meal" means a meal that meets the United States Department of Agriculture criteria for reimbursement for one (1) of the child nutrition programs in Arkansas;

(33) "School day" means the period from the midnight before to thirty (30) minutes after the end of the day's classes, during which federal Smart Snacks requirements must be met;

(34) "School events" means any occasion such as field day, a holiday, school recognition activities, end of school events, etc., designated at the discretion of the school administration;

(35) "School fundraisers" means, for purposes of this part, all food and beverage items sold by:

(A) School administrators or school nonlicensed or licensed staff (principals, coaches, teachers, club sponsors, etc.);

(B) Students or student groups;

(C) Parents or parent groups; or

(D) Any other person, company, or organization directly associated with the school programs;

(36) "School Health Index" means a self-assessment and planning guide designed by the Centers for Disease Control and Prevention to help schools identify strengths and weaknesses of the school's health promotion policies and programs for the purpose of supporting student achievement and wellness;

(37) "School nurse" means nurses employed by school districts;

(38) "School site" means any and all locations associated with an LEA number;

(39) "Smart Snacks in School program" or "Smart Snacks" means the program established by amendments to the Healthy, Hunger-Free Kids Act of 2010, which specifies that nutrition standards apply to all foods sold:

(A) Outside the school meal programs;

(B) On the school campus; and

(C) At any time from the midnight before to thirty (30) minutes after the end of the day's classes;

(40) "Stadiometer" means an instrument for measuring standing height;

(41) "Student health report" means a written notice to parents with students' health screening information;

(42) "Testing day" means a school day that involves one (1) of the statewide programs for education assessment in which every student attending an Arkansas public school is required to participate as:

(A) Required in Arkansas Code § 6-15-2907; and

(B) Established by the State Board of Education;

(43) "Vending" means to sell or give away foods and beverages anywhere at a school site on a regular basis, including but not limited to:

(A) A classroom, school store, or concession stand; or

(B) Equipment such as heated cabinets, hot or cold vending machines, ice chests, coolers, etc.;

(44) "Weight" means a measurement in pounds or kilograms;

(45) "Wellness Committee" means a school nutrition and physical activity advisory group concerned with the health and wellbeing of students and staff, also known as School Nutrition and Physical Advisory Committee; and

(46) "Written refusal" means written notice to a school district requesting a child not be included in assessing BMI.

(b) For the purposes of any protocols developed pursuant to this part, the following terms mean:

(1) "Certificate of completion" means a document provided upon completion of BMI assessment training protocol;

(2) "Fried food" means foods that are cooked by total or partial immersion into hot oil or other fat, commonly referred to as deep-fat frying or pan frying; and

(3) "Recorder" means a person who:

(A) Writes down student heights and weights; or

(B) Enters measurements into a database.

### **6 CAR § 157-103. Child Health Advisory Committee.**

(a) There is created a Child Health Advisory Committee ("committee") to consist of twenty (20) members.

(b) The committee will consist of the following eleven (11) members appointed by the Secretary of the Department of Health:

(1) One (1) member to represent the Department of Health;

(2) One (1) member to represent the Arkansas Academy of Nutrition and Dietetics, previously known as the Arkansas Dietetic Association;

(3) One (1) member to represent the American Academy of Pediatrics, Arkansas Chapter;

(4) One (1) member to represent the Arkansas Academy of Family Physicians;

(5) One (1) member to represent the Society of Health and Physical Educators of Arkansas (SHAPE Arkansas), previously known as the Arkansas Association for Health, Physical Education, Recreation and Dance;

(6) One (1) member to represent jointly the:

(A) Arkansas Heart Association;

(B) American Cancer Society; and

(C) American Lung Association;

(7) One (1) member to represent the Fay W. Boozman College of Public Health of the University of Arkansas for Medical Sciences;

(8) One (1) member to represent the Arkansas Center for Health Improvement;

(9) One (1) member to represent the Arkansas Advocates for Children and Families;

(10) One (1) member to represent the University of Arkansas Cooperative Extension Service; and

(11) One (1) member to represent the Office of Minority Health and Health Disparities of the Department of Health.

