

Proposed Rulemaking

Title

Promulgated by:
Division of Elementary and Secondary Education

Title 6. Education

Chapter I. Division of Elementary and Secondary Education

Subchapter I. Finance

Part 272. Rules Governing Student Special Needs Funding

Subpart 1. Purpose and Definitions

6 CAR § 272-101. Purpose.

The purpose of this part is to:

- (1) Distribute student special needs funding; and
- (2) Define the allowable expenditures of those funds.

6 CAR § 272-102. Definitions.

As used in this part:

(1)(A) "Alternative learning environment (ALE)" means a student intervention program consisting of an alternate class or program within a public school or school district that:

- (i) Affords all students an environment that seeks to eliminate traditional barriers to learning for students whose academic and social progress is negatively affected by the student's personal characteristics or situation; and
- (ii) Is not a punitive environment but is one that is conducive to learning.

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(B) For determination of funding only, an ALE is not a separate school even if the Division of Elementary and Secondary Education assigns the ALE a separate local education agency number;

(2) "Alternative learning environment hybrid program" means a program that provides ALE services through a combination of onsite and distance learning;

(3)(A) "Average daily membership (ADM)" means the:

(i) Total number of days of school attended plus the total number of days absent by students in grades kindergarten through twelve (K-12) during the first three (3) quarters of each school year; divided by

(ii) Number of school days actually taught in the school district during that period of time; and

(iii) Rounded up to the nearest hundredth.

(B) In those instances in which the ADM for fewer than three (3) quarters is specified, the number of days used in the calculation shall be the days in the specified period of time.

(C) As applied to this part, students who may be counted for ADM are:

(i) Students who:

(a) Reside within the boundaries of the school district;

(b) Are enrolled in a public school operated by the school district;

and

(c) Are enrolled in a curriculum that fulfills the requirements established by the State Board of Education ("state board") under the Rules Governing Standards for Accreditation of Arkansas Public Schools and School Districts, 6 CAR pt. 61;

(ii) Legally transferred students living outside the school district but who are:

(a) Attending a public school in the school district under a provision of the Arkansas Code; and

(b) Enrolled in a curriculum that fulfills the requirements established by the State Board of Education under the Rules Governing Standards for Accreditation of Arkansas Public Schools and School Districts, 6 CAR pt. 61;

(iii) Open-enrollment public charter school students who are enrolled in a curriculum that fulfills the requirements established by the State Board of Education under the Rules Governing Standards for Accreditation of Arkansas Public Schools and School Districts, 6 CAR pt. 61;

(iv) Students who:

(a) Are eligible to attend;

(b) Reside within the boundaries of a school district; and

(c) Are enrolled in the Arkansas National Guard Youth Challenge Program, so long as the students are participants in the program;

(v) Students who reside within the boundaries of the school district but due to geographic barriers attend school out-of-state under a tuition agreement, even if they are not enrolled in a curriculum that fulfills the requirements established by the State Board of Education under the Rules Governing Standards for Accreditation of Arkansas Public Schools and School Districts, 6 CAR pt. 61; or

(vi) Any other circumstance allowed by law;

(4) "Classroom teacher" means:

(A) An individual who is:

(i) Required to hold a teaching license from the Division of Elementary and Secondary Education; and

(ii) Working directly in instruction with students in a classroom setting for more than seventy percent (70%) of the individual's contracted time;

(B) A guidance counselor; or

(C) A librarian;

(5) "Community Eligibility Provision (CEP) district" means a school district that is identified by the Division of Elementary and Secondary Education as participating in the special assistance certification and reimbursement alternative implemented under 42 U.S.C. § 1759a;

(6) "Community Eligibility Provision (CEP) district base year" or "base year" means the last school year for which individual student free or reduced-price meal eligibility determinations were made;

(7) "Eligible alternative learning environment (ALE)" means an alternative learning environment (ALE) approved by the Division of Elementary and Secondary Education pursuant to 6 CAR § 272-205 as being in compliance with:

