



ARKANSAS DEPARTMENT OF EDUCATION

EXHIBIT C

Dr. Tom W. Kimbrell
Commissioner

July 9, 2012

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Ms. Donna Davis
Rules Administrator
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, Arkansas 72201

Re: Final Adoption of Rules

Dear Ms. Davis:

Please find attached one (1) copy of the proposed Arkansas Department of Education Rules Governing the Arkansas Better Chance Program. On February 13, 2012, the Arkansas State Board of Education released the proposed rules for public comment. On July 9, 2012, the State Board gave final approval to the proposed rules.

Please place these rules on the agenda for the next meeting of the ALC Rules & Regulations Subcommittee. A public comment matrix and summary of revisions is attached.

Thank you for your attention to this matter. Please do not hesitate to contact me at (501) 682-4227 should you have any questions or require additional information.

Respectfully,

Jeremy C. Lasiter
General Counsel

Enclosures

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ADE Rules Governing
The Arkansas Better Chance Program

RECEIVED**ARKANSAS DEPARTMENT OF EDUCATION RULES
GOVERNING THE ARKANSAS BETTER CHANCE PROGRAM**

JUL 10 2012

BUREAU OF
LEGISLATIVE RESEARCH**SECTION 1 – REGULATORY AUTHORITY**

- 1.01 These rules are enacted pursuant to the authority of the State Board of Education under ACA Ark. Code Ann. § 6-11-105 and 6-45-101 et seq. as amended.
- 1.02 The Division of Child Care and Early Childhood Education (DCCECE), Arkansas Department of Human Services, shall coordinate and administer the Arkansas Better Chance Program, providing all appropriate technical assistance and program monitoring necessary to fulfill the requirements of Ark. Code Ann. § 6-45-101 et seq., 20-78-206 and 6-11-105. DCCECE will annually provide the State Board of Education a list of grants which are recommended for funding for the next year.
- 1.03 The State Board of Education will approve all rules developed pursuant to Act 212 of 1991 and Act 49 of 2003 as amended and will approve all programs funded under the Arkansas Better Chance Program.

SECTION 2 – PURPOSE

- 2.01 It is the purpose of these rules to set the general guidelines for the operation of early childhood programs funded under the Arkansas Better Chance Program and the Arkansas Better Chance for School Success Program.

SECTION 3 – DEFINITIONS

- 3.01 ABC: Arkansas Better Chance
- 3.02 ABCSS (Arkansas Better Chance for School Success): Unless standards for ABC and ABCSS are listed separately, the term 'ABC' will be used to refer to all participating programs.
- 3.03 ADE: Arkansas Department of Education
- 3.04 AECPDS: Arkansas Early Childhood Professional Development System
- 3.05 APSCN: Arkansas Public School Computer Network
- 3.06 Agency: For purposes of these rules, "Agency" refers to any entity funded under the Arkansas Better Chance or Arkansas Better Chance for School Success program.
- 3.07 CACFP: Child and Adult Care Food Program (Special Nutrition). A federally-funded subsidy program administered by DCCECE designed to provide reimbursement to providers for meals and snacks served to children from low-income families.
- 3.08 CCFH: Child Care Family Home
- 3.09 CDA: Child Development Associate

- 3.10 Classroom: A physical space which is partitioned for the purpose of ABC instruction and activities. Each classroom must meet licensing requirements and state Quality Approval standards.
- 3.11 COPA: Child Outcome, Planning and Assessment. A web-based information technology system used to capture and maintain data for all children and families enrolled in ABC.
- 3.12 Core Quality Components: The six key areas of ABC which include:
 - Low student to teacher ratio
 - Well-qualified and compensated staff
 - Professional development
 - Developmental Screening and Child Assessment
 - Proven curricula and learning processes
 - Meaningful parent and community engagement activities

These components serve as the basis of ABC funding levels.

- 3.13 DCCECE: Division of Child Care and Early Childhood Education
- 3.14 DECA: Deveraux Early Childhood Assessment
- 3.15 DHS: Arkansas Department of Human Services
- 3.16 ECERS-R (Early Childhood Environmental Rating Scale, Revised): A nationally-recognized scale developed to measure various elements of classroom quality. ECERS-R is used to measure the environmental quality of early childhood programs.
- 3.17 ERS (Environmental Rating Scale): The term used to describe the tools used to measure elements of classroom quality. These include the Early Childhood Environmental Rating Scale, Infant-Toddler Rating Scale, Family Child Care Rating Scale and School-Age Care Rating Scale.
- 3.18 FPL: Federal Poverty Level
- 3.19 IEP: Individualized Education Program
- 3.20 IDEA: Individuals with Disabilities Education Act
- 3.21 INDEX: Investigating, Discovering and Exploring, the state-approved curriculum training on Math and Science for Young Children.
- 3.22 In-kind services: Support services provided at either no cost or without monetary exchange. To use in-kind services as match, services must be provided to the ABC program.
- 3.23 HIPPY: Home Instruction for Parents of Preschool Youngsters
- 3.24 LEA: Local Education Agency
- 3.25 NAEYC: National Association for the Education of Young Children
- 3.26 PAT: Parents as Teachers
- 3.27 Single-Site Classroom: One ABC classroom at a geographic location
- 3.28 Multi-classroom Site: Multiple ABC classrooms located on the same premises
- 3.29 SSN: Social Security Number

- 3.30 Shall: Mandatory standard
- 3.31 Should: Standard is recommended but not mandatory
- 3.32 SQP: Staff Qualifications Plan. A process by which DCCECE can approve staff not meeting minimum qualifications to work in an ABC classroom under certain restrictions.
- 3.33 Work Sampling System (WSS): A web-based instrument used by ABC programs to assess a child's progress in various educational domains over the program year.

SECTION 4 – CHILD ELIGIBILITY

- 4.01 The ABC Program serves educationally deprived children, ages birth through 5 years, excluding a kindergarten program. The Arkansas Better Chance for School Success Program serves children ages 3 and 4 years from families with gross income not exceeding 200% of the FPL. Programs wishing to enroll a kindergarten-eligible child must obtain a written waiver from DCCECE before enrolling the child in ABC. Parents must also complete a kindergarten waiver process through the local school district.
- 4.02 To be eligible, children shall reside within the boundaries of an Arkansas school district. Programs may accept children outside of their local area if they have exhausted local recruiting efforts and have unfilled ABC slots.
- 4.03 Eligible children for the ABC program shall have at least one of the following characteristics:

<ul style="list-style-type: none"> -Family with gross income not exceeding exceeding 200% of FPL -Parents without a high school diploma or GED -Low birth weight (below 5 pounds, 9 ounces) -Parent is under 18 years of age at child's birth -Immediate family member has a history of substance abuse/addiction 	<ul style="list-style-type: none"> -Has a demonstrable developmental delay as identified through screening -Eligible for services under IDEA -Income eligible for Title I programs -Limited English Proficiency -Parent has history of abuse or neglect Or is a victim of abuse or neglect
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- 4.04 Eligible children for the ABC for School Success program must meet the following qualifications:

<ul style="list-style-type: none"> -Must be three or four years old by ADE cutoff date. -Gross family income ≤ 200% of FPL 	<ul style="list-style-type: none"> -A program is available in the area where the child resides and there is available space for the child to attend.
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To receive special education services a child must reside within certain district/co-op boundary lines.

- 4.05 To enroll an eligible child, the child's parent or guardian shall furnish documentation of eligibility and other required information, including household income and household member information. A list of all acceptable documentation will be published annually by DCCECE. Children of parents or guardians refusing to furnish required information shall be deemed ineligible for participation. Programs are responsible for verifying eligibility before the child attends and shall maintain copies of eligibility documentation in the child's record.

- 4.06 A copy of the child's birth certificate or hospital record listing a date of birth is required. If official documentation of date of birth is unavailable, the ABC program shall follow the guidelines of the local district in such instances.
- 4.07 In determining income eligibility, programs shall use a family's gross income from employment plus any unemployment compensation. Documentation of income eligibility must be present in each child's record. If pay stubs are used to document eligibility, recent documents (dated within 30 days) shall be used. DCCECE shall publish a list of acceptable documentation annually. If a three-year old child has been qualified for ABCSS, that child shall remain eligible for two years.
- 4.08 Families claiming no earned income (full-time students or unemployed) shall produce a signed and notarized statement to that effect, which shall be maintained in the child record.
- 4.09 Parents or guardians shown to have submitted a falsified document shall be subject to repayment of funds to DCCECE and referral for prosecution.
- 4.10 Agencies shown to have enrolled ineligible children or children with no documentation of eligibility shall be required to repay the funds expended on behalf of the child to DHS.
- 4.11 An age-eligible child who falls into one of the following categories shall be exempt from family income requirements:
- Foster child
 - Child with an incarcerated parent
 - Child in the custody of/living with a family member other than mother or father
 - Child with immediate family member arrested for or convicted of drug-related offenses
 - Child with a parent activated for overseas military duty
- 4.12 The ADE and DCCECE may develop a fee schedule and establish eligibility based on family income for children who are not eligible under Section 4.4, but priority enrollment shall be provided to children eligible under Section 4.4. Families who are qualified for enrollment under a sliding fee scale should pay fees directly to the program. The amount of any parent co-pay as determined by DCCECE shall be deducted from the reimbursement to programs accepting children on a sliding fee scale.
- 4.13 DCCECE, with approval from ADE, may grant waivers to children not meeting the eligibility criteria under Sections 4.3 or 4.4 but possessing multiple risk factors for learning and developmental impairment. Requests for such waivers must be submitted to DCCECE in writing and will be considered on a case by case basis.
- 4.14 Children having certain risk factors may be eligible for home-visiting services, in addition to attending a center-based ABC program. See Section 198.06 for eligibility requirements.
- 4.15 Eligible children shall not be denied enrollment into an available ABC program or dismissed from an ABC program due to non-payment of any fees associated with another child care program.

SECTION 5 – PROGRAM/AGENCY ELIGIBILITY

- 5.01 Any child care provider meeting these criteria is eligible to apply for funding:
- Located within the boundaries of the State of Arkansas
 - Licensed by DCCECE as a Child Care Center or Child Care Family Home with no history of formal corrective action or founded complaints which pose an immediate safety risk within 12 months of application date
 - Has no outstanding debt to DCCECE or ADE (This requirement shall be suspended if an appeal is pending.)
 - Has obtained State Quality Approval accreditation OR is eligible for such accreditation in the space to be used for the ABC program
 - Can provide matching funds in accordance with local to state 40:60 funding ratio

The local-to-state match may be waived by DCCECE if the program is in a school district that has been designated by ADE as being in academic distress and DCCECE determines that the school is unable to provide the local-to-state match requirement. This determination may be made only after DCCECE has assisted the school in identifying potential funding sources to provide local-to-state match requirements.

- 5.02 Any provider wishing to be considered for funding must fully complete a grant application supplied by DCCECE. Grant applications will be evaluated and scored on the following factors:
- Current status of child care license and quality approval accreditation
 - The degree to which the program can provide a developmentally appropriate preschool program as outlined in the grant application
 - A strategy of collaboration with the local business and education community
 - A fiscally-responsible budget which correlates to core quality models
 - A plan of action for parent involvement
- 5.03 DCCECE will determine an acceptable cutoff score for approved applications. Questions and concerns regarding grant scoring should be referred to the Program Administrator. The ABC Administrator shall make the final determination of all grant scores. Grant scores are final.
- 5.04 All applications shall include a budget which corresponds to the ABC core quality components, details program costs and demonstrates fiscal responsibility. Allowable costs include:
- salaries/fringe
 - instructional materials
 - staff development
 - developmental screenings
 - parent/community engagement activities
 - financial assistance for staff working towards a degree or credential, including but not limited to books, tuition and travel.

SECTION 6 – FUNDING

6.01 Upon approval of an ABC application, the order of funding shall be based on criteria stated in Act 49 of 2003, which includes areas of the state containing:

- Schools that have 75% or more students scoring below proficiency level on the primary benchmark exams (math and literacy) in the preceding two (2) school years
- Schools designated by ADE as being in school improvement status
- Schools located in a school district in academic distress.

Other factors determining areas to be funded may include socio-economic status of the service area and the availability of existing quality preschool services in an area.

6.02 Any program funded through ABC shall work in collaboration with DCCECE, ADE, local businesses and other early childhood providers (school districts, educational cooperatives, Head Start, HIPPIY, private and non-profit providers, etc.) to ensure that all eligible children are served in the most suitable environment. This collaboration shall include, but is not limited to, participation in and/or facilitation of local early childhood meetings and referring families to other programs when appropriate.

6.03 The required local 40% match may include only the cost of providing necessary services for ABC children. Matching funds may be cash or in-kind.

6.04 State ABC Funding (60%) for the core components of the program may include salaries and fringe for staff giving direct services to ABC children, professional development, child assessment, developmental screening, meaningful parent and community engagement activities, proven curricula and learning processes, transportation and administration.

6.05 The maximum amount of funding is based upon projected child enrollment. Programs will be paid monthly. Payment shall be pro-rated for agencies not in operation a full program year. During the year, programs shall be audited to ensure compliance with child enrollment and attendance policies. An ABC program found to be enrolling ineligible children shall be required to repay applicable funds to DHS and be subject to all collection proceedings allowed by law. Funds may be withheld from future payments to satisfy repayment. Overpayments or the amount of any end of year carry-forward funds shall be deducted from future payments.

6.06 DCCECE shall not be responsible for sending out additional or late payments due to failure of Agency to enter data in COPA. DCCECE will assume any payments not disputed within 30 days of receipt shall be correct. DCCECE cannot retroactively pay any Agency for previous year services.

6.07 Payment shall be withheld if a program does not comply with reporting requirements.

6.08 ABC is intended to supplement, not supplant, existing early childhood funding sources.

6.09 Funding, not to exceed 2% of the total ABC funding pool, shall be available from the ABC monies for the additional support services required of DCCECE in administering the ABC program.

SECTION 7 – REPORTING

- 7.01 All child, family and staff information shall be maintained in COPA by the program. Attendance shall be taken daily and recorded in COPA at least monthly. Initial data must be entered by the due date set and published by DCC-ECE. Agencies shall update COPA data within ten (10) days of any change to family, child or staff data.
- 7.02 Each ABC program shall submit to DCCECE two (2) financial expenditure reports—due on January 30 and July 30 of each year—which detail operating expenses and enrollment data. Programs shall receive guidance from DCCECE on the specific format of each report.
- 7.03 An Agency shall operate its ABC program according to the financial guidelines outlined in the grant application instructions.
- 7.04 A complete and final disclosure audit of each ABC program is required and must be submitted annually for review to DCCECE. Any ABC program that is annually reviewed by Legislative Audit may submit the summary completed by that agency. All final audits shall be submitted within 120 days of the program's fiscal year completion.
- 7.05 Programs that fail to adhere to a reporting deadline or respond to a request for information by DCCECE will be subject to compliance action as outlined in Section 22±.
- 7.06 Children qualifying under the sliding fee scale must be clearly marked as such in COPA. Programs shall also report any non-ABC qualifying children who have been assigned to an ABC classroom. Failure to do so is grounds for a compliance plan (See Section 22±). DCCECE will inform programs as to the manner that reporting shall take place.
- 7.07 Once a grant agreement has been signed, any change made to the program whatsoever shall be reported to DCCECE within five (5) working days of the change. This includes, but is not limited to, any changes in address, phone, e-mail address, staff, slot locations or budget items.

SECTION 8 – APPLICATION/RENEWAL APPLICATION

- 8.01 The Request for Applications will specify all application procedures for an ABC program. DCCECE is not obligated to review any proposal received after the submission deadline stated in the application.
- 8.02 If all ABC funds are not allocated or expended during any program year, the DCCECE may initiate an additional application period to fully obligate all available funds.
- 8.03 An Agency shall operate its ABC program in accordance with all information contained in the grant application. Any deviation from the information in the application must first be approved by DCCECE. This includes budget items.
- 8.04 All applications submitted by sectarian or sectarian-affiliated programs must first be reviewed to assure that approval of funding will not result in a violation of the First Amendment to the United States Constitution.

SECTION 9 – MINIMUM STANDARDS/CLASSROOM PROGRAMS

- 9.01 All ABC classroom programs shall satisfy the requirements specified in The Child Care Licensing Act, ACA Ark. Code Ann. § 20-78-201 through 224 and rules and regulations enacted pursuant to these sections.
- 9.02 All ABC center-based or family-home based programs shall maintain a license in good standing as referenced in Section 9.1. Any ABC program whose license is revoked shall be immediately terminated from the ABC program.
- 9.03 Agencies that are barred from participating in DHS programs pursuant to DHS Policy 1088 shall be ineligible for participation in ABC. Grant agreements for any existing programs excluded pursuant to this policy shall be terminated immediately. Programs placed on corrective action by DHS shall be subject to ABC compliance action as outlined in Section 22.
- 9.04 DCCECE is directly responsible for the inspection and evaluation of programs as referenced in Section 9.1. Inspections and monitoring visits may occur without prior notice. This includes quality visits, program reviews or any other visit by a DCCECE or authorized representative.
- 9.05 All ABC classrooms shall meet the criteria for becoming an "approved" Early Childhood program under the Arkansas Child Care Approval System Rules and Regulations, Ark. Code Ann. § 6-45-103 and 106 (~~Supp. 1993~~). An overall score of 5.0 is required for the ERS which is applicable to each classroom. DCCECE will utilize the following procedure for any program failing to meet these requirements:

1 st No Pass (ERS Score < 5.0)	Recommendations for improvements shall be made in writing to the Agency ABC Administrator/Coordinator and Teacher. Technical assistance shall be given to the Agency.
2 nd No Pass (ERS Score < 5.0)	Conference shall be held between Agency ABC Administrator/Coordinator, Teacher and DCCECE staff to advise Agency of 2 nd No Pass Status and required improvements. Agency is placed on probationary status with third review scheduled within 60 days of conference.
3 rd No Pass (ERS Score < 5.0)	Agency is partially or fully de-funded for next program year.

