



Division of Elementary and Secondary Education

Transforming Arkansas to lead the nation in student-focused education

Jacob Oliva
Secretary

December 15, 2023

Stacy Smith
Deputy
Commissioner

Marty Garrity
Director
State Capitol Room 315
One Capitol Mall, Fifth Floor
Little Rock, AR 72201

**State Board of
Education**

Re: Proposed Emergency Rule

Dr. Sarah Moore
Stuttgart
Chair

Dear Ms. Garrity:

Kathy Rollins
Springdale
Vice-Chair

Please find enclosed the Arkansas Department of Education’s Proposed Emergency Rules Governing Tutoring Grants. On Friday, December 15, 2023, the Arkansas State Board of Education approved this emergency rule in a public hearing held at the Department’s offices, at 4 Capitol Mall, Little Rock, AR 72201. The Governor’s Office has also approved the enclosed emergency rule. The following supporting documents regarding the foregoing emergency rule are enclosed:

Steve Sutton
Marion

- Proposed Emergency Rule (Mark-Up);
- BLR Questionnaire and Financial Impact Statement; and
- Summary of the Proposed Emergency Rule

Adrienne Woods
Rogers

Randy Henderson
Blytheville

The Department seeks to promulgate the foregoing emergency rule to comply with the mandate set by Act 237 of 2023. The Department cannot implement the two grant programs created under Act 237 without promulgating the foregoing emergency rule. More specifically, the foregoing emergency rule is necessary to allow the Department to ensure adequate procedures are in place to determine student eligibility, select service providers, and implement account and program audits. Thank you for your attention to this matter. Please do not hesitate to contact me at (501) 682-4234 should you have any questions or require additional information.

Lisa Hunter
White Hall

Jeff Wood
Little Rock

Ken Bragg
Sheridan

Respectfully,

Leigh Keener
Little Rock

/s/ Andrés Rhodes

Chief Legal Counsel
Arkansas Department of Education

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

DEPARTMENT _____
 BOARD/COMMISSION _____
 BOARD/COMMISSION DIRECTOR _____
 CONTACT PERSON _____
 ADDRESS _____
 PHONE NO. _____ EMAIL _____
 NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING _____
 PRESENTER EMAIL(S) _____

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?

2. What is the subject of the proposed rule? _____
3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes No

4. Is this rule being filed for permanent promulgation? Yes No

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, what was the effective date of the emergency rule? _____

On what date does the emergency rule expire? _____

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes No

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes No

If yes, please provide the state statute and/or rule citation.

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

If yes, please list the rules being repealed.

If no, please explain.

8. Is this a new rule? Yes No

Does this repeal an existing rule? Yes No

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

Is this an amendment to an existing rule? Yes No

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

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

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes No

If yes, please provide the year of the act(s) and act number(s).

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

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).

13. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

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. _____

15. What is the proposed effective date for this rule? _____

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

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

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

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

If yes, please explain.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT _____
BOARD/COMMISSION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ **EMAIL** _____

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 _____

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 _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

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

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

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

\$ _____

Next Fiscal Year

\$ _____

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

\$ _____

Next Fiscal Year

\$ _____

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.