(A) Arkansas Code § 6-48-101 et seq.; and

(B) This part;

(8) "Eligible ALE student" means a student who:

(A) Meets the qualifications of 6 CAR § 272-202;

(B) Is enrolled in an eligible ALE program; and

(C) Has been enrolled in an eligible ALE for a minimum of twenty (20) consecutive days per school year except as provided in 6 CAR § 272-206(c)(4)(A);

(9) "English-language learners (ELL)" means students identified as not proficient in the English language based upon approved English proficiency assessment instruments, which measure proficiency in and comprehension of English in:

(A) Reading;

(B) Writing;

(C) Speaking; and

(D) Listening;

(10) "Intervention services" means activities within or outside a school that will eliminate traditional barriers to learning;

(11) "National school lunch students" means those students from low socioeconomic backgrounds as indicated by eligibility for free or reduced-price meals under the United States Department of Agriculture's National School Lunch Program as determined on October 1 of each previous school year and submitted to the Division of Elementary and Secondary Education, unless the district is a:

(A) Provision 2 district; or

(B) Community Eligibility Provision (CEP) district;

(12) "NSLA" means the National School Lunch Act, 42 U.S.C. 1751 et seq.;

(13) "Open-enrollment public charter school" means a public school operating under the terms of a charter granted by the State Board of Education pursuant to the Arkansas Quality Charter Schools Act of 2013, Arkansas Code § 6-23-101 et seq.;

(14) "Previous year" means the school year immediately preceding the current school year;

(15)(A) "Professional development" means a coordinated set of planned learning activities that:

(i) Improve the knowledge, skills, and effectiveness of teachers;

(ii) Address the knowledge and skills of administrators and

paraprofessionals concerning effective instructional:

(a) Strategies;

(b) Methods; and

(c) Skills;

(iii) Lead to improved student academic achievement; and

(iv) Are:

(a) Evidence-based;

(b) Standards-based; and

(c) Continuous.

(B) Training activities for school bus drivers may also be included;

(16) "Provision 2 district" means a school district that is identified by the Division of Elementary and Secondary Education as participating in the special assistance certification and reimbursement alternative implemented under 42 U.S.C. § 1759a;

(17) "Provision 2 district base year" or "base year" means the last school year for which individual student free or reduced-price meal eligibility determinations were made;

(18) "School district" or "district" means:

(A) A geographic area that:

(i) Qualifies as a taxing unit for purposes of ad valorem property

taxes under:

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(a) Arkansas Code § 26-1-101 et seq.; and

(b) Arkansas Constitution, Article 14, § 3; and

(ii) Is either:

(a) Governed by an elected board of directors; or

(b) Under the administrative control of the State Board of Education or the Commissioner of Elementary and Secondary Education, hereafter “commissioner”, in place of an elected board of directors; or

(B) An open-enrollment public charter school, as defined in Arkansas Code § 6-23-103;

(19) “School year” means the year:

(A) Beginning July 1 of one (1) calendar year; and

(B) Ending June 30 of the next calendar year;

(20) “Students at risk” means those students demonstrating an ongoing persistent lack of meeting grade-level expectations in literacy and mathematics; and

(21) “Technology” means any equipment for instructional purposes that is electronic in nature, including but not limited to:

(A) Computer hardware;

(B) Computer software;

(C) Internet connectivity; and

(D) Distance learning.

Subpart 2. Special Needs — Alternative Learning Environment

6 CAR § 272-201. ALE general ~~requirements~~.

(a)(1) Every school district ~~shall~~may provide one (1) or more eligible alternative learning environments (ALE) for all students meeting the criteria of 6 CAR § 272-202(a)(1) by any of the following methods:

(A) A school district may establish and operate an ALE;

(B) A consortium of one (1) or more school districts may establish and operate an ALE with one (1) school district designated as the lead district;

(C) Participation in an ALE operated by an education service cooperative established under The Education Service Cooperative Act of 1985, Arkansas Code § 6-13-1001 et seq.; or

(D) A partnership with a state-supported institution of higher education and technical institute to provide concurrent courses and/or technical education options for academic learning to students in grades eight through twelve (8-12).