Any agency which is not renewed pursuant to this policy shall be ineligible to reapply for an ABC grant for a period of 12 months.

At the discretion of DCCECE, the following may be considered as mitigating circumstances: impact of deficiencies on child health, safety and welfare; willingness to improve upon factors within Agency control; likelihood of program passing next review and the time in which such improvements can be implemented. Recommendations for improvement may include staff changes.

- 9.06 For each child enrolled, ABC programs shall provide a minimum of 7 hours per day, 178 days per year for instruction.

- 9.07 Classroom-based programs shall follow public school regulations regarding the time requirements for teacher planning periods. However, planning periods for ABC teachers shall be scheduled at a time that does not violate minimum staff-child ratios or other ABC standards.
- 9.08 Programs shall utilize a parent handbook specifically designed for the ABC program. Attendance and tardy policies shall be clearly outlined in the handbook. Parents shall sign a statement stating they have received a copy of the handbook and understand its contents. Programs shall maintain a copy of the signed statement in the child record. Programs should direct specific cases to DCCECE for technical assistance or guidance.

SECTION 10 – STAFF/PUPIL RATIO FOR CLASSROOM PROGRAMS

- 10.01 The group size in any classroom with ABC children shall not exceed:
- 8 children for ages birth-18 months
 - 14 children for ages 18 months-3 years
 - 20 children for ages 3-5 years
 - or the classroom's licensing capacity, whichever is less.

Programs may integrate ABC classrooms with children funded through other sources. However, the maximum group sizes listed above apply to ALL children in a classroom containing ABC children, regardless of funding source.

- 10.02 The adult-to-child ratio in any classroom with ABC children shall not exceed:
- 1:4 (birth to 18 months)
 - 1:7 (18 months-3 years)
 - 1:10 (3 years-5 years)
- 10.03 A minimum of 50% of the staff must remain in the classroom during rest time for children 3-5 years old only. Full staffing must occur for all other ages and at all other times, including meals.
- 10.04 Pursuant to licensing regulations, a teacher or aide may escort a child or group of children to a bathroom or school nurse if another qualified staff person remains in the classroom. A classroom shall not be counted out of compliance for a teacher taking a brief bathroom break as long as the other staff member remains in the classroom.

SECTION 11 – STAFF QUALIFICATIONS AND TRAINING REQUIREMENTS

- 11.01 The lead teacher shall hold a standard Arkansas teacher license with P-4 certification. Non-public school based or non-educational cooperative based ABC programs may hire a non-certified teacher with a bachelor's degree in early childhood education or child development. Non-public school or non-cooperative based ABC programs may not hire teachers with a provisional or initial teacher license. The Division shall consider degree exemptions for non-public school/coop based providers on a case-by-case basis, contingent upon the teacher having a requisite number of hours in early childhood and/or child development. Lead teachers must be able to demonstrate competency in the areas of developmentally appropriate programming, curriculum development and daily classroom management.

- 11.02 For multiple classroom sites, the teacher of a second classroom shall hold, at a minimum, an associate degree in early childhood education or early childhood development. Teachers must be able to demonstrate competency in the areas of developmentally appropriate programming, curriculum development and daily classroom management. The Division shall consider degree exemptions for non-public school/coop based providers on a case-by-case basis, contingent upon the teacher having a requisite number of hours in early childhood and/or child development. Non-public school or non-cooperative based ABC programs may not hire teachers with a provisional or initial teacher license.
- 11.03 The paraprofessional shall hold one of the following: an associate degree in early childhood education or child development OR a CDA credential. Paraprofessionals are an integral part of classroom instruction and should be given responsibilities which are commensurate with their education and experience. In general, paraprofessionals should be able to assist with classroom activities, interaction, supervision and observation.
- 11.04 Programs replacing a teacher or paraprofessional during the year—including those taking an indefinite leave of absence—shall consult with DCCECE on specific qualifications needed.
- 11.05 An ABC program coordinator or site director without teaching responsibilities shall meet the minimum licensing requirements for a center director AND complete Director's Orientation within a reasonable time period, subject to the availability of training. The coordinator or director will preferably have some experience in early childhood.
- 11.06 Caregivers in an infant/toddler ABC room shall hold a minimum of a CDA credential in infant/toddler care.
- 11.07 Staff members not qualifying under Sections 11.01-11.02 may work in an ABC program under an approved SQP. DCCECE will approve these plans on a case-by-case basis and shall monitor the plan to ensure adequate progress is being made. Programs shall file a SQP with DCCECE within fifteen (15) days of the date of hire and shall submit progress reports on January 30 and July 30 annually. Programs hiring staff members not meeting minimum qualifications without an approved SQP shall be subject to termination from the ABC program.
- 11.08 While adhering to the necessary qualifications, ABC programs should also strive to maintain an ethnically diverse staff appropriate to child enrollment.
- 11.09 Between July 1 and June 30 each year, All ABC teachers and aides shall participate in a minimum of thirty (30) hours of staff development on topics pertinent to early childhood education and approved by DCCECE. Persons who are obtaining an early childhood degree may count college course hours pertinent to early childhood education toward the required hours of staff development. Programs should multiply semester hours by 5 to obtain the number of semester hours counted towards ABC professional development.

- 11.10 Teachers and paraprofessionals shall be required to receive training in the following areas:
- Arkansas Early Childhood or Infant/Toddler Education Frameworks
 - Pre-K ELLA (Early Literacy Learning in Arkansas)
 - INDEX (Math and Science for Young Children)
 - Social/Emotional Learning in Arkansas
 - Work Sampling Online
 - COPA
 - Deveraux Early Childhood Assessment (DECA)
 - Special Needs, including process, Special Education rules and regulations and IDEA

With the exception of annual Work Sampling training and updates, timeframes for completing such requirements may vary with availability and access to the above trainings. DCCECE or ADE Special Education may mandate additional training subject to needs in various locations.

- 11.11 In addition to the requirements of 11.10, coordinators for each ABC programs shall ensure that all appropriate staff members attend mandatory ABC training (budgets, reporting, assessments, information technology, etc.) provided by DCCECE. Programs with staff members not adhering to these requirements are subject to the terms of a compliance plan as outlined in Section 21.
- 11.12 The ABC program coordinator and all ABC staff shall register with the AECPS Registry. The Registry identification number for each staff shall be entered in COPA.
- 11.13 ABC programs shall establish an employment agreement in writing with all classroom staff. This agreement shall outline working conditions, dates and hours of employment, compensation and fringe benefits. A copy of the public school teacher contract shall satisfy this requirement.

SECTION 12 – STAFFING PATTERNS/CLASSROOM PROGRAMS

- 12.01 Single classroom sites for preschool shall have a teacher qualified under 11.01-11.02. Classrooms with over 10 children must have a paraprofessional qualified under 11.03.
- 12.02 For ABC programs operating infant/toddler classrooms, programs must have one (1) qualified caregiver meeting the requirements of Section 11.6 for either every four children (infants) or seven children (toddlers).
- 12.03 In multi-classroom sites, the following staffing patterns shall be adhered to:

Classroom	Lead Teacher (11.01)	Classroom Teacher (11.02)	Paraprofessional (11.03)
1	1	0	1
2	1	1	2
3	1	2	3
4	2	2	4

- 12.04 A classroom which is partitioned in any way may be considered multiple classroom space by DCCECE. Factors to be considered in this decision shall include supervision issues, as well as level of staff qualifications in the classroom areas.

SECTION 13 – PROGRAM STANDARDS

- 13.01 All early childhood programs funded by ABC monies shall be developmentally appropriate and individualized to meet the needs of each student enrolled. The following references shall be utilized to determine developmental appropriateness:
- *Developmentally Appropriate Practice in Early Childhood Programs*, Revised Edition, Edited by Sue Bredekamp and Carol Copple, © 2004 by NAEYC
 - *From Neurons to Neighborhoods: The Science of Early Childhood Development*, Edited by Jack P. Shonkoff, M.D. and Deborah A. Phillips, © 2000 by National Academy of Sciences.
 - Arkansas Early Childhood Frameworks
- 13.02 Programs shall demonstrate that the classroom arrangement satisfies "substantial portion of the day" as defined by the environmental rating scales. If used, room dividers shall be arranged and of sufficient height to prohibit distractions from other classes yet not hinder proper supervision within the classroom.
- 13.03 Each classroom shall be equipped with toys, books and play apparatus to take care of the needs of the total group and to provide each child with a variety of activities through the day. A variety of equipment shall be accessible from low shelves to children of all ages and shall be arranged in learning centers.
- 13.04 The program shall be individualized to meet the needs of each student enrolled. Each curriculum model and the actual classroom practice will be assessed using the applicable environmental rating scale to ensure the model is developmentally appropriate.
- 13.05 The program shall have a written overall curriculum plan which is arranged in thematic units, projects or topics of study and includes goals and objectives related to the following: cultural diversity, social/emotional development, creative/aesthetic learning, cognitive/intellectual learning, physical development and language.
- 13.06 All programs must utilize a curriculum approved by DCCECE. A list of approved curriculum models will be made available by DCCECE on an annual basis. A program wishing to use a curriculum not on the list may request, in writing to DCCECE, consideration of an additional curriculum. Program coordinators shall ensure teachers have adequate training on curriculum.
- 13.07 Children shall participate in a daily schedule that reflects a balance among the following types of activities: indoor/outdoor; quiet/active; individual/small group/large group; gross motor/fine motor; child initiated/teacher initiated.
- 13.08 Routine and transition times throughout the day, such as preparing for mealtime, shall be used as opportunities for incidental learning. Transition times shall be planned to avoid frequent disruption of children's activities and long waits between activities.

13.09 Programs shall maintain an individual child record on site. At a minimum, the record shall contain copies of:

- Birth certificate, hospital birth record or other official verification of birth date
- Documentation of child eligibility
- Completed and dated application form
- Emergency information, including non-parental contact and medical information
- Parental authorization for medical care, daily pick-up and field trips
- Field trip authorization
- Completed Health Form and Immunization record (or proof of current immunizations)
- Record of completed developmental screening
- Samples of child's work
- Teacher and parent observations and summaries of parent-teacher conferences
- Work Sampling Developmental Checklists

Child records or any ABC file containing personal information on families and children shall be kept in a locked file cabinet with access granted only on a need-to-know basis. The child record shall be available for inspection by DCCECE staff. If certain records must be stored off-site, copies shall be made and given to teachers to maintain in a record on-site. In maintaining and updating child and family data, ABC programs shall utilize COPA. Other than those documents required to be retained for licensing purposes, teachers shall give a copy of the child's record to the parent upon completion of or dis-enrollment from the program or forward the record to the child's kindergarten program.

13.10 The arrangement of indoor and outdoor equipment, materials and interest areas for each group shall provide for:

- Accessibility to equipment and materials so that children may select and return them easily
- An orderly, uncluttered atmosphere
- Visual and/or auditory supervision of children in all areas
- Separation of active and quiet play areas
- Traffic patterns that avoid disruption of activities

13.11 At a minimum, developmentally appropriate equipment and materials of sufficient quantity to accommodate a sustained learning environment shall be provided in the following interest areas/learning centers:

- | | |
|---------------------------------|------------------------------|
| 1. Blocks | 5. Discovery/Science Sensory |
| 2. Dramatic Play | 6. Sand/Water Play |
| 3. Stories/Language Development | 7. Manipulative |
| 4. Art | 8. Music |

13.12 Outdoor play shall be used as an extension of the learning activities that occur in the classroom. As such, ABC staff shall participate in this activity. Each ABC classroom shall offer a minimum of 60 minutes of outdoor play daily unless prevented by inclement weather.

13.13 The outdoor play area shall be developmentally appropriate and meet the Consumer Product Safety Commission standards for outdoor play areas. The outdoor play area shall provide the following:

- A variety of surfaces
- An arrangement designed for appropriate flow of activities
- Climbing and other active play items and structures
- Open areas for running and games
- Opportunities for dramatic play
- Adequate storage for equipment and materials
- Partial shade
- Quiet, private spaces
- A separate outdoor area equipped for infants and toddlers (if applicable)

13.14 Provision should be made through program design and networking efforts to ease the transition of children moving from one program or age grouping to another or to public school kindergartens. This provision must include individual needs assessments on each child, lesson plans and specific activities written into the program design. At a minimum, the transition plan shall involve parents and appropriate school district personnel.

13.15 ABC programs are required to provide free nutritious meals and snacks for all children enrolled in ABC/ABCSS. Mealtime is an opportunity to engage children in conversation about the day and themselves. Therefore, ABC staff shall participate with the children during this time. Children shall be given an appropriate amount of time for meals and conversation.

13.16 Parents or guardians of children qualified as eligible for ABC services shall not be required to pay any fees or provide food or supplies during ABC program hours. This includes enrollment fees, field trip expenses or uniforms.

13.17 Electronic mail is a necessary means by which DCCECE communicates vital information to programs. All participating programs must maintain a working e-mail address which is checked daily. Applicable information shall be distributed to classroom staff by the program coordinator.

SECTION 14 – CLASSROOM MANAGEMENT/SPECIAL EDUCATION

14.01 No child in ABC shall be dismissed or expelled from the program for behavior without approval from DCCECE.

14.02 Discipline shall reflect positive guidance, be consistent and individualized for each child. Such discipline shall be appropriate to the child's level of understanding. Corporal punishment is an unacceptable method of discipline and shall not be used. Programs shall specifically define their approach to handling inappropriate behavior in the ABC parent handbook.

- 14.03 When a child presents with challenging behavior, teaching staff shall follow the standards of NAEYC Accreditation:
- Observe the children, then identify events, activities, interactions and other factors that predict and may contribute to challenging behavior.
 - Rather than focus only on eliminating the behavior, teaching staff shall focus on teaching the child social, communication, and emotional regulation skills and using environmental modifications, activity modifications, adult or peer support and other teaching strategies to support the child's appropriate behavior.
 - Teaching staff shall respond to challenging behavior, including physical aggression, in a manner that:
 - provides safety of the child
 - provides for the safety of others in the classroom
 - is calm
 - is respectful to the child
 - and provides the child with information on acceptable behavior.

(From Accreditation Standards, National Association for the Education of Young Children)
- 14.04 Teacher-parent discussions regarding a child's behavior shall be held in private and shall focus on working as a team to develop and implement an individualized plan that supports the child's inclusion and success. *(Adapted from NAEYC)* Teachers should request technical assistance from DCCECE on any discipline issues on which they have questions.
- 14.05 If necessary, intervention shall ensure each child has access to professional services, such as referrals to the educational cooperative behavioral specialist, the ADE-funded regional support network for early autism identification, community mental health center and a private therapist. If a child in question has a disability and is in the process or has been identified under IDEA, the ABC program shall follow state special education rules and regulations governing suspension/expulsion.
- 14.06 If children demonstrate inappropriate behavior, as indicated by the results of the DECA given by ABC staff, the ABC program shall consult with the Early Childhood Special Education program regarding classroom modifications and interventions.
- 14.07 For any ABC child also receiving special education services, appropriate staff from the Education Cooperative or school district shall have access to the child at mutually agreeable times during the program day in order to provide services outlined in the child's IEP.
- 14.08 For any ABC child requiring the intervention services of special education, the ABC program shall collaborate with special education professionals to ensure each party has access to necessary information to provide the appropriate services. Early Education Special Education teachers shall have access to any information pertaining to a child receiving special education that is in the possession of the ABC program that would be necessary for reviewing and evaluating the child's progress in the general education setting. Access to proprietary information on the child shall be on a need-to-know basis.
- 14.09 A child shall not be dismissed from the ABC program due to a lack of toilet training skills. Nor may a program refuse to admit a child because of toilet training issues if the child meets all other age and income eligibility requirements.

- 14.10 ABC programs shall assist children not yet toilet-trained with cooperation and enthusiasm. Programs shall not employ toilet-training techniques which could be construed as punishment or shaming the child. Programs are encouraged to include the parent or guardian in any plan so it may be reinforced at home. Funds from ABC may be used to purchase resources necessary to support toilet training.

SECTION 15 – ASSESSMENT AND SCREENINGS

- 15.01 DCCECE and ADE shall work cooperatively to ensure that the assessments are conducted as required by Act 49 of 2003.
- 15.02 Children in the ABC program shall be assessed annually to provide an indication of each child's progress towards school readiness.
- 15.03 The assessment shall address a child's strengths, progress, and needs and shall serve as a central part of an effective early childhood program. The assessment instrument selected by DCCECE and ADE shall be used for children enrolled in an ABC program.
- 15.04 A comprehensive longitudinal study shall be implemented to evaluate the ABC program to ensure that the program goals are achieved. The study will be designed to use sound research-based evidence to determine whether the programs meet the expected standards. This research shall include children entering the program at ages three (3) and four (4) years and follow the children through completion of the fourth grade benchmark exams. Research results will be provided annually to the Governor and the Senate Interim Committee on Education and the House Interim Committee on Education.
- 15.05 Within forty-five (45) days of entering an ABC program, a child shall receive a routine annual developmental screening to determine individual needs. The program agency shall be responsible for completing the developmental screening. The purpose of screening is to identify developmental delays and/or educational deficiencies. Children so identified shall be referred to Special Education within seven (7) calendar days of the date of screening. Programs shall comply with state and federal laws for Special Needs students.
- 15.06 The developmental screening must include, at a minimum, the following areas: vocabulary, visual-motor integration, language and speech development, fine and gross motor skills, social skills and developmental milestones.
- 15.07 DCCECE will provide a list to programs of all acceptable developmental screening instruments on an annual basis.
- 15.08 Within 45 days of the first day of attendance, every child shall receive an age-appropriate health screening, which includes a hearing and vision test, performed by a licensed physician or physician assistant. Programs should contact DCCECE for information on seeking a waiver under Ark. Code Ann. § 6-18-701 (~~Repl. 1993~~). Programs shall work in partnership with parents to obtain health screening information.