Division of Elementary and Secondary Education

Transforming Arkansas to lead the nation in student-focused education

Department of Education written findings pursuant to

Ark. Code Ann. 25-15-204(e)(4) – DESE Rules Governing Tutoring Grants

Jacob Oliva
Secretary

Stacy Smith
Deputy
Commissioner

**State Board of
Education**

Dr. Sarah Moore
Stuttgart
Chair

Kathy Rollins
Springdale
Vice-Chair

Adrienne Woods
Rogers

Randy Henderson
Blytheville

Lisa Hunter
White Hall

Jeff Wood
Little Rock

Ken Bragg
Sheridan

Leigh Keener
Little Rock

- 1. Rule's basis and purpose:** This rule is required by Act 237 of 2023 and seeks to implement a literacy tutoring grant program and a high-impact tutoring grant program created by Act 237. Without this rule, the Department cannot efficiently administer the program or hold participating schools and providers accountable. The rule is specifically necessary so that the Department of Education can ensure processes for determining the eligibility of students, school districts, and service providers, conducting account and program audits, disbursing payments, and enrolling participating students.
- 2. Problem that the rule seeks to address:** This rule is required by statute and addresses the directive in the law for the Department to administer both programs. This rule establishes a process:
 - for determining the eligibility of students for the literacy tutoring grant program, including the awarding of grants to eligible students;
 - providing the Department with authority to disburse grant funds establishing the authority for the division to claw back misused funds;
 - for conducting high impact tutoring program audits, including determining continuing eligibility for school districts and other providers; and
 - enrolling participating students.
- 3. Description of the factual evidence that justifies the agency's need for the proposed rule and describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs:** This rule is required by Arkansas law and the rule will allow the Department to implement and administer the program.
- 4.** There are no less costly alternatives to the rule: this rule is required by Arkansas law.
- 5.** No existing rules have created or contributed to the problem the agency seeks to address with the proposed rule.
- 6.** The Department is required by statute to annually provide a report to the General Assembly. This required report must include: data regarding participating public school students' access to high-impact tutoring and program implementation, data on achievement and growth outcomes from participating public school students, program successes and challenges; recommendations for policy changes in future years in order to ensure every child in Arkansas can access high-impact tutoring as needed, and an overview of actions taken to support every participating public school district and open-enrollment public charter school to ensure that high-impact tutoring is available to every eligible child in Arkansas. The Department plans to use this data to adjust program administration to ensure the most cost-effective outcome while maintaining program effectiveness.

DIVISION OF ELEMENTARY AND SECONDARY EDUCATION RULES
GOVERNING TUTORING GRANTS

Effective date:

1.00 AUTHORITY

1.01 The State Board of Education enacted these rules pursuant to its authority as set forth in Ark. Code Ann. §§ 6-11-105, 6-17-402, 6-17-429, 6-16-1601 et seq. and 25-15-201 et seq.

2.00 LITERACY TUTORING GRANTS

2.01 A literacy tutoring grant is up to a maximum of five hundred dollars (\$500) per eligible student per school year, that may be used for any of the following purposes designed to improve reading or literacy skills:

2.01.1 Online or in-person, tutoring services from a list of providers approved by the Division of Elementary and Secondary Education under 2.05 of this section whose employees or contractors are trained in the science of reading and hold:

2.01.1.1 Valid teaching certificates in either elementary education or reading; or

2.01.1.2 Baccalaureate or graduate degrees in education, English, or another subject area indicative of expertise in reading and literacy.

2.01.2 Evidence-based digital literacy applications or software programs from a list of division-approved programs that are in alignment with the science of reading.

2.02 “Eligible student” means any student enrolled in a public school or open-enrollment public charter school in kindergarten through grade three (K-3) who:

2.02.1 Is determined by the division for the purpose of this section to not meet the reading standard, as defined by the state board;

2.02.1.1 For the 2023-2024 school year, the reading standard for the purpose of identifying student eligibility for the literacy tutoring grant is defined as students achieving at or below the lowest 10th percentile for kindergarten, at or below the lowest 15th percentile for grade 1, and at or below the lowest 20th percentile for grade 2 based on the current school year beginning-of-year literacy kindergarten through grade two (K-2) assessment scores, 25th percentile based on prior school year end of year literacy assessments for students in

grade 3, and current students in grade 3 that were not promoted.

2.02.2 Beginning in 2024-2025, is determined to be at risk for reading difficulties according to results of cut scores determined by the state board on the high-quality literacy screener required under the statewide student assessment system; or

2.02.3 Has received a good cause exemption for promotion to grade four (4).

2.03 Subject to available funding, priority for literacy tutoring grants will be given to the following in descending order of priority:

2.03.1 Students who were retained the previous year;

2.03.2 Students in the lowest 15% of the reporting category in kindergarten through grade three (K-3);

2.03.3 The remaining lowest quartile of grade 3;

2.03.4 The remaining lowest quartile of grade 2;

2.03.5 The remaining lowest quartile of grade 1;

2.03.6 The remaining lowest quartile of kindergarten.

2.04 The division shall provide for an online application process that allows eligible students to register for and procure literacy tutoring services.

2.04.1 The division shall make payments to the service provider.

2.04.1.1 A third-party payment processing vendor shall create and set up payment accounts for eligible students.

2.04.1.2 Service providers, or third-party vendors shall issue an itemized invoice to eligible students for documentation of expense type, amount, and recipient.