(2)(A) An ALE hybrid program may be established to serve students in grades nine through twelve (9-12).

(B) For funding purposes, FTEs are calculated based on the percentage of onsite instruction for a student in a hybrid program.

(3) A school district that provides an ALE through the methods outlined in subdivisions (a)(1)(B) – (a)(2) of this section remains responsible for all:

(A) Related school services; and

(B) State reporting requirements.

(b)(1) An ALE shall provide intervention services designed to address students' specific educational and behavioral needs.

(2) Intervention services shall include without limitation access to the services of a school counselor, a mental health professional, a nurse, and support services substantially equivalent to those provided to other students in the regular educational environment.

(3) Intervention services shall be coordinated with state and federal student assistance programs.

(c) An ALE shall not be punitive but shall provide the guidance, counseling, and academic support necessary to enable students who are experiencing emotional, social, or academic problems to continue to make progress toward educational goals appropriate to each individual student's specific:

(1) Situation;

(2) Characteristics;

(3) Abilities; and

(4) Aspirations.

6 CAR § 272-202. ALE student eligibility and placement.

(a)(1) To be placed in an ALE, a student must:

(A) Need innovative programs and strategies that typically cannot be provided through regular school options; and

(B) Be experiencing or exhibiting two (2) or more of the situations or characteristics below that negatively affect the student's academic and social progress:

(i) Ongoing, persistent lack of attaining proficiency levels in literacy and mathematics;

(ii) Abuse:

(a) Physical;

(b) Mental; or

(c) Sexual;

(iii) Frequent relocation of residency;

(iv) Homelessness;

(v) Inadequate emotional support;

(vi) Mental/physical health problems;

(vii) Pregnancy;

(viii) Being a single parent;

(ix) Personal or family problems or situations;

(x) Recurring absenteeism;

(xi) Dropping out of school; or

(xii) Disruptive behavior.

(2) Students will not be placed in the ALE based on academic problems alone.

(b)(1) A student may be enrolled in an ALE only on the referral of an Alternative Education Placement Team to be composed of the following individuals:

(A) The school counselor from the referring school;

(B) The building principal or assistant principal from the referring school;

(C) One (1) or more of the student's regular classroom teachers;

(D) A local education agency special education or 504 representative, if applicable;

(E) A parent or guardian of the student, if they choose to participate; and

(F) An ALE administrator or ALE teacher, or both.

(2) At the option of the school district, the student may be included as a member of the Alternative Education Placement Team.

(3) The school district shall:

(A) Document efforts to contact the parent or guardian to schedule a meeting or a phone call for a placement meeting at the parent's or guardian's convenience; and

(B) Maintain such documentation in the student's Student Action Plan.

(c) The ALE program shall:

(1) Assess the student either before or upon entry into the ALE;

(2) Provide intervention services designed to address the student's specific educational needs; and

(3) Provide nonpunitive intervention services designed to address the student's specific behavioral needs for long-term improvement of the student's ability to control his or her behavior.

(d)(1) No later than one (1) week after a student begins alternative education interventions, the Alternative Education Placement Team shall:

(A) Assess the student's current functioning abilities and all relevant social, emotional, academic, career, and behavioral information; and

(B) Develop a Student Action Plan outlining the intervention services to be provided to the student.

(2)(A) The Student Action Plan shall contain at a minimum:

(i) A plan of intervention services to be provided to address:

(a) The student's specific educational needs; and

(b) If appropriate, the student's behavioral needs;

(ii) Goals and objectives necessary to achieve positive reintegration into the regular educational environment;

(iii) Exit criteria on which to base a student's return to the regular educational environment;

(iv) Documentation of the presence of the characteristics listed in subdivision (a)(1) of this section for which the student was referred; and

(v) Documentation of the specific ALE programming and supports that will address each identified characteristic or situation causing a barrier to the student's success.