- 15.09 On or before the first day of attendance, parents or guardians shall provide proof that their child is current on all required immunizations or is on an acceptable "catch up" schedule. A waiver from this requirement may be granted from the Arkansas Department of Health under ACA Ark. Code Ann. § 6-18-702 (Repl. 1993).
- 15.10 Every classroom shall be equipped with a computer with high-speed internet access (where available in the state). Each home-based educator shall also have such access to a computer. This equipment is necessary for the timely completion of enrollment data in COPA and assessment data in the Work Sampling System.

SECTION 16 – PARENT AND COMMUNITY INVOLVEMENT

- 16.01 Each program shall have a plan for parent involvement which includes opportunities for parental input into program operation and design. Parent involvement plans shall include a mechanism for parental advice and review of programmatic plans, parent conferences and a method to involve the parent in the child's educational experience.
- 16.02 The program shall have an "open door" policy for parents which encourages visiting and participation in classroom activities. Opportunities for at least two parent-teacher conferences shall be given to parents.
- 16.03 The program shall publish and utilize a parent handbook specifically for ABC program.
- 16.04 Each program shall have a plan for community/school district/educational services cooperative/agency involvement, which includes a description of how cooperation with other service providers who are concerned with the education, welfare, health and safety needs of young children, will be established and maintained. Programs should consider providing opportunities for community representatives to participate in the educational activities of the classroom.

SECTION 17 – TRANSPORTATION

- 17.01 ABC Programs shall be required to comply with all applicable state and federal laws and guidelines (including the National Highway Traffic Safety Administration 's Guidelines for the Safe Transportation of Children in School Buses), as well as Child Care Licensing Standards, regulating the transportation of children.
- 17.02 Offering transportation to and from an ABC program is strictly optional. DCCECE and ADE accept no liability for the transportation of children participating in an ABC program. Program agencies shall be responsible for the actions of their drivers. Drivers are subject to all background checks and exclusionary violations applicable to school district employees having contact with children.
- 17.03 If an ABC program is approved to use the "buddy" system on a bus, the Agency shall NOT pair an ABC child with another child younger than sixth grade.

- 17.04 An ABC child shall NOT be released from the vehicle unless an authorized adult meets the vehicle at a stop or in front of the child's home. Programs shall never release an ABC child from the vehicle alone. After exiting the vehicle, an ABC child shall not cross a street unless accompanied by the authorized adult.

SECTION 18 – OTHER PROGRAM MODELS

- 18.01 Alternate programs may include, but are not limited to, Licensed Child Care Family Homes, PAT and HIPPY. These programs will comply, where applicable, with the regulations herein.
- 18.02 All ABC funded alternate program models will be developmentally appropriate, meet applicable health and safety standards, provide developmental and health screenings and ensure immunizations of the child served.

SECTION 19 – HIPPY REGULATIONS

- 19.01 HIPPY programs shall meet program criteria as outlined in the contractual agreement signed by each site with Arkansas Children's Hospital and HIPPY USA.
- 19.02 Each HIPPY program serving at least 160 families must have one (1) full-time coordinator, holding a minimum of a bachelor's degree in education, social work, sociology, psychology, or related field. Those coordinators without a related degree must obtain at least 12 college course hours in early childhood. Programs with more than 250 children must also have at least one part-time coordinator who holds a minimum of an Associates Degree in early childhood education, social work, psychology or related field. Coordinators shall also meet additional job requirements as described in the HIPPY USA Coordinator job description. HIPPY Coordinators must attend National HIPPY Pre-service Training and receive certification. Regardless of the number of children served, HIPPY Agencies must make provision to ensure all home-based visitors are supervised appropriately by trained staff.
- 19.03 Home Based Educators working 31-40 hours per week may not serve more than 27 families. Minimum requirements for home educators include a high school diploma/GED and a current CDA credential. All new HIPPY home-based educators are required to attend new Home-based Educators training provided by Arkansas State HIPPY.
- 19.04 Hiring of any HIPPY coordinator or home-based educator not meeting the requirements of 19.02-19.03 must be approved by DCCECE through a Staff Qualifications Plan. DCCECE shall monitor such plans to ensure adequate progress is being made. HIPPY Coordinators working under a staff qualifications plan must obtain at least 12 college hours per year.
- 19.05 HIPPY programs must follow the child eligibility requirements found in Section 4. However, the cut-off date for determining age eligibility for children served in HIPPY is December 31 of each year.

- 19.06 In order to dually enroll a child in an ABC center and HIPPPY, a child must meet the ABC income requirements (< 200% FPL) plus possess at least one of the following factors:
- o Parents without HS diploma or GED
 - o Birth weight < 5 pounds, 9 ounces
 - o Parent is < 18 years of age at child's birth
 - o Family has a history of substance abuse/addiction
 - o Eligible for services under IDEA
 - o Parent has a history of abuse or neglect or is a victim of abuse or neglect
 - o Child exhibits a demonstrable developmental delay-as identified through an appropriate screening
 - o Child lives in a single parent household or has parents who are divorced
 - o Child is a foster child
 - o Child has incarcerated parent
 - o Child has parents who cannot read
 - o Child is homeless
 - o Child or parent has limited English Proficiency
 - o Child is in the custody of family member other than mother and father

Whichever program enrolls the child at the later date shall be responsible for verifying eligibility for dual enrollment. Dual enrollment shall not exceed 25% of the program's total ABC enrollment. If the same Agency operates both a center-based and home-visiting program, dual enrollment shall not exceed 25% of the average of both programs' enrollment.

- 19.07 Center-based and home-visiting programs shall collaborate in providing services to any child qualifying for dual enrollment under 19.06.
- 19.08 The Arkansas HIPPPY Training and Technical Assistance (T and TA) Office will monitor and assist HIPPPY programs throughout the state. Annual program site reviews and assessments will be forwarded to DCCECE for consideration of program compliance and funding renewal. The Arkansas HIPPPY Office will assist DCCECE with determining program compliance at the local level.
- 19.09 HIPPPY programs shall meet requirements as set forth in Sections 4-9 and 13-16.
- 19.10 Group meetings should reflect the educational programming standards as set forth in Section 13 and guidelines set forth in the HIPPPY model.
- 19.11 Any enhancements designed to complement the HIPPPY curriculum must be approved by the Arkansas HIPPPY Office prior to implementation with families.

SECTION 20 – PARENTS AS TEACHERS REGULATIONS

- 20.01 PAT Programs shall meet program criteria as outlined in PAT Program Implementation and Planning Guide.
- 20.02 All PAT Coordinators must attend the PAT Institute Training and obtain either a Parent Educator Certificate or an Administrator's Certificate.
- 20.03 Each program must have a certified Parent Educator, who may also serve as Coordinator.

- 20.04 PAT Parent Educators working on a part-time basis (20 hours per week) should serve 30 and not more than 40 children and their families.
- 20.05 PAT Programs shall operate on a twelve month, year-round basis. Families must be offered twelve personal visits and six parent group meetings.
- 20.06 PAT Programs shall follow the child eligibility requirements found in Section 4.
- 20.07 PAT programs may dually enroll children also participating in a center-based program under the guidelines of 19.06-19.07.
- 20.08 PAT Programs must coordinate services with HIPPPY Programs where both exist in the same community to avoid duplication of services.
- 20.09 PAT Programs shall meet requirements as set forth in Sections 4-7 and 14-16.

SECTION 21 – CHILD CARE FAMILY HOMES

- 21.01 Licensed child care family homes participating in ABC must meet the same requirements as an ABC center, except where listed in this section.
- 21.02 Group size for an ABC classroom in a CCFH shall not exceed sixteen (16) children or maximum licensing capacity, whichever is less.
- 21.03 The ABC family home teacher must possess a minimum of a CDA credential and file a Staff Qualifications Plan which outlines a plan to complete a four-year degree in early childhood or child development. For any ABC room with more than 10 children, an additional staff person with a minimum of a CDA credential must also be present.
- 21.04 No SQP shall be approved for an ABC family home teacher to complete a CDA credential or Associate degree. The only SQP that shall be approved for an ABC family home teacher is for a four-year degree in early childhood or child development.
- 21.05 In evaluating the ABC program in a CCFH, the applicable ERS for family homes shall be utilized. Family homes shall be subject to the same guidelines as listed in Section 9.

SECTION 22 – COMPLIANCE

~~22.01: Any person may make a formal complaint with the DCCECE if that person has reason to believe that an ABC provider failed to comply with these rules or Ark Code Ann. 6-45-101 et seq.~~

~~22.01.1: The formal complaint shall include the following:~~

~~22.01.1.1: The name, phone number and address of the complaining party.~~

~~22.01.1.2~~ ~~The name of the ABC program complained of;~~

~~22.01.1.3~~ ~~A brief description of the acts or omissions the complaining party has reason to believe constitute a violation of these rules or Ark. Code Ann. § 6-45-101 et seq;~~

~~22.01.1.4~~ ~~Documents, if any, that support the complaint; and~~

~~22.01.1.5~~ ~~The names and contact information, if known, of any witnesses who may possess information relevant to the complaint;~~

~~22.01.2~~ ~~Signed complaints shall be mailed to the DCCECE at:~~

~~Arkansas Better Chance Program
Division of Child Care and Early Childhood Education
700 Main Street, Slot S-140
Little Rock, Arkansas 72203-1473~~

~~22.01.3~~ ~~DCCECE staff shall investigate the complaint. The investigation shall afford an opportunity for the ABC provider to respond to the complaint.~~

~~22.01.2~~ An ABC program found to be out of compliance with any ABC Rule or Regulation shall be placed on a 60-day Compliance Plan. During this probationary period, a program must make all necessary corrections or be subject to termination from the ABC program. Compliance deficiencies may also result in immediate termination from the ABC program, denial of future ABC funds, repayment of funds and exclusion from participation in any DHS programs.

~~22.02.3~~ Issues for a compliance plan may include, but are not limited to:

- Founded licensing or maltreatment complaints
- Violations of minimum licensing standards
- Revocation of Quality Approval status or failing to meet Quality Approval standards
- Financial mismanagement, including use of funds for programs other than ABC ~~programs as set forth in these rules;~~
- Failure to operate program in accordance with approved budget or any part of an approved grant application
- Enrolling ineligible children or refusing to enroll an eligible child due to toilet training issues or non-payment of other child care fees
- Habitually late reports or missing information
- Failure to report a change in program status within five working days
- Program deficiencies documented by DCCECE or any authorized representative
- Erroneous or fraudulent billing of DCCECE vouchers or Special Nutrition programs
- Falsification of any document or information
- Hiring of unqualified staff without consultation with DCCECE on a Staff Qualifications Plan.
- Staff members not meeting the requirements of a Staff Qualifications Plan.

- Dismissing or expelling a child from a program without approval from DCCECE

22.03.4 Any program who submits a falsified document will be subject to immediate termination from the ABC program, repayment of funds and possible referral of program officials and/or responsible employees for criminal prosecution.

22.04.5 An ABC program may appeal any adverse action taken by DCCECE. Such appeals must be in writing and be received within thirty (30) days of the notice of corrective action. A program wishing to appeal should send a written notice to Attention: DCCECE Division Director, P.O. Box 1437, Slot S-140, Little Rock, AR 72203. The Division Director will make a recommendation to the State Board of Education, which will issue a final ruling.

SECTION 23 – ADDITIONAL REGULATIONS CONCERNING THE USE OF ARKANSAS BETTER CHANCE PROGRAM FUNDS

23.01 Purpose: To assure that public funds are spent in compliance with U.S. Const. Amend. I, which prohibits any state or federal "law respecting an establishment of religion, or prohibiting the free exercise thereof."

23.02 Limitation: This section is not an exhaustive list of criteria to test constitutional sufficiency. The question in every case is whether state funds impermissibly aid a religiously based or affiliated entity in discharging its religious mission. The answer will be controlled by the particular facts of each case.

23.03 Definitions: As used in this Section 23:

23.03.1 "ABC day" means the seven (7) hours beginning with the first ABC activity of the day and includes all activities described in Section 13 of the ABC Program Standards.

23.03.2 "ABC instructional materials" means any tangible thing, such as a book, paper, poster, picture, slide, object, or display; or image or sound that an ABC provider uses to impart knowledge during an ABC day.

23.03.3 "Administrative costs" means:

(a) Salaries (including fringe)-Director and Assistance Director;

(b) Salaries-Housekeeping;

(c) Group Health Insurance;

(d) Child Care Center liability insurance;

(e) Pensions;

(f) Unemployment Taxes;

- (g) Worker's Compensation;
- (h) Accounting Fees;
- (i) Housekeeping Supplies; and
- (j) Criminal Background Checks.

23.03.4 "Professional services" means, without limitation, assessment, screening, instruction, and parent/community engagement activities.

23.03.5 "Religious activities" means, without limitation, religious services, prayer, religious rituals, or religious instruction provided or carried out by or under the authority of the ABC program.

23.03.6 "Secular" means not related to religion.

23.04 Conditions of Participation as an ABC Provider:

23.04.1 ABC programs must admit eligible students without regard to race, gender, national origin, ancestry, color, disability, creed, political affiliation, or religion.

23.04.2 ABC funds must be used exclusively for the following expenses incurred to provide ABC services:

- (a) Professional services (~~salaries~~ *compensation* and fringe benefits);
- (b) Assessment and screening tools;
- (c) Instructional materials;
- (d) Transportation to and from ABC programs;
- (e) Staff development;
- (f) Financial assistance for staff working towards a secular degree or credential relating to early childhood education, including but not limited to books, tuition and travel; and
- (g) If ABC funds remain after paying the expenses described in subparagraphs (a)-(f), those funds may be used to:
 - (1) Provide food for ABC students;
 - (2) Pay that portion of administration costs, utilities, or both, attributable to day care operations multiplied by the

following fraction: number of ABC students/ total number of day care students.

- 23.04.3 All ABC instruction and instruction materials must be secular and neutral with respect to religion.
- 23.04.4 No religious activity may occur during any ABC day ~~and no ABC funds may be used to support religious services, instruction or programming at any time.~~
- 23.04.5 Each ABC provider ~~must maintain documentation that it has provided parents and guardians with the following written notice:~~ that also offers religious activities must maintain documentation that it has informed parents and guardians in writing that no religious activity will be paid or subsidized by public funds or occur in any manner suggesting governmental endorsement of any religion or religious message.
- ~~To assure that no religious activity is paid or subsidized by public funds or occurs in any manner suggesting governmental endorsement of any religion or message:~~
- (a) ~~ABC funds must be used exclusively to support allowable ABC program costs incurred to provide non-religious instruction and activities during the ABC day, and~~
- (b) ~~No religious activity may occur during any ABC day regardless of the source of funds used to support the activity.~~
- 23.04.6 Each ABC provider must annually certify compliance with each requirement of this rule and agree to such unannounced public inspection and investigation as may be necessary to ascertain and monitor the provider's compliance.
- 23.04.7 ~~Each ABC provider must establish and maintain a separate bank account for the deposit, transfer and withdrawal all ABC funds. No other funds of the ABC provider shall be commingled in the bank account with ABC funds and no ABC funds shall be placed in another bank account maintained by the ABC provider.~~

General Summary of Revisions
During Public Comment

Arkansas Department of Education Rules Governing the
Arkansas Better Chance Program

General Summary of Revisions During Public Comment

- | | |
|-----------------|--|
| Section 22.01 | Based upon public comment, a revision was made to the rule to allow for a public complaint resolution procedure. |
| Section 22.02 | Renumbered due to the addition of Section 22.01. |
| Section 22.03 | Renumbered due to the addition of Section 22.01. Clarifying language was added to the rule to identify issues that may necessitate a compliance plan. |
| Section 22.04 | Renumbered due to the addition of Section 22.01. |
| Section 23.04.2 | Revised to clarify that ABC funds must be used exclusively for professional services, a term that encompasses compensation and fringe benefits, not just salaries. |
| Section 23.04.4 | Clarified that no ABC funds may be used to support religious services, instruction or programming at any time. |
| Section 23.04.5 | Clarified the notice that must be given to parents and guardians by each ABC provider. |
| Section 23.04.7 | Based upon public comment, a revision was made to the rule to require ABC providers to establish and maintain a separate bank account for the deposit, transfer and withdrawal of all ABC funds. |