(c) The committee will also consist of the following nine (9) members appointed by the Commissioner of Elementary and Secondary Education:

(1) One (1) member to represent the Division of Elementary and Secondary Education;

(2) One (1) member to represent the Arkansas School Nutrition Association, previously known as the Arkansas School Food Service Association;

(3) One (1) member to represent the Arkansas School Nurses Association;

(4) One (1) member to represent the Arkansas Association of Educational Administrators;

(5) One (1) member to represent the Arkansas Parent Teacher Association;

(6) One (1) member to represent the Arkansas School Boards Association;

(7) One (1) member to represent the Arkansas Association of School Business Officials;

(8) One (1) member to represent the Arkansas ASCD, previously known as Arkansas Association for Supervision and Curriculum Development; and

(9) One (1) member who is a classroom teacher.

(d) Terms of the committee members will be three (3) years.

(e) If a vacancy occurs, the officer who made the original appointment shall appoint a person who represents the same constituency as the member being replaced.

(f) The committee will elect one (1) of its members to act as chair for a term of one (1) year.

(g) A majority of the members shall constitute a quorum for the transaction of business.

(h) The committee:

(1) Shall meet at least monthly; and

(2) Will make recommendations to the State Board of Education and the State Board of Health consistent with:

(A) The intent and purpose of this part; and

(B) Arkansas Code §§ 20-7-133, 20-7-134, and 20-7-135.

(i) The committee shall develop nutrition and physical activity standards and policy recommendations with consideration of the following:

(1) Foods sold individually in school cafeterias but outside the regulated National School Lunch Program;

(2) Competitive foods;

(3) The continuing professional development of food service staff;

(4) The expenditure of funds derived from competitive food and beverage contracts;

(5) Physical education and activity;

(6) Systems to ensure the implementation of nutrition and physical activity standards; and

(7) The monitoring and evaluating of results and reporting of outcomes.

(j)(1) As the Smart Snacks standards published by the United States Department of Agriculture will allow schools to offer healthier snack foods to children while limiting less nutritious food, the committee shall promote Smart Snacks policies and procedures for identifying appropriate food and beverages for school campuses during the school day.

(2) The Smart Snacks regulation applies to foods sold a la carte and in the school store, and to vending machines, etc.

(k) The committee shall:

(1) Examine the progress of the Arkansas Coordinated School Health Program; and

(2) Make recommendations to the division and the Department of Health concerning the implementation of the Arkansas Coordinated School Health Program.

**6 CAR § 157-104. Implementation of nutrition and physical activity standards.**

(a) After having consulted the Child Health Advisory Committee and the State Board of Health, the State Board of Education shall promulgate appropriate rules to ensure that nutrition and physical activity standards and body mass index for age assessment protocols are implemented to provide students with the skills, opportunities, and encouragement to adopt healthy lifestyles.

(b)(1) Every school district shall:

(A) Prohibit for elementary school students in-school access to vending machines offering food and beverages;

(B) If offering vending machine services, permit students in grades seven through twelve (7-12) in-school access to vending machines offering food and beverages that meet the nutrition standards of the federal Smart Snacks in School program throughout the school day according to the school's wellness policy;

(C) Ensure that there is no restriction regarding the times that vending machines under subdivision (b)(1)(B) of this section are powered on or powered off;

(D) Require schools to include as part of the annual report to parents and the community the amounts and specific sources of funds received and expenditures made from competitive food and beverage contracts;

(E) Beginning with kindergarten and then in even-numbered grades, require schools to include as a part of a student health report to parents a body mass index percentile by age for each student; and

(F) Permit any parent to refuse to have his or her child's body mass index percentile for age assessed and reported, by providing a written refusal to the school.

(2) Students in grades eleven and twelve (11-12) are exempt from any policy or requirement of a public school or the state for measuring or reporting body mass index.

(c) The Division of Elementary and Secondary Education shall:

(1) Begin the implementation of standards developed by the committee and approved by the division; and

(2) Annually monitor and evaluate the implementation and effectiveness of the nutrition and physical activity standards and Smart Snacks requirements.