2.04.1.3 Eligible students and families shall verify and submit payment requests, identifying the service provider to receive payment, the payment amount, and the expense type.

2.04.1.4 Eligible students shall include invoices for review and documentation during payment submission process via the third-party payment processing vendor.

- 2.04.1.5 The third-party payment processing vendor shall remit payment to service providers for authorized expenditures, unless expenditure is not authorized by law, following review and approval of expense request and documentation by the division.
 - 2.04.2 The division shall maintain a waitlist for students who are unable to receive literacy tutoring grants in the event that more funding becomes available to support the program.
 - 2.04.3 Subject to additional funding, eligible students on the waitlist will be awarded literacy tutoring grants according to the priority schedule under section 2.03 on a first-come, first-served basis.
 - 2.05 Providers of supplemental educational services may apply to be an approved provider.
 - 2.05.1 The division shall review and evaluate provider applications based on the provider's:
 - 2.05.1.1 Capacity to provide literacy tutoring services to students in kindergarten through grade three (K-3);
 - 2.05.1.2 Tutor qualifications as defined in 2.01;
 - 2.05.1.3 Alignment to the science of reading; and
 - 2.05.1.4 Evidence of student outcomes and data collection methods.
 - 2.06 Approved providers shall be evaluated by the division for initial and continued eligibility for payments to ensure the effectiveness of a literacy tutoring grant program in improving eligible students' reading abilities, using one or more of the following criteria:
 - 2.06.1 Results from literacy assessment data that demonstrates positive learning gains in literacy or reading results, consisting of:
 - 2.06.1.1 State-approved literacy screeners or other assessments using data collected by the division; or
 - 2.06.1.2 An assessment used by the tutoring provider that collects both baseline data and at least one additional assessment following the baseline data collection.
 - 2.06.1.3 A provider submitting their own assessment for evaluation must provide to the division:

2.06.1.3.a The assessment used;

2.06.1.3.b A description of what the assessment measures and how it aligns to the science of reading; and

2.06.1.3.c Aggregate performance data.

2.06.1.4 The division may request student-level data from providers as determined necessary to evaluate program effectiveness;

2.06.2 Evidence of positive and statistically significant learning gains in literacy that is conducted by a third-party researcher; or

2.06.3 Evidence of parent satisfaction with student literacy gains as a result of literacy tutoring services as measured by a valid and reliable survey.

2.06.4 Approved providers must annually submit to the division the information required under 2.06.

2.07 A provider that fails to provide the information required under section 2.06 or that is found to be ineffective due to failure to demonstrate improvement in eligible students' reading abilities for two (2) consecutive years shall be ineligible to participate in the literacy tutoring grant program.

2.07.1 In addition to measuring effectiveness, the division may audit approved providers to ensure that eligible students who received literacy tutoring grants received the services and materials for which grant funds were spent.

2.07.2 Providers will be removed from the approved provider list immediately if the provider is found to be ineffective, not in alignment with the provider approval rubric, or if evidence of fraud or student harm is discovered.

2.07.3 A provider removed from the approved list may re-apply to be on the approved provider list for the following school year but must provide additional evidence, aligned to evaluation criteria, to demonstrate that all requirements are met.

2.08 On an annual basis the division will collect and report to the state board on the following:

2.08.1 The number of students eligible for literacy tutoring grants;

- 2.08.2 The number of eligible students who applied for literacy tutoring grants;
- 2.08.3 The number of eligible students who spent any amount of grant funding from the literacy tutoring grant;
- 2.08.4 The number of eligible students who spent the full amount of grant funding from the literacy tutoring grant;
- 2.08.5 The total amount of grant funding available, the total amount awarded from the application process, and the total amount expended;
- 2.08.6 The total amount of grant funding expended on approved literacy tutoring providers, overall and by provider; and
- 2.08.7 Student outcomes data provided by approved literacy tutoring providers, by provider.
- 2.08.8 The report under 2.08 shall contain data under 2.08.1-2.08.4 for the overall program and data organized by grade, by school and district, and by the priority order in 2.03.