Public Comment Matrix

Arkansas Better Chance Program Proposed Rules – Public Comment Matrix

Date	Respondent	Comment	ADE Response
2/14/12	Mike Houston	<p>"The purpose of the Arkansas Department of Education is to provide the highest quality leadership, service, and support to school districts and schools in order that they may provide equitable, quality education for all students in Arkansas PUBLIC schools. With a staff of approximately 300 professionals, the ADE is firmly committed to this mission."</p> <p>My question does the State of Arkansas own these schools? If the answer is NO then you have no right to govern what they teach. Funding that you gave out was your choice with out strings therefore hindsight rulings should be null and void. In saying this I believe it is wrong for private groups to take Gov. (public) funds because this is what the Government does instead of protecting the first amendment you do everything possible to trample on those rights. It's sad day for America that we allow those with no real vision for anything to stomp on our freedom.</p>	<p>From its original enactment, Ark. Code Ann. § 6-45-106 (a)(1)(B) has required compliance with the Establishment Clause, which prevents the expenditure of public funds to directly aid religion, regardless of whether the religious activity occurs on publicly owned property. See, e.g. <i>Comm. for Pub. Educ. & Religious Liberty v. Nyquist</i>, 413 U.S. 756, 778 (1973);</p>
2/23/12	Greg Buillard	<p>I recently read that you were opening up for public comment, a proposed rule for banning religious teaching during school hours by pre-schools. I do not live in Little Rock, but I wanted to write a letter to make a comment that could be added to the others.</p> <p>NOTE: This letter is being sent to the main communications line for the ADE, and all board members.</p> <p>To Whom it May Concern,</p> <p>I am perplexed as to the need for a law like this. The laws that are currently in place, concerning the teaching of religious ideology in schools are well established on a federal level. A state should not feel the need to create laws re-enforcing laws it is already required to follow, thus simply adding to our collection of state laws. Can it be assumed that the owner of these two institutions isn't aware that receiving government funds (over half a million over a two year period) would entail that he would be required to follow the same rules as everyone else? It is sad to me that this is one of our elected Representatives. For the record, I have no problem much like the law has no problem, with private religious schools teaching religion in their classrooms. I'm personally not a</p>	<p>The Establishment Clause "is not a precise, detailed provision in a legal code capable of ready application." <i>Lynch v. Donnelly</i>, 465 U.S. 668, 678 (1984). Rather, the Founders included the Establishment Clause to state an objective. <i>Id.</i> (Citations omitted).</p> <p>The line between permissible relationships and those barred by the Clause can no more be straight and unwavering than due process can be defined in a single stroke or phrase or test. The Clause erects a "blurred, indistinct, and variable barrier depending on all the circumstances of a particular relationship."</p> <p><i>Id.</i> at 678-9 (citations omitted.) It is difficult to "draw lines between forbidden and lawful benefit." <i>Mitchell</i>, 530 U.S. at 869 (Souter, J., dissenting). After more than 50 years of struggle, "not all of the points creating the boundary have enjoyed self-evidence." <i>Id.</i> Amplifying this point, Justice Souter added:</p>

Arkansas Better Chance Program Proposed Rules – Public Comment Matrix

		<p>fan of religion, but I understand the separation of church and the state, and would not impose upon their rights. However, My personal state tax money has now been collected into a pool of funds that has been distributed to support these two religious institutions. If they have taken this huge sum of money, then I feel confident that surely they are operating in the red, and would not have their doors open unless they were being supported by state funding. This is the case with public schools too; they do not support themselves, they exist because of funding provided by the government. I believe that the law itself should not be needed, because this matter has been settled years before any of these children were born. However, since the state of Arkansas sees fit to supplement the established law with even more red tape, then I would like not only for the proposition to pass, but an investigation should be considered into State Sen. Key, as to why he was accepting money for an institution of learning, with an intent on supplementing education with religious teachings. Taking a half million is not something that should be ignored. Irony all around, that he is dishonestly stealing to teach a doctrine that sees stealing as a sin.</p>	<p>In all the years of its effort, the Court has isolated no single test of constitutional sufficiency, and the question in every case addresses the substantive principle of no aid: what reasons are there to characterize this benefit as aid to the sectarian school in discharging its religious mission? <i>Particular factual circumstances control</i>, and the answer is a matter of judgment.</p> <p><i>Id.</i> (Emphasis added.) Far from being settled, Establishment Clause jurisprudence has changed significantly over time. See, e.g., <i>Agostini v. Felton</i>, 521 U.S. 203, 207 (1997). Consequently, proposed rules governing the particular factual circumstances of the ABC program are necessary to notify providers of their obligations under the Establishment Clause, and to guide regulators in matters of judgment.</p>
<p>2/13/12</p>	<p>Linda Ferguson</p>	<p>I understand the Ark. Board of Education has come down on a Christian pre-school for having prayers and teaching Bible stories. I'm told this is being done simply because you can since this school has accepted gov. funding. My guess is that the secularists, ACLU, atheists or others are the ones complaining. I want to point out that surely you people have not failed to notice that children of all ages in Arkansas and across the country are not being taught the moral lessons people must know for all of us to behave civilly and acquire virtues and principles that will carry them through their lives avoiding conflicts with others. Parents, schools and churches have failed our children for various reasons. Bottom line is that a good many of our children do not know how to conduct themselves as civilized human beings. To put a stop to any person or organization teaching our children the moral tools they need to succeed is unconscionable. I ask you to back off this attack against Growing God's Kingdom or any other school that attempts to instill morals and good behavior. Those opposing the</p>	<p>The proposed rule does not prohibit the teaching of moral lessons, which the dictionary defines as "principles of right and wrong in relation to human action and character." <i>American Heritage Dictionary</i> 813 (2d coll. Ed. 1985). Instead, the proposed rule prevents direct public aid to the teaching of religion, which the dictionary defines as "[b]elief in and reverence for a supernatural power recognized as the creator and governor of the universe." <i>Id.</i> at 1044.</p> <p>The priceless truths of the Bible are best taught to our youth in the church, the Sabbath and parochial schools, the social religious meetings, and; above all, by parents in the home circle. There, these truths may be explained and enforced, the spiritual welfare of the child guarded and protected, and his spiritual nature directed and cultivated, in accordance with the dictates of the parental</p>

Arkansas Better Chance Program Proposed Rules – Public Comment Matrix

		<p>curriculum of this school are only doing so out of hatred and resentment of Christianity. Can you not see this? To do anything else is to fail our children.</p>	<p>conscience. The Constitution does not interfere with such teaching and culture. It only banishes theological polemics from the district schools. It does this, not because of any hostility to religion, but because the people who adopted it believed that the public good would thereby be promoted, and they so declared in the preamble.</p> <p><i>Schultz v. Medina Valley Indep. Sch. Dist.</i>, 2012 WL 517518 (W.D. Tex.) (quoting <i>State ex rel. Weiss v. Dist. Bd.</i>, 76 Wis. 177, 44 N.W. 967, 976 (1890)).</p>
<p>2/28/12</p>	<p>Teresa Fine</p>	<p>The past few weeks I have been reading with interest the development of the rules regarding ABC day cares in our state. I was very concerned when an article first appeared in the Arkansas Democrat Gazette regarding an inspection and reprimand of an ABC Day Care. It seemed the General Assembly and the Department of Education were at odds over the intent of the parameters of the centers. It is understood that when any facility receives public monies it is subject to the governing authorities mandates. In reading the rules of the ABC Centers on the web I saw something. The ABC rules speak in Section 23 that its purpose is to uphold the first amendment in regard to religion. There is no mention of the other first amendment rights of these small citizens in their freedom of speech, freedom of press, the right to peaceably assemble, and the right to petition the government for redress of grievances. There is also no mention of protecting the free exercise of religion mentioned in this amendment. To understand this amendment more fully I believe it is most helpful to look at other contemporary writings by the same authors of the Bill of Rights and the Constitution they penned. I began to look up these things and the journey was fascinating and enlightening. In May of 1787 the Constitutional Convention (as it is now called) met to address the weaknesses and deficiencies of the Articles of Confederation which governed our young nation. They found it inadequate in its scope and began work on what would be our Constitution by which we are still governed. The first draft was ready in August and the final one in</p>	<p>See previous comment.</p> <p>Like the Establishment Clause, the Free Exercise Clause is contained in the First Amendment to the United States Constitution. Both clauses are of equal importance.</p> <p>The Free Exercise Clause was a guidepost in developing the proposed rule, as evidenced by the care taken to assure that the proposed rule does not impair the exercise of religion in connection with any activity that is not supported with public funds.</p>

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		<p>September of that same year. By that time our young nation was expanding westward at a rapid pace. In order to set protocols and parameters by which as yet uninformed population could become at first territories and then states the Northwest Ordinance of 1787 was passed in July of that year in the midst of it all. It addressed many of the same values held by our founding fathers that were being incorporated into the yet to be finished Constitution. Ratification would take time and expansion would not wait. This document guaranteed in the territories what would soon be guaranteed in the states: freedom of religion, freedom of speech, freedom of press, the right to peaceably assemble, habeas corpus, bans on cruel and unusual punishment, trial by jury, ex post facto laws, and the right to petition the government for redress of grievances. It also set the standard for public education at that time. "Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." Our children today are in no less need of these same values in themselves and in their government. If we truly want to give these small "Arkansans a Better Chance" as these rules so state as their purpose we should take some very old advice and allow the free exercise of religion in these ABC Day Cares. It would not be a bad idea to do as the Northwest Ordinance did and require it. ABC parents should be free to place their children in day care centers of excellence that are friendly to and encouraging of their faith not hostile to it. As Arkansans we are a religiously friendly state and we by in large share many of the same values and beliefs regardless of the name on the church we attend or do not attend. Our ABC day care centers should be a reflection of this. Please reconsider Section 23 to alter its contents so that it is friendly to the citizens it serves.</p>	
3/1/12	Rankin and Dorothy Kennedy	<p>We should have freedom to express our Christian beliefs that our government was founded on. The Bible teaches virtues the children and staff should practice. Please consider my request to allow Bible teaching in school .</p>	<p>The proposed rule only prohibits using public funds for Bible teaching; it does not prohibit privately supported Bible teaching in preschool programs.</p>
3/6/12	Deborah Wright (Executive	<p>As written this rule appears to affect regular ABC budget</p>	<p>Under the United States Constitution, the Arkansas Department of Education has no authority to adopt a rule allowing public funds to be used for Bible teaching. The proposed rule's spending limitations apply to all ABC</p>

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	<p>Director, Quality Child Care, Inc.)</p>	<p>items and is confusing to providers. Please make clarification that this is only related to teaching religious content. Please also clarify that no other issues were addressed at this public hearing. Additionally, I would like to volunteer to be apart of any committees organized pertaining to ABC as a voice for the private provider sector. Thank you for allowing us to enrich the lives of children, daily!</p>	<p>expenditures.</p>
<p>2/28/12</p>	<p>Americans United for Separation of Church and State</p>	<p>We have reviewed the proposed additions to the regulations for the Arkansas Better Chance for School Success program. This letter contains Americans United's public comments on those proposed regulations. The proposed regulations, and the FAQ that accompanies and explains those regulations, constitute a mostly effective system for ensuring that religious activity does not occur during the 7-hour ABC program day. We have, however, identified three areas in which the proposed rules should be strengthened, and shall devote our comments to addressing those problem areas. <i>Enforcement of funding restrictions and use of ABC funds</i> Although the proposed rule purports to limit the use of ABC funds to pay for certain strictly delineated items (see Arkansas Department of Education Rules Governing the Arkansas Better Chance Program, § 23.04.2 (proposed February 13, 2012)), the rules (both currently in force and the proposed additions) do not appear to contain a particularly robust system for enforcing these spending restrictions.¹ The annual grantee financial statements that we have seen only report expenditures related to very broad categories- salaries, transportation, rent, and the like and would only be of limited usefulness for enforcement. Nor do we see any evidence that grantees are required to ensure that ABC funds are not commingled with private funds. Once commingling has occurred, the government becomes reliant upon statistical analysis and other unacceptable accounting tricks to ensure that ABC funds have not been used for religious activities. See <i>Comm. for Pub. Educ. & Religious Liberty v. Nyquist</i>, 413 U.S. 756, 778 (1973) ("[O]ur cases make clear that a mere statistical judgment will not suffice as a guarantee that state funds will not be used to finance religious [activity]."); accord <i>Ams. United for Separation of Church & State v. Prison Fellowship</i></p>	<p><i>Enforcement.</i> The proposed rule imposes specific and detailed expenditure limitations not only to assure that no public funds are spent to support religion, but also to require clearly defined and traceable funding streams. Compliance with the spending restrictions is a condition of participation in the ABC program, so termination awaits any provider that does not promptly correct any noncompliance.</p> <p><i>Use of Funds:</i> We agree that establishment of separate bank accounts is a prudent practice that will simplify monitoring and save auditing time, and will modify the proposed rule accordingly. For the following reasons we do not, however, agree that the proposed rule establishes any statistical allocations or that separate bank accounts are constitutionally mandated.</p> <p>ARKANSAS DEPT OF ED. RULES GOVERNING THE ARKANSAS BETTER CHANCE PROGRAM, §§ 6.03-4 and 6.08, require that ABC programs use matching (40%) and other funding in addition to ABC public funding. If, for example, the proposed rule had provided that religious activities could take place 40% of the time, a statistical allocation would exist and the commenter's point would be well taken. But such is not the case, because no ABC funds may be used for any religious activities at any time or place, and no religious activities may occur during an ABC day even if the activities are privately funded.</p> <p>The commenter cited three cases in support of this recommendation:</p> <p>(a) <i>Comm. for Pub. Educ. & Religious Liberty v. Nyquist</i>, 413 U.S. 756, 778 (1973);</p> <p>(b) <i>Ams. United for Separation of Church & State</i></p>