### **6 CAR § 157-105. Wellness Committee.**

(a)(1) Every school district shall convene a Wellness Committee that shall include members from:

(A) School district governing boards;

(B) School administrators;

(C) Food service personnel;

(D) Teacher organizations;

(E) Parents;

(F) Students;

(G) Teachers of physical education;

(H) School health professionals;

- (I) Professional groups such as nurses; and
- (J) Community members.

(2) Each school district shall develop a health and wellness district plan that identifies the district's Wellness Committee members.

(b) The Wellness Committee will:

(1) Help raise awareness of the importance of nutrition and physical activity;  
and

(2) Assist in the development of local policies that address issues and goals including but not limited to the following:

(A) Assist with the implementation of nutrition and physical activity standards developed by the Wellness Committee with the approval of the:

- (i) Division of Elementary and Secondary Education; and
- (ii) State Board of Health;

(B) Integrate nutrition and physical activity into the overall curriculum;

(C) Ensure that professional development for staff includes nutrition and physical activity issues;

(D) Ensure that students receive nutrition education and engage in healthy levels of vigorous physical activity;

(E) Improve the quality of physical education curricula and increased training of physical education teachers;

(F) Enforce existing physical education requirements; and

(G) Pursue contracts that both encourage healthful eating by students and reduce school dependence on profits from the sale of competitive foods.

(c) Every school district shall begin the implementation of standards developed by the Child Health Advisory Committee with the approval of the division and the State Board of Health.

(d) Every school district shall require that goals and objectives for nutrition and physical activity be incorporated into the annual Health & Wellness School Improvement Plan.

(e) The Wellness Committee shall be structured in a way as to ensure age-appropriate recommendations that are correlated to the current grade configuration of the school district utilizing one (1) of the following options:

(1) Establish a Wellness Committee at each school in addition to the district committee;

(2) Establish subcommittees of the district committee, representing the appropriate age and grade configuration for that school district; or

(3) Include representatives from each appropriate grade-level group (elementary, middle, junior, and senior high) on the membership of the district committee.

(f) At a minimum, the Wellness Committee will:

(1) Ensure each school campus incorporates the Nutrition, Physical Activity, and Tobacco Use Health Topics to annually assess the following School Health Index Modules:

(A) #1 — School Health and Safety Policies and Environment;

(B) #2 — Health Education;

(C) #3 — Physical Education and Other Physical Activity Programs;

(D) #4 — Nutrition Services;

(E) #10 — Family Engagement; and

(F) #11 — Community Involvement;

(2) Compare the physical education and health education assessment from the School Health Index to the standards defined by the division's Physical Education and Health Curriculum Framework;

(3)(A) Compile the results of the School Health Index and develop goals and objectives that are included in the Health & Wellness School Improvement Plan.

(B) By the 2022-2023 school year, the following priority areas shall be included in the public school's and open-enrollment public charter school's health and wellness plan:

(i) Physical and built environment;

(ii) Nutrition standards;

- (iii) Physical education and activity standards; and
- (iv) Breastfeeding education and practices;

(4) Provide the annual completed School Health Index assessment results and the physical activity standards comparison to the principal of each school in the district to be maintained and presented to the local school board;

(5) Review and make written recommendations to the district child nutrition director regarding the district's school meal menus;

(6) Assist the schools in implementing the Child Health Advisory Committee recommendations for all foods and beverages sold or served anywhere on the school campus, including all foods and beverages other than those offered as part of reimbursable meals, including:

- (A) A la carte;
- (B) Vending machines;
- (C) Snack bars;
- (D) Fundraisers;
- (E) School stores;
- (F) Class parties; and
- (G) Other venues that compete with healthy school meals;

(7) Maintain and update annually a written list of recommended locally available, healthier options for food and beverages available for sale to students;

(8) Encourage the use of nonfood alternatives for fundraisers;

(9) Review and make written recommendations to the local school board regarding the components to be included in food and beverage vending contracts; and

(10) Include as part of the district's annual report to parents and the community the amount of funds received and expenditures made from competitive food and beverage contracts.