(B) The Student Action Plan may be revised from time to time by the Alternative Education Placement Team as circumstances warrant.

(e) No later than five (5) school days after a student begins alternative education interventions, the Alternative Education Placement Team shall develop a signed agreement between the ALE, the parent or guardian if they choose to participate, and the student, outlining the responsibilities of the ALE, parent or guardian, and the student to provide assurance that the plan for each student is successful.

(f) A positive behavior or transitional plan shall be developed and added to the Student Action Plan prior to a student's return to the regular educational environment.

6 CAR § 272-203. ALE personnel requirements.

(a) Administrative, teaching, and other personnel in an ALE shall meet appropriate state licensure and renewal requirements for the positions to which they are assigned.

(b) Every classroom in an ALE program shall maintain student/teacher ratios as follows:

(1)(A) For grades kindergarten through six (K-6), no more than ten (10) students to one (1) teacher.

(B) If a paraprofessional is employed in addition to a licensed teacher, the student/teacher ratio shall be no more than twelve (12) to one (1);

(2)(A) For grades seven through twelve (7-12), no more than fifteen (15) students to one (1) teacher.

(B) If a paraprofessional is employed in addition to a licensed teacher, the student/teacher ratio shall be no more than eighteen (18) to one (1).

(C) For physical education courses that lend themselves to large group instruction, this ratio may be increased up to thirty (30) students to one (1) teacher when a paraprofessional is employed in addition to a licensed teacher;

(3) In a middle school where the grade configuration includes grades five (5) or six (6) or both, the student/teacher ratios for grades seven through twelve (7-12) may be applied; and

(4)(A) For an ALE hybrid program including any of grades nine through twelve (9-12), no more than thirty (30) students to one (1) teacher.

(B) If a paraprofessional is employed in addition to a licensed teacher, the student/teacher ratio shall be no more than thirty-five (35) to one (1).

(C) However, the number of onsite students on any day shall not exceed the ratios in subdivision (b)(2)(A) of this section.

(c)(1) An ALE shall establish plans for professional development and in-service training for all licensed personnel working in the ALE in a teaching or administrative capacity.

(2) Professional development and in-service training for ALE personnel shall include training in:

(A) Classroom management; and

(B) Additional areas related to the specific needs and characteristics of students in alternative education environments.

(3) All licensed personnel working in an ALE shall participate in specific alternative education professional development as part of the six (6) days required annually for licensed personnel by the Rules Governing Professional Development, 6 CAR pt. 183.

(4) The Division of Elementary and Secondary Education shall award professional development credit for programs:

(A) Provided under subsection (d) of this section; and

(B) Approved pursuant to the Rules Governing Professional Development, 6 CAR pt. 183.

(d) Wages, salaries, or benefits may be paid out of ALE funds only to the extent of the time devoted by an employee to direct supervision of or direct work in an eligible ALE program.

6 CAR § 272-204. ALE curriculum and program requirements.

(a) An ALE shall assess each ALE student either before or upon entry into the ALE with effective, research-based assessment tools to determine the student's current academic capability.

(b)(1) An ALE shall provide a curriculum including mathematics, science, social studies, and language arts aligned with the regular classroom instruction.

(2) Reading, writing, and mathematics shall be incorporated into all curriculum areas.

(3) An ALE shall use the curriculum frameworks adopted by the Division of Elementary and Secondary Education to plan instruction leading to student demonstration of proficiency in the Arkansas academic standards.

(c) As an alternative to the curriculum required by subsection (b) of this section, an ALE may allow an individual student to instead pursue a curriculum aligned with the standards for high school equivalency tests, subject to the following conditions:

(1) The student must be sixteen (16) years of age or older;

(2) The student must lack sufficient credits to graduate by the time the student turns eighteen (18) years of age; and

(3) The student's parent or guardian, or the student if the student is eighteen (18) years of age or older, must consent in writing.