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<p><i>Ministries</i>, 432 F. Supp. 2d 862, 923-24 (S.D. Iowa 2006) (refusing to accept state's attempt to show that it only funded non-sectarian activity by using percentages rather than accounting for specific activities); <i>Freedom From Religion Found. v. McCallum</i>, 179 F. Supp. 2d 950, 974 (W.D. Wis. 2002) ("The Supreme Court has systematically rejected attempts to unbundle religious activities through statistics and accounting."). Moreover, the Frequently Asked Questions document that accompanies the proposed rules implies that religious activity supported by ABC funds can occur so long as it occurs outside the program day. See Arkansas Better Chance for School Success Programs Religious Activities Frequently Asked Questions, page 2 ("Accordingly, Arkansas Better Chance for School Success program funds may be used for all of the purposes listed in the proposed addition but not for religious services, religious rituals, or religious instruction provided or carried out as a part of or during an ABC program."). In fact, government funds must not directly support religious services, instruction, or programming at any time, not just for the arbitrarily selected duration of the program. See <i>Mitchell v. Helms</i>, 530 U.S. 793, 840-41, 857, 861 (2000) (O'Connor, J., concurring); <i>Bowen v. Kendrick</i>, 487 U.S. 589, 621 (1988); <i>Roemer v. Bd. of Pub. Works</i>, 426 U.S. 736, 754-55 (1976); <i>Hunt v. McNair</i>, 413 U.S. 734, 743 (1973). Indeed, in <i>Tilton v. Richardson</i>, 403 U.S. 672 (1971), the Supreme Court struck down a statutory enforcement provision because it set an arbitrary time-limit of twenty years on the government's ability to prohibit religious activities in a building constructed by government funds. <i>Id.</i> at 683. Together, these issues result in a serious problem with the proposed rule: it does not provide a way to track precisely what ABC funds are being spent on, and it may give grantees the impression that ABC funds can be used to provide infrastructure and support for the grantees' religious programming that occurs outside the school day. Religious programming must be financed only by private funding and not by government funding. For illustrative purposes, imagine a pre-school program that operates solely with ABC funding the government pays all operating expenses and the program has no private funding. Such a school cannot legally engage in</p>	<p><i>v. Prison Fellowship Ministries</i>, 432 F.Supp.2d 862, 923-24 (S.D. Iowa.2006), <i>aff'd</i> in part and <i>rev'd</i> in part, 509 F.3d 406 (8th Cir. 2007); and (c) <i>Freedom From Religion Found. v. McCallum</i>, 179 F. Supp.2d 950, 974 (W.D. Wis. 2002).</p> <p><i>Nyquist</i> invalidated a New York law that paid public funds to parochial schools for school facility maintenance and repair (including heat, light, and water), capped at 50% of the average per-pupil cost in public schools. The Supreme Court ruled that while incidental and indirect benefits to religion do not offend the Constitution, states must not engage in "sponsorship, financial support, and active involvement of the sovereign in religious activity." 413 U.S. at 771. In direct response to <i>Nyquist</i>, the proposed rule creates redundant safeguards that make it impossible to reasonably conclude that the state is sponsoring, financially supporting, or is actively involved in, religion.</p> <p>Pointing to page 778 of the <i>Nyquist</i> opinion, the commenter focused on the 50% cap for maintenance payments. Allocating payments at 50% of the per-pupil costs in public schools was a statistical judgment that at least 50% of the teaching at parochial schools was secular, and thus could be supported with public funds. The Supreme Court, however, determined that the statistical allocation did not assure that public funds will not be used to support religion. 413 U.S. at 778.</p> <p>Critically: (a) fund co-mingling was not the issue; and (b) unlike the New York arrangement, the proposed rule does not rely on any statistical allocation, and instead imposes an absolute bar on the use of public funds for any religious activity.</p> <p>In <i>Prison Fellowship Ministries</i>, Iowa contracted with a religious organization to provide a mix of sectarian and secular services to prison inmates. As in <i>Nyquist</i>, Iowa used a fixed percentage to statistically allocate Prison Fellowship Ministries' staff time between secular (state paid) time and sectarian (non-state paid) time. On appeal, the Eighth Circuit Court of Appeals ruled that because Iowa did not monitor Prison Fellowship</p>
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<p>religious activity no matter if it occurs outside of the "ABC program day" or not, because everything that the school does is funded and directly supported by the government. See, e.g., <i>Mitchell</i>, 530 U.S. at 840-41, 857, 861 (O'Connor, J., concurring); <i>Tilton</i>, 403 U.S. at 683-84; <i>Cnty. House, Inc. v. City of Boise</i>, 490 F.3d 1041, 1056-59 (9th Cir. 2007). This problem is easy to fix. Retain the existing rule prohibiting religious activity as part of any ABC program or during the ABC program day, but add a rule clarifying that ABC funds must not be used to directly support religious activity, even if that activity occurs outside the formal bounds of the ABC program or outside the ABC program day. Further, add a new rule that requires that ABC funds be kept in a separate bank account, apart from any private funds. This will make it possible to directly track what ABC funds pay for and, thus, to determine whether ABC funds are improperly used to pay for religious activity. 2 Such a requirement would also resolve our hypothetical situation above, because it would be abundantly clear that the preschool in question did not have the private funds available to pay for its religious activities. This rule will also have the virtue of being an easy requirement to apply to all ABC grantees, and not just faith-based grantees, thus avoiding any question about whether faith-based grantees are being treated differently. and that ABC funds were being used improperly. You would also be less reliant upon someone filing a complaint, because violations would likely be apparent during the annual audit.</p> <p><i>Religious Iconography</i></p> <p>The proposed rule apparently allows religious iconography to remain on the walls of faith-based grantee pre-schools. Though this does not appear in the proposed rule itself, it is stated directly in the F AQ that accompanies the rule. Specifically, the F AQ states that the government may not condition the receipt of government funds on the removal of religious iconography from private premises, and that government programs can operate with visible iconography. The only legal authority cited for these propositions is a passage from <i>Agostini v. Felton</i>, 521 U.S. 203 (1997), which you appear to cite here for the proposition that the government cannot deny aid to a religious organization</p>	<p>Ministries' use of public funds, the court would not apply the legal presumption of compliance with secular restrictions. ("In the absence of evidence to the contrary, we assumed instead that the [publicly-paid] interpreter [assigned to a parochial school] would dutifully discharge her responsibilities as a full-time public employee and comply with the ethical guidelines of her profession by accurately translating what was said.") <i>Agostini v. Felton</i>, 521 U.S. 203, 223-24 (1997).</p> <p>Existing ABC rules clearly state that the Arkansas Better Chance ("ABC") program is a 7-hour daily preschool program. ARKANSAS DEPT OF ED. RULES GOVERNING THE ARKANSAS BETTER CHANCE PROGRAM, §§ 9.06; 13.07-8; and 13.12. Under the proposed rule, 100% of ABC time will be secular; 0% will be sectarian. The absence of secular/sectarian statistical allocations undermines any comparison with <i>Prison Fellowship Ministries</i>.</p> <p>In <i>Freedom From Religion Foundation</i>, Wisconsin hired Faith Works, a faith-based drug and alcohol treatment provider, to counsel Wisconsin Department of Correction inmates. Counselors' time was allocated 80% to secular activities; however, counselors engaged "in religious counseling on an 'as needed' basis." 179 F. Supp. 2d at 973. "Moreover, counselors are available to discuss issues of spirituality at any time." <i>Id.</i> The court ruled that this ill-defined and unstructured intermingling of secular and sectarian activities made it impossible "to conclude that the counselors' duties are 80% religion-free. It follows that the religious responsibilities of the counselors cannot be estimated and distinguished from the job responsibilities that are publicly funded." <i>Id.</i> In stark contrast to the Wisconsin arrangement, the proposed rule prevents any such intermingling by forbidding ABC teachers from engaging in religious counseling or discussing spiritual issues at any time during any ABC program.</p> <p>Faith Works attempted to overcome its main obstacle – the impossibility of determining when counselors are engaging in religious activities – by asserting that it received sufficient private funds to pay its counselors. The court was not persuaded, because</p>
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	<p>for a discriminatory reason. <i>Id.</i> at 231. But <i>Agostini</i> dealt with a program that sent public-school teachers onto campuses of private schools - some of which were religious schools to teach wholly secular materials to the private school students. <i>Id.</i> at 208-14. The case does not hold that the government cannot regulate its programs to ensure that they do not violate the Establishment Clause. Indeed, the program in <i>Agostini</i> was subject to extensive regulation to ensure that the program remained secular, including a requirement that "[a]ll religious symbols were to be removed from classrooms used for Title I services." <i>Id.</i> at 211-12. The courts commonly consider the presence of visible religious iconography as a major factor in determining the constitutionality of a government program operated on or within private religious property. <i>Compare Spacco v. Bridgewater Sch. Dep't</i>, 722 F. Supp. 834, 842 (D. Mass. 1989) (granting preliminary injunction to plaintiffs assigned to public-school facility leased from Roman Catholic Church, despite fact that religious symbols were covered in classrooms, because students could not avoid several large crosses outside building that impermissibly linked public school to Church), and <i>Musgrove v. Brevard Cnty. Sch. Bd.</i>, 608 F. Supp. 2d 1303, 1305 (M.D. Fla. 2005) (concluding that public-school graduation ceremonies in a church with large visible cross would be unconstitutional), with <i>Walker v. SF. Unified Sch. Dist.</i>, 46 F.3d 1449, 1456 (9th Cir. 1995) (noting, as evidence that mobile classrooms parked on parochial-school property were religiously neutral sites, that units contained no religious symbols); <i>Pulido v. Cavazos</i>, 934 F.2d 912, 919-20 (8th Cir. 1991) (same); <i>Porta v. Klagholz</i>, 19 F. Supp. 2d 290,303 (D.N.J. 1998) (holding that charter school located in church did not violate Establishment Clause because no religious symbols or messages were visible to students inside building, no religious symbols appeared on exterior of building, and charter-school students had separate entrance that did not require them to pass sign for church); <i>Thomas v. Schmidt</i>, 397 F. Supp. 203, 207 (D.R.I. 1975) (noting as evidence of religious neutrality that no religious artifacts were displayed in classrooms or corridors of portion of parochial school leased to public school to relieve overcrowding), <i>aff'd mem.</i>, 539 F.2d 701 (1st Cir. 1976). The classroom environment is an</p>	<p>there is no way to excise any activities offending the establishment clause from state funding. The public and private funding that Faith Works receives is deposited into the same account and is not earmarked for one purpose or another. Therefore, it is not accurate for Faith Works to assert that public funding is not used to pay counselor salaries.</p> <p>179 F. Supp. 2d at 974. Co-mingling of funds was an issue only because religious and non-religious activities were co-mingled in ways that made reliable monitoring impossible. ABC, however, is 100% religion-free, eliminating any comparable funding concerns.</p> <p>We disagree that the proposed rule arbitrarily selects ABC program duration. Existing ABC rules define the 7-hour ABC course of preschool instruction, and provide that every student activity – including recesses and meals – are a part of that program. Unlike the prison cases cited by the commenter, the ABC program is a non-residential program that has a clearly defined daily beginning and end.</p> <p>As a condition of ABC participation, providers must use ABC funds “exclusively ... for ... expenses incurred to provide ABC services.” Proposed rule, § 23.04.2. By definition, ABC services cannot exist outside the formal bounds of the ABC program or outside the ABC program day. Any ABC provider who uses ABC funds for any reason other than to provide ABC services is ineligible to continue participating in the ABC program. It is, therefore, clear that the proposed rule prohibits the use of any ABC funds to directly support religious services, instruction, or programming at any time.</p> <p>Additionally, the proposed rule prohibits religious activities during the ABC day regardless of the funding source for such activities. By preventing any comingling of sectarian and secular activities, the proposed rule avoids the problems discussed in <i>Nyquist</i>, <i>Prison Fellowship Ministries</i>, and <i>Freedom From Religion Foundation</i>.</p>
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<p>The commenter, however, argues that the proposed rule is inadequate, as illustrated by the following hypothetical situation:</p> <p>Imagine a pre-school program that operates solely with ABC funding -- the government pays all operating expenses and the program has no private funding. Such a school cannot legally engage in religious activity no matter if it occurs outside of the "ABC program day" or not, because everything that the school does is funded and directly supported by the government.</p> <p>This hypothetical is unrealistic, because:</p> <p>(a) ABC public funds supplement, and do not supplant, other early childhood funding sources, so no ABC program operates solely with ABC funding. See ARKANSAS DEPT OF ED. RULES GOVERNING THE ABC PROGRAM, § 6.08; and</p> <p>(b) As explained elsewhere, ABC funds cannot be used for capital expenses or certain other costs that ABC providers necessarily incur to keep the doors open, so non-public funding sources are a given.</p> <p>That aside, the commenter appears to assume that all religious activities are paid, and that no volunteer leads or participates in religious activities. In fact, one of two things must be true with respect to the hypothetical: (a) the provider diverts ABC funds to pay for after-program religious activities; or (b) the religious activities are unpaid. If ABC funds are used, the provider is in violation of a condition of ABC program participation, is no longer eligible to receive ABC funds, and any Establishment Clause violation is corrected. If the religious activities are unpaid, then the activities are not publicly supported, and there is no Establishment Clause violation.</p>	<p>integral part of the ABC program. This is evident in the fact that the government already extensively regulates the physical makeup of the preschool classrooms used by ABC grantees. The ABC rules set minimum standards for eligible classrooms using an environmental rating scale (§ 9.05), dictate when classroom partitions make a single-room count as multiple classrooms (§§ 12.04 & 13.02), command that each classroom be stocked with specific items and where those items should be stored (§ 13.03), and set out standards that directly affect the layout of both inside and outside areas (§§ 13.10, 13.11, 13.13). The government regulates the environment in these ways because the physical makeup of the environment and the images and symbols contained therein communicate messages and ideas to the students who are immersed in them. Government programs cannot communicate religious messages, and it is beyond dispute that religious iconography sends a religious message. See <i>Capitol Square Review and Advisory Bd. v. Pinette</i>, 515 U.S. 753, 760 (1995) (holding that Christian cross sends an expressive message); <i>City of Allegheny v. ACLU</i>, 492 U.S. 573, 598, 600-01 (1989) (finding that crèche sends a religious message); <i>W. Va. State Bd. of Educ. v. Barnette</i>, 319 U.S. 624, 632 (1943) (noting that "the church speaks through the Cross, the Crucifix, the altar and shrine, and clerical [r]ajiment"). Consequently, the government can no more allow ABC grantees to use religious iconography as a part of the ABC program than it can allow them to conduct Bible lessons or sing religious songs. Again, the fix for this problem is easy: require grantees to cover or remove religious messages or iconography during the ABC day to ensure that the program remains wholly secular.</p> <p><i>Misleading disclaimer</i></p> <p>Finally, proposed rule 23.04.5 requires that grantees must inform parents and guardians in writing that "no religious activity will be paid or subsidized by public funds or occur in any manner suggesting governmental endorsement of any religion or religious message." This language may incorrectly suggest that religious activity may occur during ABC programming or as part of the ABC program day if it is not financed with public funds. That would be contrary to both the proposed rule and the</p>
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	<p>Constitution. As noted above, government-funded programs must not include religious activities, and the courts have repeatedly rejected arguments that religious components can be included in state-sponsored programs if statistics or accounting are used to allocate the cost of those components to private funding. See <i>Nyquist</i>, 413 U.S. at 778-80; <i>Prison Fellowship</i>, 432 F. Supp. 2d at 923-24; <i>McCallum</i>, 179 F. Supp. 2d at 974.</p>	<p>ABC programs must have written agreements with teachers and paraprofessionals. Arkansas Dept. of Ed. Rules Governing the Arkansas Better Chance Program, § 11.13. Agreements must state the rate and frequency of pay, working days per year, working hours per day, and specific duties. <i>Id.</i> Consequently, ABC funding is traceable. For example, assume that a provider-teacher agreement sets the teacher's salary at \$15 per hour and requires the teacher to lead one hour of religious activities daily. If an audit shows that the teacher's gross pay is \$120 on any day, ABC funds are being diverted to religious activities and correction or enforcement (termination form the ABC program) will follow.</p> <p>Compare that to another contract at the same pay. An audit shows that the teacher's gross pay is \$105 per day, but the teacher, as a condition of employment, must lead 1 hour of religious activities after each ABC day without pay. In the second example, the teacher's decision to take the job means that he or she "volunteers" to lead religious activities. Even if the teacher feels coerced to accept the "take it or leave it" offer:</p> <ul style="list-style-type: none"> (a) Neither the teacher nor the provider receives any public support for religious activities; and (b) The decision to accept the conditions of employment is a personal decision made by the teacher; no state action is involved. <p>An Establishment Clause violation does not exist unless it is "fair to say that the government <i>itself</i> has advanced religion through its own activities and influence." <i>Mitchell v. Helms</i>, 530 U.S. 793, 809 (2000) (O'Connor, J., concurring) (Emphasis in original, citation omitted). Thus, some state action supporting religious activity must exist before the Establishment Clause is implicated. <i>Id.</i> (citations omitted).</p> <p>It is not enough to point to secular public aid received earlier in the day and argue that the government aid was a catalyst for attendance at a subsequent religious activity. In <i>Good News Club v. Milford Central School</i>,</p>
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		<p>533 U.S. 98 (2001), a public school denied the Good News Club's application to conduct activities, including religious activities, at the public school after class. The Supreme Court held that: (a) the denial violated the Free Speech Clause; and (b) the after school meetings posed no threat of an Establishment Clause violation. "[W]e have never extended our Establishment Clause jurisprudence to foreclose private religious conduct during nonschool hours merely because it takes place on school premises where elementary school children may be present." 533 U.S. at 113.</p> <p>The commenter cites three cases in support of this comment:</p> <p>(a) <i>Mitchell v. Helms</i>, 530 U.S. 793, 840-41, 857, 861 (2000) (O'Connor, J., concurring);</p> <p>(b) <i>Tilton v. Richardson</i>, 403 U.S. 672, 683-84 (1971); and</p> <p>(c) <i>Crmty. House, Inc. v. City of Boise</i>, 490 F.3d 1041, 1056-59 (9th Cir. 2007).</p> <p><i>Mitchell</i> concerned a Louisiana law under which the state channels public funds to local education agencies that use the funds to purchase, among other things, secular educational and reference materials, which the agencies then loan to pervasively sectarian schools. <i>Mitchell</i> rejected an Establishment Clause challenge to the law, holding that "the question whether governmental aid to religious schools results in governmental indoctrination is ultimately a question whether any religious indoctrination that occurs in those schools could reasonably be attributed to governmental action." 530 U.S. at 809 (citations omitted). (Emphasis in original, citation omitted.)</p> <p>Accordingly:</p> <p>When a religious school receives textbooks or instructional materials and equipment lent with secular restrictions, the school's teachers need not refrain</p>
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		<p>from teaching religion altogether. Rather, the instructors need only ensure that any such religious teaching is done without the instructional aids provided by the government.</p> <p>530 U.S. at 859 (O'Connor, J., concurring). <i>Mitchell</i>, therefore, flatly contradicts any suggestion that ABC teachers must refrain from teaching religion altogether.</p> <p><i>Mitchell</i> also identified three public spending limitations that assure Constitutional compliance:</p> <ul style="list-style-type: none"> (a) Limit public aid to secular services, materials, and equipment; (b) Prohibit any public payment for religious worship or instruction; and (c) Require signed assurances of compliance. 530 U.S. at 861-2. <p>The proposed rule imposes all these limitations, and otherwise satisfies all <i>Mitchell</i> tests for constitutional compliance.</p> <p>Justice O'Connor's concurring <i>Mitchell</i> opinion distinguishes the Supreme Court's opinion in <i>Sch. Dist. of the City of Grand Rapids v. Ball</i>, 473 U.S. 373 (1985) (overruled by <i>Agostini</i>). In that case, Grand Rapids paid for after-school classes to supplement parochial school curricula. Teachers who had just completed a day devoted to carrying out the school's religious mission taught the classes, causing Justice O'Connor to presume that: (a) the day's religious teaching would not end abruptly, but rather, would bleed into the supplemental classes; and (b) because the supplemental classes were entirely paid for by public funds, the carry-over religious teaching would result in governmental religious indoctrination:</p> <p>[In <i>Ball</i>] I was willing to presume that the religious school teacher who works throughout the day to advance the</p>
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<p>school's religious mission would also do so, at least to some extent, during the [publicly financed] supplemental classes provided at the end of the day. Because the government financed the entirety of such classes, any religious indoctrination taking place therein would be directly attributable to the government.</p>	
<p>530 U.S. at 860.</p>	
<p>The Establishment Clause is not offended if teachers continue to convey secular information during after-school religious activities, so <i>Ball</i> is the precise opposite of this matter.</p>	
<p>Activities that occur outside the ABC day are not government-sponsored. As <i>Mitchell</i> explains, the question is whether the government itself advances religion through its own activities and influence, not whether others advance religion before or after some separate government-supported activity. <i>Mitchell</i> and <i>Agostini</i> illustrate that point: both cases concerned public aid to parochial schools that carried out religious instruction and activities to a captive audience throughout the regular school day, under circumstances creating far more potential for indirect government aid to religion than is possible under the proposed rule. Nevertheless, both cases held that such public aid to a sectarian organization is permissible if: (a) publicly employed teachers do not attempt to inculcate religion; 2) public aid is made available to both religious and secular beneficiaries on a nondiscriminatory basis; and 3) public aid is available to all eligible children regardless of their religious beliefs or where they attend school. <i>Agostini</i>, 521 U.S. at 205. Under the proposed rule, public aid provided to ABC programs would meet these conditions.</p>	<p><i>Tilton</i> concerned the Higher Education Facilities Act of 1963 ("Act"). The Act provided grants to church-related colleges and universities to construct academic facilities, and limited the facilities' uses to secular purposes. Though the grants themselves were permissible, the Act went on to say that the secular-use limitation expired after</p>