(g)(1) No later than the first day of the school year, each LEA shall establish a local school wellness policy for schools under the LEA.

(2) The local school wellness policy shall include goals for nutrition, physical activity, and other school-based activities that are designed to promote student wellness.

(h) The division and the Department of Health shall report annually on progress in implementing nutrition and physical education standards to the chairs of the:

- (1) Interim House Committee on Public Health, Welfare, and Labor;
- (2) Interim Senate Committee on Public Health, Welfare, and Labor;
- (3) Interim House Committee on Education; and
- (4) Interim Senate Committee on Education.

(i) The State Board of Education shall submit to the interim House Committee on Education and the interim Senate Committee on Education for the committees' review any proposed rules regarding physical education or physical activity standards for grades kindergarten through twelve (K-12).

**6 CAR § 157-106. Physical education and recess requirements and standards.**

(a) The physical education and physical activity requirements for every public school are:

(1) Except as provided in subdivision (a)(2) of this section, for students in grades kindergarten through six (K-6):

(A) At least forty (40) minutes, as determined by the superintendent of the school district, of physical education training and instruction each calendar week of the school year; and

(B) Ninety (90) minutes of physical activity each calendar week of the school year, which may include without limitation:

- (i) Daily recess;
- (ii) Physical education instruction in addition to the requirement of subdivision (a)(1)(A) of this section; or
- (iii) Intramural sports;

(2) For students in grades five through eight (5-8) who attend a public school organized to teach grades five through eight (5-8) or any combination thereof, at least forty (40) minutes, as determined by the superintendent of the school district, of physical education training and instruction each calendar week of the school year or an equivalent amount of time in each school year, with no additional requirement for physical activity; and

(3) For students in grades nine through twelve (9-12), one-half (1/2) unit of physical education as required for high school graduation, with no additional requirement for physical activity.

(b) Nothing in this part prohibits:

(1) A public school student's elective enrollment or voluntary participation in physical activity or physical education as a part of public school curriculum or extracurricular activities; or

(2) A school district's decision to require physical education instruction or physical activity in excess of the amounts identified in subsection (a) of this section.

(c) The physical education training and instruction shall be designed to:

(1) Improve the health of this state's school children;

(2) Increase knowledge about the health benefits of physical activity and exercise;

(3) Develop behavioral and motor skills that promote a lifelong commitment to healthy physical activity;

(4) Promote health-focused activity among children and adolescents; and

(5) Encourage physical activity outside of physical education.

(d) Suitable modified courses shall be provided for students physically or mentally unable or unfit to take the course or courses prescribed for other pupils.

(e)(1) A student may be exempted from physical education and physical activity requirements by seeking a waiver from the local school board of directors.

(2) The local school board of directors may grant such a waiver based upon the following criteria:

(A) The student must present a statement by the student's attending physician indicating that participation in physical education and physical activity will jeopardize the student's health or wellbeing; or

(B)(i) The parent and student must show that attending physical education classes:

(a) Will violate the student's religious beliefs; and

(b) Would not be merely a matter of personal objection.

(ii) The parent or student must be a member of a recognized religious faith that objects to physical education as part of its official doctrine or creed.

(3) The local school board of directors shall encourage a student granted a waiver under this subsection to take, as an alternative to physical education, appropriate instruction in health education or other instruction in lifestyle modification if an exemption is granted.

(f) Each school shall develop a physical education program that fits effectively and efficiently into the school's existing organization and into the standards and curriculum frameworks adopted by the State Board of Education, while incorporating the goals of this part.

(g) The state board shall submit to the interim House Committee on Education and the interim Senate Committee on Education for the committees' review any proposed rules regarding physical education or physical activity standards for grades kindergarten through twelve (K-12) developed pursuant to this section that exceed the maximums identified in subsection (a) of this section.