3.00 HIGH IMPACT TUTORING GRANTS

- 3.01 “High-impact tutoring” means tutoring that is aligned with tutoring quality standards, including without limitation tutoring that is:
 - 3.01.1 Data-driven with student results, characteristics, and progress guiding decision making.
 - 3.01.2 Provided in groups of four or fewer students or one-on-one (1-1);
 - 3.01.3 Provided:
 - 3.01.3.1 For a minimum of three times per week, at least 30 minutes a session; or
 - 3.01.3.2 A comparable model that provides direct tutoring based on specific skills needed;
 - 3.01.4 Provided by a consistent tutor or consistent set of tutors that sustain strong relationships with students;
 - 3.01.5 Implemented during the school day; and

- 3.01.6 Supplemental to core academic instruction and not a replacement for such instruction. Supplemental instruction may include small group instructional time where students might otherwise be working independently.
- 3.02 A public school district or an open-enrollment public charter school may annually apply for a high-impact tutoring grant to establish or expand a tutoring program that meets the definition of high-impact tutoring in section 3.01 and that drives strong outcomes for students.
- 3.03 The Division of Elementary and Secondary Education shall establish a timeline for a public school district or open-enrollment public charter school to apply for the program.
- 3.04 A public school district or open-enrollment public charter school applying for funding under this section must provide a detailed plan in its application for how its tutoring program is, or will be with respect to a prospective program:
- 3.04.1 Data-driven with student results, characteristics, and progress guiding decision making.
- 3.04.2 A program that uses assessments throughout the school year to monitor student progress.
- 3.04.3 Provides tutoring in small groups of four or fewer students, or one-on-one (1-1);
- 3.04.4 Uses a consistent tutor or a consistent set of tutors to provide tutoring to eligible students throughout the school year;
- 3.04.5 Provides tutoring:
- 3.04.5.1 For a minimum of three times per week, at least 30 minutes a session; or
- 3.04.5.2 A comparable model that provides direct tutoring based on specific skills needed;
- 3.04.6 Implements tutoring during the school day. The tutoring is related to core academic instruction and supplements not supplants that core academic instruction; and
- 3.04.7 Uses trained tutors, as defined by the approved provider, to provide the tutoring.

- 3.05 A public school district or open-enrollment public charter school that receives an award under this section must launch and deliver high-impact tutoring services in accordance with the timeline established by the division.
- 3.06 The high-impact tutoring pilot program will provide a maximum grant award determined annually by the division based on available funding.
- 3.07 A public school district or open enrollment public charter school applying for a grant award under this section must specify in its grant application criteria for which students are eligible for its high-impact tutoring program and how those students are selected.
- 3.07.1 The public school district or open-enrollment public charter school must consider without limitation the academic performance of student groups across grades and subjects within a public school district or open-enrollment public charter school and student assessment results, including standards-aligned or nationally normed student assessment results, as part of its eligibility and selection process.
- 3.08 The division shall post a list of each public school district or open-enrollment public charter school that receives funding and each public school district or open-enrollment public charter school's high-impact tutoring program plan on its website.
- 3.09 A public school district or open-enrollment public charter school receiving grant funding under this rule must comply with all state and federal laws with respect to the use of grant funds and may spend tutoring program funds on:
- 3.09.1 Contracting with vendors which provide high-impact tutoring from a division-approved provider list;
- 3.09.2 Hiring or contracting for tutors or providing stipends or other incentives to paraprofessionals, retired teachers, community organizations to ensure maximum tutoring capacity;
- 3.09.3 Covering administrative expenses; and
- 3.09.4 Covering costs associated with tech-enabled tutoring solutions, such as licenses, software, and related devices.
- 3.10 A public school district or open-enrollment public charter school receiving grant funding under this rule must provide a funding match to support the high-impact tutoring program funding awarded by the division.

3.10.1 The division may allow an in-kind match from the district or open-enrollment public charter school to meet the requirement set forth in 3.10.

3.11 A public school district or open-enrollment public charter school receiving funds for a high-impact tutoring program under this rule must implement the approved tutoring program plan with fidelity ensuring that eligible students receive the specified dosage of high-impact tutoring services.

3.11.1 A public school district or open-enrollment public charter school that does not implement its approved program with fidelity may be ineligible for future grant funds.

3.12 A provider that fails to submit information required under this rule or that is found to be ineffective due to failure to demonstrate improvement in eligible students for two (2) consecutive years shall be ineligible to participate in the high-impact tutoring grant program.