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		<p>20 years, creating the probability that publicly funded buildings of considerable value would be converted to religious use. We agree that the government may not build a physical plant and subsequently donate that capital investment for religious uses. No similar danger exists in the ABC program, because the proposed rule limits ABC expenditures to non-capital expenditures.</p> <p>Taken together, the prohibitions against any capital expenditures – or any expenditure outside the formal bounds of the ABC program – render <i>Tilton</i> inapplicable. <i>Tilton</i> does, however, teach that the Establishment Clause is no bar to the provision of public assistance to religious institutions if that assistance is limited to secular purposes.</p> <p>In <i>Community House</i>, the City of Boise leased a homeless shelter worth at least \$2.5 million to Boise Rescue Mission Ministries (“Ministries”) for \$1 per year. Ministries conducted daily religious activities as part of its shelter operations. The net effect was reminiscent of <i>Tilton</i>: the government in effect donated a building for religious activities. Predictably, the Ninth Circuit Court of Appeals determined that the arrangement constituted an actual diversion of secular government aid to religious indoctrination in violation of the Establishment Clause.</p> <p>Because the proposed rule does not allow ABC funds to be diverted to any purpose other than ABC secular educational services, no circumstance resembling <i>Community House</i> is possible with respect to the ABC program.</p> <p><i>Religious Iconography</i>: We agree that providers may not use religious iconography as a part of the ABC program. To that end:</p> <p>(a) Section 23.03.2 defines “instructional materials” as “any tangible thing, such as a ... poster, picture ... object ... display; or image ... that an ABC provider uses to impart knowledge during an ABC day.” Section 23.04.3 requires that all instructional materials be “secular and neutral with respect to religion.” Taken together,</p>
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		<p>these two provisions prevent the use of religious messages or iconography during the ABC day; and</p> <p>(b) The FAQ states that "the Establishment Clause prohibits using such religious material or symbols for religious instruction or observance during as a part of any government-funded program, including ABC."</p> <p>Accordingly, the proposed rule complies with the Establishment Clause, which "focuses on the manner of use to which materials are put; it does not focus on the content of the materials per se." <i>Roberts v. Madigan</i>, 921 F.2d 1047, 1055 (10th Cir. 1990) (emphasis in original). Additionally, the proposed rule is consistent with 45 C.F.R. §§ 87.1(d) and 87.2(d), which provide that:</p> <p>A religious organization that participates in the Department-funded programs or services will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from the Department to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, a faith-based organization that receives financial assistance from the Department may use space in its facilities without removing religious art, icons, scriptures, or other religious symbols.</p> <p><i>Misleading Disclaimer:</i> The challenged statement is not a disclaimer, but rather, a notice. To read the notice as suggesting that privately-funded religious activities may occur during the ABC day, the reader must ignore the proviso that "no religious activity ... [will] ... occur in any manner suggesting governmental endorsement of any religion or religious message." However, the statement must be read as a whole. <i>Grayned v. City of Rockford</i>,</p>
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			<p>408 U.S. 104, 110 (1972). Read as a whole, the notice does not support the commenter's concern. For the sake of clarity, however, we will amend the statement as follows:</p> <p>23.04.5 Each ABC provider must maintain documentation that it has provided parents and guardians the following written notice:</p> <p>To assure that no religious activity is paid or subsidized by public funds or occurs in any manner suggesting governmental endorsement of any religion or religious message:</p> <p>(a) ABC funds must be used exclusively to support allowable ABC program costs incurred to provide non-religious instruction and activities during the ABC day; and</p> <p>(b) No religious activity may occur during any ABC day regardless of the source of funds used to support the activity.</p>
3/6/12	Karen Marshall (Arkansas Child Care Providers' Association	As written this rule appears to affect regular ABC budgets and is confusing to providers. Please clarify that this is only related to programs who have instructors who specifically teach religious content.	See response to comment filed on 3/6/12 by Deborah Wright.
3/7/12	Elaine Turley	The past few weeks I have been hearing and reading with interest the development of the rules regarding ABC day cares in our state. I was very concerned when I first heard about an inspection and reprimand of an ABC Day Care. It seemed the General Assembly and the Department of Education were at odds over the intent of the parameters of the centers. I understand that when a facility receives public monies it is subject to the governing authorities mandates. But the ABC rules speak in Section 23 that its purpose is to	See response to comment filed on 2/13/12 by Linda Ferguson. See response to comment filed on 2/28/12 by Teresa Fine. Parents are free to choose faith-based preschool programs, with the understanding that public funds may not directly support religious activities taking place at such programs.

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	<p>uphold the first amendment in regard to religion. Section 23.01 Purpose: "To assure that public funds are spent in compliance with U.S. Const. Amend. I, which prohibits any state or federal "law respecting an establishment of religion, or prohibiting the free exercise thereof." There is no mention of the other first amendment rights of freedom of speech, freedom of press, the right to peaceably assemble, and the right to petition the government for redress of grievances. In section Section 23.03.4 "Religious activities" means, without limitation, religious services, prayer, religious rituals, or religious instruction provided or carried out by or under the authority of the ABC program." and then in Section 23.04.5 it states that "Each ABC provider that also offers religious activities must maintain documentation that it has informed parents and guardians in writing that no religious activity will be paid or subsidized by public funds or occur in any manner suggesting governmental endorsement of any religion or religious message." If an ABC provider wants to have a Bible story or prayer before a meal and the parents and/or guardians know this is done and have been informed then this entire thing is a moot point. I do not see how a prayer before a meal or the telling of a Bible story in any way 'establishes a religion', in fact, it denies me and my children/grandchildren the freedom to exercise our right. Our state and federal governments have a prayer each day before each session.....</p>
<p>No one is asked to refrain from practicing his or her religion, or to refrain from personal prayer before a meal. The proposed rule is directed solely at publicly funded religious activities – including leading an assemblage in prayer – carried out under the authority of an ABC program.</p>	<p>If we truly want to give our children and grandchildren a better chance in life we should take some very old advice and allow the free exercise of religion in these ABC Day Cares. ABC parents should be free to place their children in day care centers of excellence that are friendly to and encouraging of their faith not hostile to it. As Arkansans we are a religiously friendly state and we by in large share many of the same values and beliefs regardless of the name on the church we attend or do not attend. Our ABC day care centers should be a reflection of this.</p> <p>Please reconsider Section 23 to alter its contents so that it is friendly to the citizens it serves.</p>

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3/6/12	Donna Schillinger	<p>Yes. So I easily have an hour, right? My name is Donna Schillinger. I'm a parent of one of the beneficiaries of the ABC program in Clarksville, Arkansas, under the direction of His Little Lambs. Where is the Board? Are they not here? Okay. Well, Esteemed Members of the State Board of Education and everyone else, the proposed new rules in Section 23 are not only a poorly contemplated over-reaction to a simple complaint, they are also an infringement on the same First Amendment which they are intended to address. Americans United for the Separation of Church and State, which I will refer to as Americans United from hereon, complained that Growing God's Kingdom, Open Arms and Noah's Ark preschools violate the First Amendment to the constitution in that they incorporate daily time for prayer and Bible study despite being publicly-funded partially through the ABC program. They asserted, and I quote, "While DHS reviews the situation, government funds continue to unconstitutionally flow to these three religious preschools," end-quote. Despite that this small special interest group did not claim to be acting on any complaints from citizens of Arkansas, this group has asked DHS to, quote, "Advise us of your plans and update us on" -- quote -- "when we can expect the Department of Human Services to take action on this matter." I would like to point out that Americans United is no judge of what is or is not constitutional. Particularly in complex First Amendment issues, it is ultimately the Supreme Court which deems an action unconstitutional. Secondly, the Department of Human Services is in no way accountable to Americans United. Finally, Americans United has no legal standing in this matter and is therefore at best in a position to inform and request but not to, quote, "expect or be advised or demand" anything. Any concern about litigation initiated by Americans United is largely unfounded as there has not been an ABC program First Amendment right violation report or a complaint by anyone with legal standing. Nonetheless, their request that DHS investigate seems reasonable. Also reasonable is the suggestion that, quote, "these preschools alter implementation," end-quote, to bring them into compliance with the First Amendment or that their grants be terminated or that they sign agreements guaranteeing that religion will not</p>	See responses to previous comment.
		<p>In <i>Sherbert v. Verner</i>, 374 U.S. 398 (1963), the Supreme Court invoked the Free Exercise Clause to overturn a South Carolina law that denied unemployment compensation to a Seventh-day Adventist, who, because of her religion, declined to work on her Sabbath. In stark contrast to the facts in <i>Sherbert</i>, the proposed rule does not deny any public benefit on the basis of a specific religious belief; instead, it provides that public funds cannot be used to directly support religion. Stated another way, the proposed rule does not ask any individual to refrain from practicing his or her religion as a condition of receiving public benefits, but rather, prohibits using public benefits to finance the practice of religion.</p>	<p>(Note: In <i>Employment Div., Dept't of Human Res. v. Smith</i>, 494 U.S. 872 (1990), the Supreme Court held that the First Amendment "right of free exercise [of religion] does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)." <i>Id.</i> at 879 (quotations omitted). In reaching this holding, the Supreme Court effectively rejected the rule of <i>Sherbert v. Verner</i>, 374 U.S. 398 (1963), that "governmental actions that substantially burden a religious practice must be justified by a compelling governmental interest". See <i>In re Young</i>, 141 F.3d 854, 857 (8th Cir. 1998).)</p>

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be injected into government-supported programming, with some monitoring agreements. Those were the three things that they asked for in their letters. What I find unreasonable is the response of DHS which went far beyond the actual request of Americans United. Instead of addressing the three programs in question, DHS is proposing a blanket policy which among other things prohibits, quote, "all religious activity," end-quote, during the ABC day. I imagine Americans United would be quite pleased with this response and will certainly get off your back. However, if a couple of letters from an organization not claiming to have legal standing in this matter caused this kind of concern, what kind of trepidation will result when the Board passes a rule that compromises the constitutional mandate for government to remain neutral regarding religion and arguably infringes on the religious freedom of hundreds of parents and providers who actually do have legal standing in this matter? It is my opinion, which I fully intend to test in court if given due-cause, that a ruling that states no religious activity during the seven hours of my child's preschool day, including the portion in which I am with him volunteering at the program to provide part of the parent and community involvement required by the agency program, is untenable without invasive government control to enforce. It permits conduct required by my religious beliefs, specifically to bring up a child in the discipline and instruction of the Lord (Ephesians 6:4). It constitutes an intentional interference by government and therefore is subject to the most legal strict scrutiny. And it is a coercion causing me to have to choose between receiving benefits and following my religion, a burden on freedom of religion which the Supreme Court has ruled in Sherbert v. Verner to be unconstitutional. As this rule is proposed, I will be prohibited from praying with my son before he eats breakfast, an activity of the ABC program day. There is no room for religious freedom in the phrase "no religious activity," which happens to be Section 23.04.4 of the proposed rule. For as many precedents as Americans United cited to address the violations they perceive, there are an equal number of compelling precedents for not accepting this proposed rule, such as Agustin v. Fulton, Wisconsin v. Yoder, Sherbert v. Verner, and more, which I will expound on in my written comment

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		<p>to the Board. I'm not a member of the Americans United but I value separation of church and state as well. I do not disagree that certain items on the daily calendars of the three schools mentioned in the Americans United letter seem problematic, but there are a number of ways these could be addressed without infringing on the religious freedom of ABC beneficiaries and providers. I urge the Board to reject the proposed rule and, number one, address purported violations with the specific centers in which these activities may be occurring; and number two, to continue to preserve religious freedom by completely abstaining from developing a rule on religion. There hasn't been one since the inception of the program. If there wasn't a problem, why fix it? However, should the Board deem one truly necessary I urge you to engage a constitutional lawyer with values and a disposition on these matters similar to that of the citizens of this state to craft a rule that addresses both clauses of the First Amendment, "No establishment of religion by government" and "protection of the free exercise of religion." Thank you.</p>	
<p>3/6/12</p>	<p>Representative Justin Harris</p>	<p>Thank you, and thank you for having us this morning. I must say I have to apologize; our attorney from Alliance Defense Fund could not make it here. He's obviously an out-of-state attorney. And we received the notification late Thursday afternoon and so I was in session and my wife was at home and we just didn't coordinate until I got home on Friday. So, we did not have time to get everything together. But I want to tell you why I'm standing here today; it's a simple principle. I'm standing here today for my children, my three boys, our adopted two girls that's getting ready to come into the family; then I'm also speaking today for 168 children that come to Growing God's Kingdom; then I speak for the people in my district, 30,000 people; then I want to speak also for all the children in the State of Arkansas. This is a time when just by me saying I was coming down here this morning and the three hours it took to get here the hatred that fueled up this morning on Twitter-land and different areas is amazing. And I think we've got to be careful in the ABC rule change that we are not over-reaching, we are not discriminating against anyone. So we go from this rule -- we started in 2003 in our garage</p>	<p>See responses to comments filed on 3/17/12 by Elaine Turley.</p>

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with 12 students, three being our own. We were not an ABC program. Then, two years later we became an ABC program after hearing from another fellow provider and we decided we wanted to make a big difference. Having degrees from the University of Arkansas, we decided to open up a preschool that could service people who truly were in need and children who were in need. So 110 of those children come to our preschool. They come from all walks of life and we have always had them sign a waiver saying that they understood that they would be taught Christian beliefs during the day. There were no rules in place so we weren't breaking any constitutional rule to our knowledge. Mind you, I am not an attorney and I'm very proud to not be an attorney, but I am an early childhood educator. And I will tell you when we -- what we were doing during the day -- and it's kind of been misconstrued in the media and in different places by lovely bloggers --we had a 10-minute-a-day reading a Bible story. It wasn't even a teaching; it was reading a Bible story, which often consisted of love and loving each other. Never in that time did we use it to indoctrinate children 'cause I don't believe birth to five really would understand all that. But what we did teach was love and it was very simple, "you use your words, not your hands," just simple stuff; love your neighbor, The Good Samaritan. Those are good stories. But what we found today because of one group that came into the State of Arkansas -- and I understand this is another reason why it's far-reaching; if I had never run for State Representative, if I had never won, this would not be an issue at this time. Now it would have been an issue further down the road but because of it, it has made it come faster. That is-- that is a given knowledge; we've got paper trails of that. And so I want us to be careful that just because we make an exception for one group, United for Separation for Church and State [sic], that we be careful when we have another big group come in that wants to make sure that religious freedoms are allowed in the State of Arkansas. And so we've got to be careful. And I just want to make it clear, one thing that these rules -- Marsha and I had understood that we were no longer going to be teaching Bible during the day and were -- you know -- that's --that's one core of the day. We knew we were helping low-income families; we knew that parents

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don't get off at 3:00 or 2:30, in which our hours consisted. So we had the hours of ABC from 7:30 to 3:30, an eight-hour day, which we did not have to have. And during that time for 10-minutes we taught -- we didn't teach, I want to make that clear -- we read Bible stories and sung Jesus Loves Me or just different songs that just were part of transitions. And because of that, we had to shorten our day now. But instead of hurting families, we decided to take that hour from -- I believe it's 2:00 to 3:00. The Department has those scheduled hours. We just allow parents to still come and they're for free, and so we have gotten around it. But here's where my issue went, was the moment -- and I do not blame -- and I want to be very clear today; hopefully, it's been stated but media only takes bits and pieces of what they want to hear -- is that I do not blame DHS for the way this has been orchestrated. I understand it's an outside group coming in and now we're having to play a little bit of defense 'cause we should've played offense in the first place and had things set up. But in this, no monies for my program - - I can't speak for others in the state but from Growing God's Kingdom -- did monies go towards buying Christian instructional material. Matter of fact, not only -- our program doesn't only have to do a state audit; we now have to do a federal audit, and so we've been looked at. Every year we've done an audit; things have been looked at. We have five different organizations, including Arkansas State University, that comes into our program and we have some of the highest scores in the State of Arkansas. And the teachers in our area seek out for the children that come from Growing God's Kingdom Preschool 'cause they know they're going to be far ahead of the curve, of other children because we believe in teaching children to get them prepared for either public school, private school, home-school, whatever it may be, and that is our job and I feel like we've done it. But what you've done now is kind of put these Christian organizations, which many are in churches, into a certain box and these rules have kind of been far-reaching. And anyone that is in this knows that we have to do the -- we choose the creative curriculum, which our teachers have their P4 licensure or their child development degree -- not associates but their degree; they know how to teach. So we have this curriculum that we have to get scores to

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continue to have ABC funding into our school. We have to have posters. The pictures that you see up here on this wall is a prime example of what we have to have in our classrooms. We have to have books that are multicultural, all walks of life; we have to show them in their element. So if they're in India or wherever they may -- China -- we know that China doesn't have a Christian nation, that's a given, but we still have to have pictures of them. We have to do different things. We have to have books that explain all walks of life. But what I was told -- and I think there's going to have to be clarification in these rules -- and we -- this is not the end-all right here, this public comment period, nor the Board of Education is the end-all. It has to go before legislative review. But I was told that we could pray but we can't pray in the name of Jesus, any particular religion. I was also told we can't sing Christian songs anymore but we are required to sing songs for transitions. We're required to do these things, yet now we can't say the name of Jesus; we can't invoke God; we can't sing Jesus Loves Me going down the hallway. I know there's more -- Noah Built an Ark -- I mean, there's a whole lot more that we could sing but we can't sing those anymore. And so what you've done is you've taken the right from the parent who has chosen to come to our preschool. You've taken their right away because they have chosen a faith-based preschool and now that has been taken away from them. And so I think we've got to be careful and we need to look at these parents' rights, which is the avenue I'm going to be going, that we're going to be going, that these parents have a right, especially the way the funding is done in the ABC program. The way it's set up now, by all technicalities, is that it follows the child. If the child doesn't come to the faith-based but goes to the public one that's in the same town, that money goes there. If we can't fill our enrollment, we lose that money. So the money does follow the child. And the other thing that I want to point out -- and my speech wasn't -- I'm not one that has a speech written out and do things; I just kind of talk about what we're going through. But the fact that we can no longer have Christian music at the preschool, CD's, is appalling. But I have to have rap, which it is clean rap; I have to have country, secular music of all kinds, but you're telling me I have to take the Christian CD's out.