(h) At a minimum, school districts will work with their local Wellness Committees to:

(1) Encourage participation in extracurricular programs that support physical activity such as walk-to-school programs, biking clubs, after-school walking, etc.;

(2) Encourage the implementation of developmentally appropriate physical activity in after-school childcare programs for participating children;

(3) Promote the reduction of time youth spend engaged in sedentary activities such as watching television and playing video games; and

(4) Encourage the development of and participation in family-oriented community-based physical activity programs.

**(i) Physical education instruction in grades kindergarten through six (K-6).**

(1) For grades kindergarten through six (K-6), physical education classes will have a maximum student-to-adult ratio of thirty-to-one (30:1).

(2)(A) At least one (1) of the adults directly supervising the physical education classes must be:

(i) A licensed physical education teacher; or

(ii) Alternatively, a licensed elementary teacher.

(B) The licensed physical education teacher or licensed elementary teacher will be responsible for the delivery of physical education instruction.

(C) A licensed physical education teacher will be responsible for development of the physical education curriculum.

(3) Nonlicensed personnel may assist in filling the thirty-to-one (30:1) student-to-adult ratio requirement if they are trained and assigned to assist licensed personnel in supervising physical education classes.

**(j) Physical education instruction in grades seven through twelve (7-12).**

For grades seven through twelve (7-12), physical education instruction must be provided by a licensed physical education teacher with a license that corresponds to the grade levels being taught.

(k)(1) At least forty (40) minutes of instructional time per school day shall be used for recess for students attending public elementary schools.

(2) For purposes of this subsection, "elementary school" means the educational model consistent with instructional grouping and scheduling used in grades kindergarten through four (K-4) but may include grades five through six (5-6).

(3) Minutes provided under this subsection may count towards the minimum number of minutes required for physical activity by Arkansas Code § 6-16-132 and subdivision (a)(1)(B) of this section.

(4) Minutes provided under this subsection shall not count towards the minimum physical education requirements under subdivision (a)(1)(A) of this section.

(5) A public elementary school may seek a waiver from the requirements of this subsection only if the school:

(A) Submits to the Division of Elementary and Secondary Education for approval of an alternative plan for recess that meet the following criteria:

(i) Exceeds the required minimum amount of minutes combined for:

(a) Physical activity under Arkansas Code § 6-16-132 and this section; and

(b) Recess under Arkansas Code § 6-16-102(a)(5) and this subsection; and

(ii) Provides for both structured and unstructured social time; or

(B) Is approved by the division to operate as a virtual school.

(l) The minutes of recess required by subsection (k) of this section shall:

(1) Consist of supervised, unstructured social time during which students may communicate with each other;

(2) Occur outdoors when weather and other relevant conditions permit; and

(3) Include without limitation opportunities for free play and vigorous physical activity, regardless of whether recess occurs indoors or outdoors.

(m) A public school principal may use discretion to adjust the recess time required under subsections (k) and (l) of this section due to special circumstances or programs that interrupt a regular school day.

(n) There is no requirement that recess be supervised by a licensed teacher.

## **6 CAR § 157-107. General requirements for food and beverages in public schools.**

### **(a) Access to foods and beverages in public schools.**

(1) Elementary students will not have access to vending machines offering food and beverages.

(2)(A)(i) During the school day, all schools may serve or provide food or beverages that are compliant with Smart Snacks regulations.

(ii) This includes competitive foods provided by:

(a) School administrators or school nonlicensed or licensed staff (principals, coaches, teachers, club sponsors, etc.);

(b) Students or student groups;

(c) Parents or parent groups; or

(d) Any other person, company, or organization associated with the school site.

(B) The school district shall maintain documentation that all food and/or beverages comply by utilizing the Alliance for a Healthier Generation Smart Snacks Calculator, including a copy of the:

(i) Smart Snacks Calculator product compliance screen; and

(ii) Nutrition fact label of the product.

(C)(i) Outside of meal service, schools shall limit the number of servings per day to one (1) per student.

(ii) Food and beverages provided under subdivision (a)(2) of this section shall not be available in the food service area during meal service.