3.13 A public school district or open-enrollment public charter school that is found to be ineligible for grant funds after receiving funds from the division shall return grant funds to the division.

4.00 HIGH-IMPACT TUTORING PROVIDERS

4.01 The Division of Elementary and Secondary Education shall maintain an approved list of high-impact tutoring providers that participating districts and open-enrollment public charter schools may use.

4.02 Criteria that may be considered for providers include, but are not limited to:

4.02.1 Provider experience in providing high-impact tutoring services;

4.02.2 Types of student performance data collected;

4.02.3 Evidence of impact on student outcomes;

4.02.4 Grade levels and content areas served;

4.02.5 Tutor experience, training, and content expertise;

4.02.6 Per student costs;

4.02.7 Tutoring models used whether those models are in-person, fully virtual, or a hybrid model; and

4.02.8 Alignment to high-impact tutoring as defined in 3.01 of this section.

5.00 DATA COLLECTION AND REPORTING

5.01 A public school district or open-enrollment public charter school receiving grant funding for the high-impact tutoring pilot program under this rule must annually report the following information to the Division of Elementary and Secondary Education using the division’s template:

5.01.1 The number of unique students who participated in the high-impact tutoring program, and related student metrics including tutoring subject, grade level, attendance, dosage, prior performance on the state assessment, and demographic information;

5.01.1.1 For purposes of this section, “dosage” means the actual number of student-level sessions for students identified to participate.

5.01.2 How the public school district or open-enrollment public charter school maintained consistent access for participating students to non-core academic instruction;

5.01.3 How program grant funding was used by the public school district or open-enrollment public charter school and a summary of other resources, if any, used to provide high-impact tutoring;

5.01.4 The academic achievement results or other criteria used to identify eligible students in the high-impact tutoring program; and

5.01.5 The impact on student academic and non-academic outcomes associated with the public school district or open-enrollment public charter school’s program including interim assessments or other outcomes metrics; and

5.01.6 Any additional private, federal, or local funds that the public school district or open-enrollment public charter school used to support high-impact tutoring.

5.01.7 A public school district or open-enrollment public charter school who chooses to use a provider from the approved provider list must submit the information required by 5.01 with respect to the provider.

5.02 The division will annually report the following district-level data to the State Board of Education and the General Assembly:

5.02.1 Data regarding participating public school or open-enrollment public charter school students' access to high-impact tutoring and program

implementation, including by geography, grade span, and subject based on program requirements, including without limitation:

5.02.1.1 How data required under this subdivision has changed over time;

5.02.1.2 The number of students who received high-impact tutoring.

5.02.1.3 The dosage and attendance of students who received high-impact tutoring in the program; and

5.02.1.4 The number of students eligible for high-impact tutoring;

5.02.2 Data on achievement and growth outcomes from participating students; and

5.02.3 Program successes and challenges.

Emergency Clause

Whereas Act 237 of 2023 requires that the State of Arkansas through the Department of Education to administer the literacy grant program and high-impact pilot program through rules promulgated by the State Board of Education; and

Whereas, research shows that tutoring is one of the most effective interventions for accelerating the learning of students who are academically behind; and

Whereas, emergency promulgation of the Rules Governing Literacy Tutoring Grants is necessary for the department to prepare for implementation of the program; without which the State cannot efficiently administer the program. The rules are specifically necessary for the department to process and issue payments pursuant to the program.

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.

SUMMARY OF AMENDMENTS

DIVISION OF ELEMENTARY AND SECONDARY EDUCATION RULES GOVERNING TUTORING GRANT PROGRAMS

Pursuant to Act 237 of 2023, the Division is charged with promulgating rules regarding the Right to Read Act, which is codified at Ark. Code Ann. § 6-18-2501, et seq. Additionally, the Department is charged with administering a high-impact tutoring pilot program, codified at Ark. Code Ann. § 6-16-1601 et seq., for which the Department believes that rulemaking is required.

Act 237 of 2023, amended the Right to Read Act codified at Ark. Code Ann. § 6-17-429. As part of the amendment, the Act created literacy tutoring grant funding and directed the Division of Elementary and Secondary Education to establish a literacy tutoring grant program to provide funds for supplemental educational services for eligible students.