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You're taking the rights away from me, you're taking the right from the parent, but you're also taking the right away from the children. And so if I'm wrong, and I'm sure I will be told I'm wrong today in some of my ways I've interpreted the rules, I would like to know and I'm sure I will be told. But I think it goes back to -- there was another preschool that was actually gone to and told them to take the things off the wall, and I have evidence of that. Yet, my preschool program was told they could keep their things on the wall. And so I think we're going to have to be careful about the interpretations of the rules, who comes in and monitors these programs and is it going to be a loose interpretation. But I will tell you -- and it was done in the Board of Education -- that there may be some legal ramifications from this, so I want you to look at both sides of it and let's -- let's protect freedom of speech; let's protect our rights to -- to say things just as well as another person's right to say things. And I think instead of teaching hate what we've done is we've taught love. And I want to leave you with one last story of a parent who came in with her daughter, who the night before got molested by her biological father -- comes into my office, Marsha and I, in the office; mom is devastated. And instead of talking about it in front of the child we sent the child on to the classroom so they could be with friends and kind of have a normal day as much as it could be for that situation. We sat down with mom, we prayed with her, we hugged her. We called the proper authorities; we're mandated reporters. But because of that, two years later, this girl is functioning well in public school. She does get counseling but mom can always come back to Growing God's Kingdom and say, "You know what? You prayed for me, you loved me, you hugged me, you saved my child's life," and that's the work we do every single day at my preschool and the preschools across the state. It's a safe environment for these children to go to and we're able to comfort them in a way that maybe someone else wouldn't. And I really enjoy doing it and we're thankful to do it and we're not going to stop doing it. We're going to continue to do it. So I ask ABC, Board of Education to look at these rule changes. I'm not a lawyer, I'll make that disclaimer again. I also want to thank the Capitol Police for coming today. It's such a rowdy crowd --and so that's kind of just a joke

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<p>3/12/12 3/13/12 3/15/12 3/17/12 3/18/12 3/26/12</p>	<p>Rachel Brick Donna Schillinger Jeannie Ritchie Malinda Voreis Teresa Ritchie Rogelio Saldana Jessie Cisco Monica McClure Zulma Saldana Doris Greer Julie Yarbrough Erica Mora Chirs Dickerson Brittany Nichols Will Meeler Brenda Payne Nomie Fraser John Schillinger Penny Hammonds Stacy Hammonds Marilyn Kilcrease Randy Richardson Jettie Bauman Katelyn Blamey Morgan Blamey John Blamey Jamie Blamey Cassidy Anglin Kristen Anglin Courtney Anglin Johnny Anglin Howard Payne Susan C. Wallenburg Cheryl Valliquette Debbie Stephens Unreadable names (2)</p>	<p>there. But thank you and I appreciate y'all listening.</p> <p>I am writing to express my concern for the proposed rule, Section 23, to the Arkansas Better Chance program for preschoolers, which seeks to address the complaint of a Washington DC-based special interest group, Americans United for the Separation of Church and State.</p> <p>In response, the Department of Human Services proposed rule Section 23, which requires instruction materials to be secular (23.04.4); prohibits any religious activity during the seven-hour ABC program day (23.04.4); and requires annual certification of this rule and subjects the preschools to "public inspection and investigation" to guard against any religious activity (23.04.6).</p> <p>In the effort to address Americans United's complaint, the Department of Human Resources would compromise government neutrality toward religion, put an undue burden on the private citizens involved in this program and become watchdogs against religious activity of any sort during the ABC day. This bureaucratic overcompensation to avoid possible litigation has the unintended effect of inviting litigants who cherish their religious freedom, also protected in the First Amendment. As written, this rule would prohibit a mother from instructing her own child religiously, praying with him before he eats breakfast and reading a Veggie Tales book with him during any part of the ABC day. In short, there is no room for religious freedom in the rule "No religious activity may occur during any ABC day" (23.04.4).</p> <p>Unlike public schools, ABC programs are not an entitlement. ABC is not a free, public program which occurs in a public setting and is carried out by public employees. ABC funding is only for eligible individuals, the setting is private places of business, and instruction is carried out by private employees of those businesses. Further, the owners of these businesses are required to match government funds by at least 40% of their own</p>	<p>The proposed rule is not intended to provide Americans United for Separation of Church and State with any remedy, but rather, to assure compliance with the Constitution.</p> <p>Some principles stated by courts in public school decisions were used in developing the proposed rule, but the specific questions often are different. For example, asking whether a public school may put up a religious display is not the same as asking whether a private preschool must take down a religious display. Where the proposed rule was guided by school-related cases (for example, <i>Mitchell</i>), the focus was on parochial schools because, like ABC programs, those schools are private settings in which the teachers are private employees.</p> <p>The commenter correctly states that the ABC program is only partly supported with public funds; however, this fact does not lessen the force of the Establishment Clause as it governs the use of any public funds. See, e.g., <i>Nyquist, Ams. United for Separation of Church & State</i>, and <i>Freedom From Religion Foundation</i>.</p>
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		<p>funds (cash or in kind), and the owners must involve parents and the community in the delivery of the ABC program. Each of these "private" components challenges the applicability of the landmark public schools cases to the ABC program.</p> <p>Consider also that many of the landmark cases on the First Amendment religious establishment clause resulted from a proposed rule or requirement the government had imposed on interested parties. And that is precisely what DHS is proposing with this proposed rule. The State cannot practically or legally govern the nuances of the required 40% match that providers, parents and the community contribute to the ABC program, nor should it attempt to.</p> <p>I urge you not to accept Section 23 in any form, preserving the unregulated freedom of religion which has never been spoken against by any interested party. However if you find it necessary to address this issue with regulation, I urge you to amend the proposed rule to strike Sections 23.04.3, 4, 5 and 6 – those that compromise government neutrality on religion and infringe the religious freedom of providers, participants and members of the community involved in the ABC program.</p>	
3/20/12	Linda Farrell	<p>As an Arkansas taxpayer, retired teacher and passionate defender of the constitutional right to freedom of religion, I am disturbed by the fact that any taxpayer funding has been accorded to the children's daycare center (Growing God's Kingdom) recently in the news and others of similar religious persuasion. Proselytizing to small children is a bad enough idea but to do it at taxpayer expense is unthinkable. How much more clear can the law make the idea that church and state must be separate? There are so many other areas where public funds can be better used for the greater good of education while churches have unlimited opportunities to spread their faith messages. This over-reaching accommodation to Fundamental Christianity in Arkansas can only hurt our efforts to make Arkansas appear progressive to the rest of the country and compete for needed jobs. I also seriously doubt that a school espousing Islam, Judaism or Secular Humanism would</p>	<p>The Supreme Court "has never held that religious institutions are disabled by the First Amendment from participating in publicly sponsored social welfare programs." <i>Bowen v. Kendrick</i>, 487 U.S. 589, 609 (1988). Rather, government aid must be "allocated on the basis of neutral, secular criteria that neither favor nor disfavor religion" and "made available to both religious and secular beneficiaries on a nondiscriminatory basis." <i>Agostini</i>, 521 U.S. at 205.</p>

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		<p>engender such generosity. Please understand that my battle is not with Christianity or any other faith. It is with showing a clear disregard for the constitution of the United States and Arkansas. Please fix this now so that the lines between public and private schools are more clearly defined and more respect is given to all the taxpayers of this state. Thank you for your kind attention.</p>	
3/20/12	Vivian Michaels (Benton County Democratic Central Committee)	<p>The separation between Church and State should be absolute. No religion, Christian or other, should be able to influence or benefit from what is State and that includes taxpayers' money, i.e. taxes. In my secular opinion it is especially wrong to indoctrinate children who should be allowed to explore everything for themselves including religion. Religious instruction should be funded by churches, or any other religious institution.</p>	See previous comment.
3/20/12	Don Hirschberg	<p>Children as young as these are very vulnerable to being influenced by adults. They think they are expected to comply with what they are told. So I think there should be no religious symbols or instruction what-so-ever. There are plenty of other places for them to be influenced without invoking the State's muscle and money.</p>	See response to comment filed on 3/20/12 by Linda Ferrell.
3/23/12	Teresa Ritchie	<p>In the school systems today we are not allowed to pray or talk about God. Since the daycare where I work is funded by the federal government we are also not allowed to do Bible stories or pray. The ABC Program staff said this was prohibited. We have been doing a Bible story and singing songs once a week with the children as long as I have been doing childcare. The program has been an ABC Program for five years out of 18. Throughout the week we say a little prayer before meals. If we miss these activities the children brings it up, we forgot to pray and they will start praying. The children do not have to sit in these activities. They are allowed to go to a different learning center as long as they are quiet and respect the others that do want to hear the story. Children in this world today are under a lot of pure pressure, broken homes, and poverty. They need some stability in their life and when they get used to a routine it is taken away from them. Some of these children that is all they have to hold onto in knowing that someone loves them and hears the truth of love, honesty and being part of a family. The United States Supreme Court stopped Bible teaching and prayer in</p>	<p>See response to comments filed on 3/1/12 by Rankin and Dorothy Kennedy.</p> <p>Leaving the room during religious activities is conspicuous, especially if there are no other scheduled events, and subjects nonparticipants to both adult and peer pressures encouraging conformity. "[T]he First Amendment prohibits the government from putting children in this difficult position." <i>Berger v. Rensselaer Cent. School Corp.</i>, 982 F.2d 1160, 1170 (7th Cir. 1993). Accordingly, an "opt-out" policy does not remedy Establishment Clause concerns.</p>

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		<p>public schools. They are separated schools from churches. In the public schools prayer is being taken out of graduations. Children in public schools have to pray quietly to themselves. Parents are even taken their children out of the public school systems to homeschool and give their children the true values of Christian morals. The government has prohibited that Arkansas Better Chance Programs have no religious activities in their programs. There was a hearing on March 6th in Little Rock, if this passes the program won't even be allowed to have a volunteer in the program to do the Bible stories even though we don't pay for the Christian stories. The daycares can't even pray if this law is passed. They won't even be allowed to have Christian faith pictures on the wall. If each preschool teacher keeps on reading Bible stories to their daycare children their funds will be taken away. The children without any stability in their life that are under pure pressure, broken homes, and poverty will have nowhere to go to but stay in the environment they are in, stability in their life. This is all because we are afraid to offend people by our Christian walk. People get offended everyday whether it is Christian or non-Christian. People need to stand up for what they believe in and not back down from biblical values taken out of the Arkansas Better Chance Programs. Children today are exposed to more worldly things then they should be exposed to. They need some good morals in their life. If preschool teachers can give these preschoolers the true values of some hope and love through a Christian story. Why take this out of a government program? Other Christians believes are settling in their own religion. People just have to look at the name of the daycare to see what the name of it means. If people want to enroll their child in the daycare with a Christian name they ought to know what it stands for. Please keep Christianity in the Arkansas Better Chance Programs</p>	
3/23/12	Stan Lancaster	<p>I want to voice support for the changes in the ABC program, and to encourage further amendments to ensure that it is transparent and accountable to the public. How the public funds are used should be public knowledge, as well. When one compares the amount of money dispersed to the number of students involved, it begs clarification. To be true to the spirit of the law, there</p>	<p>The proposed rule prevents any overlap of religious activities with the ABC day.</p>

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		<p>should be no overlap of religious activities with the preschool day, and ALL religious materials and scripture should be covered or removed during school hours. Children should have adequate time to leave the premises before religious activity begins. I'm concerned that there is no apparent means by which to enforce compliance, or any penalties for non-compliance. This is troubling to me, as people who consider themselves to be "doing God's work" will constantly push and exceed the limits imposed by laws they hold in contempt. Two of the programs in question are owned by state legislators that surely knew they were non-compliant, but that didn't stop them from accepting funding. I have lived in Arkansas for 60 years. I was raised Southern Baptist, but am not a religious person. I have personally experienced the "tyranny of the majority" in school and social settings where one is expected to go along with religious activities. It is a demeaning experience, and leaves one feeling excluded and demoralized. When well-meaning people fail to see the separation of church and state as the protector of both, our personal freedoms and way of life suffer.</p>	
3/23/12	Claire Gainey	<p>Please don't come up with new rules to satisfy every barking dog or interest group such as Americans for the Separation of Church and State. Strike the Department of Human Services proposed rule: sec 23,04, There are already too many rules that limit our lives to no benefit, and could have unintended consequences.</p> <p>Do your appointed tasks and don't look for extra problems.</p> <p>Sincere hopes for reason and judgment to guide you.</p> <p>I am writing concerning the complaint that the Washington DC based special interest group filed against the ABC programs and other partially government funded schools in Arkansas.</p> <p>I oppose any intrusion on my rights as a United States citizen on my religious freedom to participate in and teach any curriculum I choose without government regulations. My religious freedom is protected by the First Amendment of the Bill of Rights which applies to state governments as well since the passing of the 14th amendment.</p>	<p>The proposed rule carries out the state's appointed task to see that state-supported activity is not used for religious indoctrination. See <i>Levitt v. Comm. for Pub. Educ. And Religious Liberty</i>, 413 U.S. 472, 480 (1973).</p>
3/26/12	Cheryl Valliquette		<p>The limitations imposed by the rule are designed to restrict the use of public funds, not the practice of religion. The proposed rule does not impair any private religious activity or practice.</p>

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		<p>Please do not impose this proposed rule Section 23 on the children of your state. We have enjoyed some religious freedom in Arkansas and do not want to lose any more freedoms that we in America were given by our Founding Fathers.</p> <p>The students are not required to listen or participate. Parents are not required to put their children in these programs that you are seeking to discriminate against. Sincerely, a concerned Citizen of the United States of America and Arkansas</p>	
3/26/12	Cheryl Valliquette	<p>Concerning the proposed rule, Section 23, addressing the complaint from a Washington DC based special interest group, Americans for the Separation of Church and State, I want to express that my religious freedoms are being suppressed.</p> <p>Unlike public schools, the ABC program is held in private businesses and has a match for funds with private citizens and parents.</p> <p>I urge you not to accept Section 23 in any form, preserving the unregulated freedom of religion which the ABC program has enjoyed since its inception, and which has never been spoken against by any interested party. Thank you, Mrs. Cheryl Valliquette, Concerned Citizen of the United States of America</p>	<p>See responses to comments filed on 3/7/12 by Elaine Turley.</p> <p>See responses to comments filed on 3.23.12 by Teresa Ritchie.</p>
3/26/12	Donna Schillinger	<p>My son is a participant in the ABC Program in Clarksville at His Little Lambs, and as an interested party, I am writing to urge you NOT to approve proposed rule Section 23 for the ABC program.</p> <p>In a long history of adjudicating the First Amendment, one thing has become clear: Attempting to regulate religion is unconstitutional. In fact, that's the whole point of the two-pronged amendment which seeks to keep religion and government in separate domains. Yet Section 23 is similar to many such rules that have been challenged and overturned by the courts, specifically in that it compromises government neutrality between the religious and the secular by forbidding "any religious activity" during the ABC program day. Much farther-reaching than assuring that government resources are not inadvertently promoting religion, this proposed rule as written would regulate the behavior of any person who enters the ABC program place, including children, parents and members of the community. You simply</p>	<p>It is more accurate to view the proposed rule as imposing conditions on the receipt of public funding rather than as regulating behavior. Any preschool provider may reject public funds and ignore the proposed rule.</p> <p>It is also more accurate to view the proposed rule as regulating ABC program activities (regardless of where such activities occur) rather than as regulating personal behavior. The proposed rule is silent about any personal religious practice.</p> <p>The ABC program is not a voucher program, so the judicial decisions regarding such programs do not apply.</p>

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	<p>cannot regulate the religious activity of these contingents without infringing on their right to religious freedom. Once you pass this proposed rule, the burden will be on the Board of Education to prove the constitutionality of this proposed rule, whereas in the current unregulated state, the Board has the freedom to address alleged breaches in the wall between church and state as they occur. And from my understanding, the occurrences of complaints by interested parties are rare – in fact, unheard of in the history of the program. (The complaint by Americans United is without legal standing.) Please understand that the litigious-free history the ABC program has enjoyed is at stake in this decision. I can assure you that my religious convictions and rights as an American will compel me to oppose this proposed rule more fervently if the State Board passes it and as it goes through the legislative review process. And should it make it through that – which could only happen through an epidemic ignorance of First Amendment case law – I will seek to repair the injustice done the citizens of Arkansas through legal recourse.</p> <p>The fact that the ABC program is conducted in private places of business by private employees, is funded with a 40% local match, and requires the participation of parents and the community makes this an unprecedented circumstance; in other words, none of the case law you may have read about regarding public or parochial schools is applicable. Further, the Supreme Court has already ruled that in voucher-type programs, where funds follow the children, there is no government establishment of religion for a program with a secular purpose, whose primary effect is not to advance religion, even if conducted in a religious setting, alongside religious instruction (see <i>Zelman v. Simmons-Harris</i>). I urge you to oppose Section 23.</p> <p>Donna Lee Schillinger Clarksville, AR</p> <p>ps - tried submitting this comment via email - it was longer - but email was kicked back.</p>	
3/26/12	Arkansas ACLU	<p>The purpose of the proposed rule is to assure compliance with the Constitution; therefore, the nondiscrimination provision is comprised of constitutionally protected classifications. Because ABC programs are not public schools, Ark. Code Ann. § 6-18-514(b)(1) neither requires,</p>