(D) The school district shall maintain documentation that all fundraisers to which subdivision (a)(2) of this section applies are approved by district administration.

(3) During the school day, all schools may sell or provide competitive food or beverages to students anywhere on school premises thirty (30) minutes after the last lunch period has ended as long as those food and beverage items meet the Smart Snacks requirements and meet the following limitations:

(A) Beverages shall be no larger than twelve ounces (12 oz.); and

(B) Beverages shall not contain more than fifty-five milligrams (55 mg) of caffeine per serving.

(4)(A) A la carte items sold in the food service area during meal times shall be compliant with Smart Snacks regulations.

(B) This includes:

- (i) Entrees;
- (ii) Side dishes;
- (iii) Second trays; and
- (iv) All competitive foods.

**(b) Exceptions to limiting access to foods and beverages in all schools.**

**(1) Parents' rights.**

(A) This section does not restrict what parents may provide for their own child's lunch or snacks.

(B) Parents may provide competitive foods and/or beverages or candy items for their own child's consumption, but they may not provide restricted items to other children at school.

(2) **School nurses.** This section does not apply to school nurses using competitive foods and/or beverages during the course of providing health care to individual students.

(3) **Special needs students.** This section does not apply to special needs students whose individualized education program plan or 504 plan indicates the use of competitive foods and/or beverages for behavior modification or other suitable need.

(4)(A) **School events.** Students may be given any food and/or beverage items during the school day for up to nine (9) different events each school year to be determined and approved by school officials.

(B) These items may not be given during meal times in the areas where school meals are being served or consumed.

**(5) Foods for instructional purposes.**

(A) Foods integrated as a vital part of the instructional program are allowed at any time.

(B) Examples include edible manipulatives such as:

- (i) A square of cheese to teach fractions;
- (ii) A nutrition food experience;
- (iii) Food production in family and consumer science units; and
- (iv) Food science units.

**(6) United States Department of Agriculture Fresh Fruit and Vegetable Program.** Fresh fruits and fresh vegetables may be provided through this program, which is administered by the Division of Elementary and Secondary Education's Child Nutrition Unit and funded through the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, to provide all children in participating schools with a variety of free, fresh fruits and fresh vegetables throughout the school day.

**(7) Self-Sustaining Fresh Fruit and Vegetable Program.**

(A) Fresh fruits and fresh vegetables may be provided through this program administered at the local school level and funded through:

- (i) Local Child Nutrition Funds, when exceeding an operating balance of three (3) months;
- (ii) School-sponsored groups; and/or
- (iii) Private entities within the community.

(B) Schools participating in this program attest that the intent of the federal Fresh Fruit and Vegetable Program will be followed, including but not limited to the requirements for only:

- (i) Fresh fruits and fresh vegetables;
- (ii) Nutrition education; and
- (iii) Community involvement.

**(8) School testing days.** School officials may authorize students to be provided any food and/or beverage items during the school day that meet the Alliance for a Healthier Generation Smart Snacks Calculator requirements on those days scheduled on the school calendar as testing days as defined in 6 CAR § 157-102(42).

**6 CAR § 157-108. Nutrition standards for foods and beverages.**

(a)(1) The Arkansas nutrition standards will apply to all foods and beverages served, provided, or sold to students on elementary, middle, junior high, and high school campuses, except the reimbursable school meals, which are governed by United States Department of Agriculture federal regulations.

(2) All schools will be required to meet federal Smart Snacks regulations and document compliance using the Alliance for a Healthier Generation Smart Snacks Calculator.

(b)(1)(A) A list of the maximum portion size restrictions and nutrition standards will be provided to school districts.

(B) This list will apply to all foods and beverages served, sold, or made available to students during the school day at any school site with the exception of reimbursable school meals that have nutrition standards governed by the federal law and regulations.

(2) On or before April 1, the list of maximum portion sizes and nutrition standards for foods and beverages for the upcoming school year will be developed by the Child Health Advisory Committee and distributed by the Division of Elementary and Secondary Education via Commissioner's Memo.