Act 237 of 2023 also created a high-impact tutoring pilot program to be administered by the Division of Elementary and Secondary Education. This rule creates a framework for administration of the program, including establishing eligibility criteria under the program for both students and providers, and identifying allowable uses for grant funding and continued eligibility criteria. Further, the rule creates reporting requirements for school districts and providers to submit information to the Division that the Division is required to present to the General Assembly.



STATE OF ARKANSAS
BUREAU OF
LEGISLATIVE RESEARCH

Marty Garrity, Director
Kevin Anderson, Assistant Director
for Fiscal Services
Matthew Miller, Assistant Director
for Legal Services
Jessica Whittaker, Assistant Director
for Research Services
Eric Sanders, Assistant Director
for Information Technology Services

Memorandum

TO: Members, ALC – Executive Subcommittee

CC: Marty Garrity, Director, Bureau of Legislative Research;
Rebecca Miller-Rice, Administrator, Administrative Rules Review Section,
Legal Services Division

FROM: Jason Kearney, Legislative Attorney, Administrative Rules Review Section,
Legal Services Division

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SUBJECT: Legal Authorization for the Emergency Promulgation of Proposed Division of
Elementary and Secondary Education Rules Governing Tutoring Grants

The Arkansas Department of Education’s Division of Elementary and Secondary Education seeks legislative review and approval of the emergency promulgation of its Rules Governing Tutoring Grants. Pursuant to Arkansas Code Annotated § 6-17-429(j)(2)(A), or the Right to read Act, as amended by Act 237 of 2023, § 29, beginning with the 2023-2024 school year, with full implementation no later than the 2025-2026 school year, the division shall establish a literacy tutoring grant program to provide funds for supplemental educational services for eligible students.¹ Furthermore, the division shall administer and implement the literacy tutoring grant according to rules developed and adopted by the state board. *See* Ark. Code Ann. § 6-17-429(j)(2)(C).

Such rules shall require the division to: **1)** Evaluate a student’s eligibility for the literacy tutoring grant; **2)** Develop an application process for students and providers and to accept applications; **3)** Evaluate providers of supplemental educational services, including without limitation those with expertise in early literacy, to determine the

¹ The proposed amendments incorporate provisions of Act 237 of 2023, sponsored by Senator Breanne Davis, which created the Learns Act and amended various provisions of the Arkansas Code as they relate to early childhood education in the state of Arkansas.

providers' initial and continued eligibility for payments, and the division shall establish minimum criteria by which approved providers shall be evaluated to ensure effectiveness of a literacy tutoring grant program in improving eligible students' reading abilities, including without limitation performance on the Arkansas annual reading assessment or other literacy assessments approved by the division; **4)** Remit payments to approved providers for services rendered to eligible students in the literacy tutoring grant program, and the division shall establish criteria for prioritizing eligible students if the number of applicants exceeds available funding for literacy tutoring grants;

5) Notify the governing authority of each public school district and open-enrollment public charter school of the application process, requirements, and deadlines for a literacy tutoring grant for parents, legal guardians, or persons standing in loco parentis to a student; **6)** Remit payment for services provided, up to a maximum of five hundred dollars (\$500) per eligible student per school year, which may be used for any of the following purposes designed to improve reading or literacy skills: (a) online or in-person, high-dosage tutoring services from a list of state-approved providers whose employees are trained in the science of reading and hold either a valid teaching certificates in either elementary education or reading or baccalaureate or graduate degrees in education, English, or another subject area indicative of expertise in reading and literacy; or (b) evidence-based digital literacy applications or software programs from a list of state-approved programs that are in alignment with the science of reading;

7) Develop and curate a list of approved tutoring providers and evidence-based digital literacy applications or software programs that are in alignment with the science of reading that will be updated on a regular basis; and **8)** Develop a procedure for verification that eligible students who received a literacy tutoring grant received the services or materials for which payments were made. *See* Ark. Code Ann. §§ 6-17-429(j)(2)(C)(i) – (viii). Pursuant to Ark. Code Ann. § 6-17-429(m), the division shall promulgate rules to implement the Right to Read Act.

Additional authority for the rulemaking can be found in Ark. Code Ann. § 6-16-1604(c), as amended by Act 237 of 2023, § 20, which states that the State Board of Education may promulgate rules to implement the Arkansas High-Impact Tutoring Pilot Program. *See* Ark. Code Ann. §§ 6-16-1601 – 1604.