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	<p>religion and the protection of religious liberty set forth by the Free Exercise and Establishment Clauses of the First Amendment to the United States Constitution and Article 2 Sections 24-25 of the Arkansas Constitution. We write today to offer our comments on the proposed rules concerning the Arkansas Better Chance ("ABC") Program and the Constitutional prohibitions on use of tax dollars to support religious institutions and programming. We hope you will accept and utilize our comments to improve the proposed rules. Our observations are as follows:</p> <p>Proposed Rules</p> <p>~ Proposed rule 23.04.1 regarding conditions of participation as an ABC provider states, "ABC programs must admit eligible students without regard to race, gender, national origin, ancestry, color, disability, creed, political affiliation, or religion." We are pleased that the Department has included a non-discrimination provision, and we suggest that the proposed participation language be amended to include the protections currently set forth in Arkansas' protection of students law codified at Ark. Code Ann. § 6-18-514(b)(1). This would be accomplished if the rule were amended to state that, "ABC programs must admit eligible students without regard to the student or the student's caregivers or relatives' race, gender, sexual orientation or gender identity, national origin, ancestry, color, disability, creed, political affiliation, physical appearance, socioeconomic status, or religion."</p> <p>~ Proposed rule 23.03.1 defines the ABC day as, "the seven (7) hours beginning with the first ABC activity of the day and includes all activities described in Section 13 of the ABC Program Standards." This is clearly intended to prohibit tax dollars from being spent for religious instruction during the seven hour curriculum set forth and paid for by state tax dollars for participating preschool providers, which may include religious entities. However, this seven hour limitation misses the mark for ensuring that taxpayer dollars are not used for improper religious purposes and in protecting students and families against religious coercion in connection with the ABC Program. First, as noted by the proposed Frequently Asked Question 3, under the Establishment Clause, tax dollars cannot be used to provide resources or infrastructure that</p>	<p>nor does it provide rulemaking authority for, the requested amendment.</p> <p>It would be inaccurate to declare that the ABC day extends beyond the publicly funded seven-hour day defined in current ABC rules.</p> <p>The state's authority to impose Establishment Clause regulation is limited to public places, public functions, and publicly funded activities. All other places, functions, and activities remain the province of private persons and entities. Cf. <i>U.S. Postal Service v. Full Gospel Interdenominational Church, Inc.</i>, 577 F.3d 479, 484 (2d Cir. 2009), cert. denied sub nom. <i>Sincerely Yours, Inc. v. Cooper</i>, 130 S. Ct. 1688 (2010) (Any Establishment Clause violation "is limited to the area of the [church-operated contract postal unit, or "CPU"] performing the public function; all other areas of the CPU remain the province of the private entity.") ABC programs exist at private places and carry out privately funded activities that are protected by the Free Exercise Clause.</p> <p>The FAQ is an aid in understanding and applying the proposed rule; it is not intended to supplement or supplant any part of the proposed rule.</p> <p>The suggested amendment goes too far, because it would prevent a parent from praying with his or her child in prayer before a meal in a private activity conducted separate and apart from any ABC program activity. However, we agree that the language can be improved. Accordingly, the proposed rule will be amended as follows: "Under the Establishment Clause, religious activities or instruction – including prayer or singing religious songs – organized, <u>ex-sponsored, or led by an ABC provider or any person acting under the authority or permission of the provider,</u> may not occur during any part of the ABC day."</p>
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	<p>support religious programming. Simply stated, any tax dollars received by an ABC provider cannot be used to support religious programming, even if that programming falls outside of the seven hour curriculum day. Second, most parents of preschoolers who are employed outside of the home do not work a seven hour day. In these cases, the common practice is for a preschool to provide after care services for the additional time the child is at the facility. In many areas, ABC providers are often the 1 only preschool provider or one of a handful of providers of preschool education. The after care services they provide are often the only option or the only affordable option for many working parents who want to enroll their children in an ABC program, but cannot pick up their children at the end of the seven-hour curriculum. Where ABC providers do not offer secular after care services, families with working parents may be effectively coerced into participating in the religious after care programming if they hope to remain a part of the particular ABC program. The seven hour rule proposed does not take into account these realities. In light of these factors, we urge you to consider some practical alternatives to the current proposed seven-hour rule. For example, the Department could define the "ABC day" as lasting from the child's arrival for an ABC program until his or her departure from the provider's facility. Such a rule would ensure that parents and children who have little choice as to providers of preschool under ABC are not compelled to utilize a provider that converts to a religious after care for the remainder of the child's time at the facility. Alternatively, the Department might require that any ABC after care program be non-religious, or that a non-religious after care program be offered alongside any religious after care program for all ABC providers that establish after care services.</p> <p>We agree that the suggestion of Americans United that requiring separate accounts for taxpayer funds is a good way to ensure compliance. We would also ask that the Department ensure that that the terms of employment or contracts for ABC employees are subject to the compliance review process.</p> <p>Frequently Asked Questions</p>	<p>Government must allocate benefits among secular and religious organizations without regard to their religion. See <i>Mitchell</i>, 520 U.S. at 809-10. A church is itself a religious symbol. To condition government funding on the removal of religious symbols is to condition public benefits on the absence of religion in violation of constitutional principles of neutrality. In <i>Does v. Elmbrook Joint Common Sch. Dist. No. 21</i>, 2010 WL 2854287 (E.D.Wis. July 19, 2010), the public school held graduation ceremonies in a church. The court found no violation of the Establishment Clause, despite the presence of large crosses; Bibles and hymnals; religious banners, symbols and posters; Bible quotes inscribed in wood; and religious literature displayed throughout the church at issue. See also, <i>ACLU-TN v. Sumner County Bd. of Educ.</i>, 2011 WL 1675008 (M.D.Tenn.,2011).</p> <p>Furthermore, religious icons on private property are private religious speech protected by both the Free Speech and Free Exercise Clauses. "[T]here is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." <i>Board of Educ. of Westside Community Schs. v. Mergens By and Through Mergens</i>, 496 U.S. 226, 250 (1990).</p> <p>Our precedent establishes that private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression. <i>Lamb's Chapel v. Center Moriches Union Free School Dist.</i>, 508 U.S. 384 (1993); <i>Board of Educ. of Westside Comm. Schs. (Dist. 66) v. Mergens</i>, 496 U.S. 226 (1990); <i>Widmar v. Vincent</i>, 454 U.S. 263 (1981); <i>Heffron v. Int'l Soc. for Krishna Consciousness, Inc.</i>, 452 U.S. 640 (1981). Indeed, in Anglo-American history, at least, government suppression of speech has so commonly been directed precisely at religious speech that a free-speech clause without the religion would be Hamlet without the</p>
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	<p>II- It is unclear to us whether the Frequently Asked Questions ("FAQ") provided with the comments is intended to be formalized so as to constitute a formal statement of the Department regarding the Arkansas Better Chance Program and rule enforcement, or whether they are merely informal, advisory comments for purposes of communicating with the public and providers regarding the proposed rules. Subject to the following comments on the proposed FAQ, we would ask that the FAQ be formalized, as it provides helpful guidance that is not otherwise provided in detail in the proposed rules.</p> <p>II- In FAQ 4 regarding prayer or singing at facilities, the phrase "organized or sponsored by an ABC provider may not occur during any part of the ABC day" should be modified to say, "organized, sponsored, or led by an ABC provider, its employees, volunteers, guests or other adults may not occur during any part of the ABC day." This modification would ensure that the law --which requires no adult led or organized religious activities -- is accurately stated in the FAQ. The proposed rule correctly recognizes that students are still entitled, on a voluntary basis, to pray individually or in groups or to discuss their religious views with their peers so long as they are not disruptive.</p> <p>II- FAQ 6 relates to the preschool's extending the day beyond seven hours to have Bible study or prayer. Please see our above comments regarding proposed rule 23.03.1.</p> <p>... FAQ 7 relates to the display of religious material on the walls. The constitutionality of religious icons, symbols, pictures, and other idols in a state funded preschool setting generally depends on the location of those symbols. The commentary to FAQ 7 states, without citation, that receipt of public aid cannot be conditioned on the removal of religious materials from private premises. This commentary is incorrect. In fact, religious icons should not be displayed by an ABC provider in any area where students are learning or where ABC programming is otherwise taking place, such as classrooms, play areas, and other common areas used by students, including cafeterias, restrooms, and</p>	<p>prince. Accordingly, we have not excluded from free-speech protections religious proselytizing, <i>Heffron, supra</i>, at 647, 101 S.Ct., at 2563-2564, or even acts of worship, <i>Widmar, supra</i>, at 269, n. 6, 102 S.Ct., at 274, n. 6. Petitioners do not dispute that respondents, in displaying their cross, were engaging in constitutionally protected expression.</p> <p><i>Capitol Square Review and Advisory Bd. v. Pinette</i>, 515 U.S. 753, 760 (1995).</p> <p>The commenter cited five cases in support of the contention that ABC programs must remove religious icons. When considering the applicability of these cases, the ultimate question is "whether any religious indoctrination that occurs ... could reasonably be attributed to governmental action." <i>Mitchell</i>, 530 U.S. at 809, citing <i>Agonstini</i>, 521 U.S. at 226. There must be "a sufficiently close nexus between the State and the challenged action of the ... entity so that the action of the latter may be fairly treated as that of the State itself." <i>United States v. Stein</i>, 541 F.3d 130, 146 (2d Cir. 2008) (quoting <i>Jackson v. Metro. Edison Co.</i>, 419 U.S. 345, 351 (1974)).</p> <p>When religious icons appear on property the government owns or leases, or on property used exclusively for inherently public functions, reasonable persons may attribute the presence of those icons to the government. ABC facilities, however, are not owned or leased by the government, nor are they used exclusively for inherently public purposes. Instead, ABC is:</p> <p>(a) Offered at private preschool child care facilities;</p> <p>(b) An educational component of the provider's services; and</p> <p>(c) Only partially supported with public funds. Under these circumstances, it is not reasonable to attribute every aspect of the ABC environment to</p>
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<p>the government. With that said, we turn to the five cases cited by the commenter.</p> <p>Four of the five cases cited by the commenter concerned public schools, where the presence of religious icons is naturally attributed to government action, and generally prohibited. The fifth case, <i>Cooper v. USPS</i>, 577 F.3d 479 (2d Cir. 2009), cert. denied sub nom. <i>Sincerely Yours, Inc. v. Cooper</i>, 130 S.Ct. 1688 (2010), concerned a postal facility operated by a private entity on private property. Other than <i>Cooper</i>, the commenter cited no cases involving religious icons displayed on private property.</p> <p>In <i>Cooper</i>, the United States Postal Service contracted with a church to operate a contract postal unit, or CPU, on church property. Within its CPU, the church displayed a variety of religious materials including prayer cards and requests, advertisements and donation boxes for a religious organization, and played church-related videos on a monitor. 577 F.3d at 488-9. The fact that the "CPU is located in a religious facility, or sponsored by a religious entity, or that its revenues benefit a particular faith, does not offend the Establishment Clause." 577 F.3d at 494. However, as a U.S. mail handler, the CPU exercised powers that are traditionally the exclusive prerogative of the State, and thus was a state actor under the "public function" test announced in <i>West v. Atkins</i>, 487 U.S. 42, 57 (1988). Areas where the public functions were carried out had to be differentiated from other parts of the CPU and cleared of religious materials. (Religious materials were allowed to remain in other areas of the CPU.) 577 F.3d at 497.</p> <p><i>Cooper</i> turned on the fact that the CPU was a state actor. Preschool education is not traditionally or inherently a public function, so ABC providers cannot be identified as state actors. As a result, the <i>Cooper</i> Court's rationale does not apply to the ABC program.</p> <p>We will amend the proposed rule to set out a complaint process and adopt the existing correction timeframes.</p>	<p>hallways. <i>Agostini v. Felton</i>, 521 U.S. 203, 211-212 (1997). Thus, for example, the U.S. Court of Appeals for the Second Circuit recently held that, to comply with the Establishment Clause, a contract unit of the Postal Service housed in a part of a church-related building must remove religious material (including religious displays and pictures) from the area in which postal customers seek services. <i>Cooper v. USPS</i>, 577 F.3d 479, 497 (2d Cir. 2009), cert. denied, sub nom. <i>Sincerely Yours, Inc. v. Cooper</i>, 130 S. Ct. 1688 (2010). Similarly, in the public-school context, which is analogous to the state-funded ABC Program, the courts have made clear that displays of religious iconography are simply impermissible. See, e.g., <i>Washegesic v. Bloomingdale Pub. Sch.</i>, 33 F.3d 679 (6th Cir. 1994) (holding public school's display of portrait Jesus portrait unconstitutional); <i>Roberts v. Madigan</i>, 921 F.2d 1047, 1049, 1051 (10th Cir. 1990) (upholding public school's removal of poster display that stated, "You have only to open your eyes to see the hand of God"); <i>Ahquist v. City of Cranston ex rei. Strom</i>, No. CA 11-138L, 2012 WL 89965 (D.R.I. Jan. 11, 2012) (holding that a public school's display of prayer banner was unconstitutional). These decisions recognize that schoolchildren are particularly vulnerable to religious coercion and must, therefore, be protected from government-sponsored and government-funded promotions of religious messages. Indeed, with these considerations in mind, one federal district court has even held that a public school could not conduct its classes in a leased church parish building. The court reasoned that, even though crosses and bulletin boards with religious messages were covered in each classroom, the rest of the building and grounds to which the schoolchildren were exposed included religious symbols and messages that improperly conveyed governmental endorsement of religion. <i>Spacco v. Bridgewater Sch. Dept.</i>, 722 F. Supp. 834, 843 (D. Mass. 1989). As these authorities make clear, religious symbols must be removed or covered when they appear in areas of programming supported by taxpayer dollars. As these authorities make clear, religious symbols must be removed or covered when they appear in areas of programming supported by taxpayer dollars. ABC providers should not express personal religious beliefs to</p>
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	<p>students during or in conjunction with instructional time or school events or through written or symbolic means (whether placed on a classroom or hallway wall, erected on a classroom floor, or otherwise attached or placed on the District's tangible property). However, it must be remembered that jewelry or other adornments worn on the ABC providers and their employees' persons or clothing or other religious articles worn by the school officials and students (e.g., yarmulke and a cross necklace) are personal religious expressions and Free Exercises of religion protected by the Constitution and must be permitted during ABC programming .</p> <p>... FAQ 8 relates to compliance. The comment under FAQ 8 states that compliance will be reviewed at regular monitoring visits, which certainly makes sense. The Department should also add, for public information, the proper mechanism for persons to complain about these and other rule or regulation violations .</p>	
	<p>... FAQ 8 seems to suggest that correction for non-compliance with the new rules will be handled differently by the Department than would correction for non-compliance for other rules. Though the proposed rule changes do not specify a separate compliance rule for ABC participating preschools, the FAQ states, "If DCCECE concludes that a violation exists, the provider will be informed and asked for a plan to correct the violation within 30 days. If the violation is not corrected within that time, DCCECE will initiate a formal enforcement action to discontinue public funds for the noncompliant program." By contrast, the existing compliance rule for ABC participating preschools, 22.01, states, "An ABC program found to be out of compliance with any ABC Rule or Regulation shall be placed on a 60-day Compliance Plan. During this probationary period, a program must make all necessary corrections or be subject to termination from the ABC program. Compliance deficiencies may also result in immediate termination from the ABC program, denial of future ABC funds, repayment of funds and exclusion from participation in any DHS programs." While there may be reasons that the Department would treat non-compliance for this issue differently than for other issues, on its face, there seems to be no basis for having a separate</p>	

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	<p>compliance procedure for the new rules than for existing rules. Having separate compliance rules could constitute an Equal Protection violation. To provide a separate mechanism in the FAQs than under the proposed rules also would create ambiguity. For these reasons, we urge you to consider using the established compliance rules for issues of non-compliance with the new proposed rules, as well.</p> <p>Conclusion Our constitutional jurisprudence is clear that taxpayer dollars cannot be used to support religious teaching in these circumstances. This constitutional prohibition against governmental promotion of religion is vital to preserving the religious liberty of every Arkansan. This notion is always easier to understand when one envisions that the religion being supported by tax dollars is a religion other than one's own. For example, those who practice Christianity would no doubt be offended if the only ABC provider in their geographic area utilized the ABC program's tax dollars to promote the Islamic religion, worship, and education for preschoolers. The same is true for preschools that center around Christian beliefs that are different from those of the families of enrolled preschoolers. As noted above, the importance of ensuring that the government does not discriminate in this manner is especially pronounced when it involves very young children who are particularly impressionable. The ABC program was set up to benefit all eligible Arkansans. We commend the Department for taking steps to ensure that the program is carried out in a Constitutional manner that does truly benefit all eligible Arkansans. Thank you for considering our comments, and please feel free to contact us if you have any questions, comments, or concerns about the foregoing.</p>	
	<p>Section 23.03.4 – The definition of “professional services” needs to specify that the activities are provided by ABC provider employees. Otherwise this would not be a salary but would be a contracted service. The term “professional services” is used most often in the context of a contracted service.</p>	<p>3/26/12 Tripp Walter (APSRC)</p>
	<p>The definition of professional services identifies specific ABC functions that are supportable with public funds. Because the goal was to identify allowable costs by function rather than employment status, we will amend § 23.04.2 by deleting “salaries” and substituting “compensation.”</p>	