(3) Compliance will be monitored by the division in addition to the self-monitoring by the local Wellness Committee.

(4)(A) A choice of two (2) fruits and/or one hundred percent (100%) fruit juices must be offered for sale at the same time and place whenever competitive foods are sold.

(B) Fruits should be fresh whenever possible.

(C) Frozen and canned fruits should be packed in:

(i) Natural juice;

(ii) Water; or

(iii) Light syrup.

(5) At the point of choice, at least fifty percent (50%) of beverage selections in vending machines, school stores, and other sales venues shall be:

(A) One hundred percent (100%) fruit juice;

(B) Low-fat or fat-free milk; and

(C) Unflavored, unsweetened water.

(6) Any modification or revisions of vending contracts must be in full compliance with all sections of this part.

(7) Nothing in this part shall be construed to prohibit or limit the sale or distribution of any food or beverage item through fundraisers by students, teachers, or other groups when the items are sold off the school campus.

**6 CAR § 157-109. Nutrition education.**

(a)(1) The Division of Elementary and Secondary Education shall promote grade-appropriate nutrition education as part of a broad-based integrated health education program that is aligned with the Arkansas Physical Education and Health Education Framework.

(2) The Child Nutrition Unit of the Division of Elementary and Secondary Education shall review nutrition standards prior to implementation.

(3) Examples of integration into the curriculum include comprehensive health education courses and career education courses that are taught within family and consumer sciences, such as Nutrition and Wellness and/or Foods and Nutrition.

(b) The Division of Elementary and Secondary Education and the Division of Career and Technical Education will provide technical assistance in helping schools integrate health education curricula that will include the nutrition components.

(c) Implementation of grade-appropriate nutrition education through a comprehensive education program will be included in the school improvement process.

**6 CAR § 157-110. Healthy school environment.**

(a)(1) No food or beverage shall be used as reward or punishment for academic, classroom, or sport performances and/or activities.

(2) For exceptions to this requirement, see 6 CAR § 157-107(b).

(b) All school cafeterias and dining areas should reflect healthy nutrition environments.

(c)(1) Schools should ensure that all students have access to school meals.

(2) A school shall not:

(A) Provide a student requesting a meal or snack one that is different from the meal or snack being provided to other students in the school;

(B) Prevent a student from accessing the school's meal or snack services;

or

(C) Establish policies, class schedules, bus schedules, or other barriers that directly or indirectly restrict meal access.

(3) A school shall develop and follow a local charge policy according to the Hunger-Free Students' Bill of Rights Act, Arkansas Code § 6-18-715.

(d) Drinking water via water fountains or other service receptacle should be available without charge to all students on campus according to Department of Health standards.

**6 CAR § 157-111. Screening process for BMI assessments.**

(a)(1) All children in kindergarten (K), grade two (2), grade four (4), grade six (6), grade eight (8), and grade ten (10) shall have their heights and weights assessed to calculate body mass index for age percentile.

(2) This requirement applies to public schools.

(3) The responsibility for enforcement of this section rests equally with each school district.

(4) Nothing in this part shall preclude:

(A) Voluntary screening of any educational grade; or

(B) The referral of any child, regardless of grade, whom the parent, teacher, or school nurse feels should be screened or examined unless the school has received written refusal from the student's guardian.

(5) Each school district shall follow the approved screening process as outlined in the Height and Weight Measurement Training Manual.

(b) Screening equipment shall include but is not limited to:

(1) Stadiometer;

(2) Scales for measuring weight; and

(3) Carpenter's square.

(c) **Training/assurance.**

(1) The Division of Elementary and Secondary Education in conjunction with the Department of Health shall develop standards for training school nurses or other school designees to perform body mass index for age assessments.

(2) The department in consultation with the division shall assign all community health nurses under its supervision to work with schools to assure that body mass index for age assessment protocols are followed by school employees or their designees who conduct body mass index for age assessments and other student health screenings.

(d) Beginning with kindergarten and then in even-numbered grades, schools will be required to include as a part of a student health report to parents a body mass index percentile by age for each student in a private and confidential manner.