(d)(1) Computer-based asynchronous instruction programs:

(A) May be used only as a supplement to direct teacher instruction; and

(B) Must constitute less than forty-nine percent (49%) of total instructional time in any one (1) course.

(2)(A) An ALE may use courses or teachers from a digital provider approved by the division.

(B) The instruction provided must be synchronous to be considered direct teacher instruction.

(C) The physical classroom must:

(i) Be staffed by a licensed teacher who will monitor, assist, and facilitate as needed; and

(ii) Adhere to the ALE class-size ratios identified in 6 CAR § 272-203(b).

(3)(A) An ALE hybrid program must meet all required components of an ALE program.

(B) Students in an ALE hybrid program must participate onsite for direct support at least twenty percent (20%) of the total instructional time to be counted for funding.

(C)(i) A district using an ALE hybrid program must develop clear criteria for monitoring student success to determine the need for additional direct support if there is a lack of expected progress.

(ii) Additional direct support may include an increased percentage of:

(a) Onsite instruction; and

(b) Additional services and supports.

(D) An increased percentage of remote instruction or placement of a student in an ALE hybrid program should only be used to meet a student's academic, social, and emotional goals outlined in the Student Action Plan, not as a punishment or negative consequence.

(4) A student receiving fully remote instruction shall not be considered to be part of an ALE program.

(e)(1) All students attending an ALE operated by a consortium of school districts shall follow the lead district's school calendar.

(2) All students attending an ALE operated by an education service cooperative shall follow a school calendar designated by the cooperative.

(f) An ALE shall be furnished with the equipment and instructional materials necessary to provide the environment and working conditions appropriate for subjects or activities assigned.

(g) Meals provided at ALE facilities shall:

- (1) Follow the Arkansas child nutrition guidelines; or
- (2) Be approved by the Child Nutrition Unit.

(h) An in-school suspension program for a regular educational environment may not be located in an ALE classroom.

6 CAR § 272-205. ALE program approval, reporting, and monitoring.

(a)(1)(A) Each ALE program shall submit to the Division of Elementary and Secondary Education every three (3) years, in electronic format, a program description documenting the program's compliance with:

- (i) Arkansas Code § 6-48-101 et seq.; and
- (ii) This part.

~~(B) Program descriptions are due before March 31 of the year assigned by the division.~~

(2) ALE programs operating in separate facilities, even if located within the same school district, are deemed to be separate individual programs requiring separate approval and separate reporting.

(3) Deviations from prior approved ALE program descriptions must be submitted to the division for review and formal approval.

(b) ~~On or before March 31, according~~ According to a three-year cycle established by the division's ALE Unit, each school district shall submit to the division in electronic format an assurance statement, signed ~~physically or~~ electronically by the superintendent of the district, that the school district is in compliance with:

- (1) Arkansas Code § 6-48-101 et seq.; and
- (2) This part.

(c) ~~On or before March 31, according~~ According to a three-year cycle established by the division's ALE Unit, each ALE program operated by a consortium of school

districts or by an education service cooperative shall submit to the division in electronic format:

(1) A list of all school districts participating in the ALE; and

(2) A copy of the contract agreement or memorandum of understanding governing the ALE program and entered into by:

(A) The participating school districts; and

(B) If applicable, the education service cooperative.

(d)(1) Annually, the division shall compile annual report data for each ALE program utilizing Arkansas Public School Computer Network (APSCN) student management data.

(2) The data compiled shall include:

(A) The number of students, subdivided by race, gender, and grade level, enrolled in an ALE program at any time during that school year;

(B) The number of students enrolled in an ALE program who:

(i) Returned to the regular educational environment;

(ii) Dropped out of school;

(iii) Graduated; or

(iv) Received a high school equivalency diploma;

(C) The number of high school students graduating in that school year who, over their entire grades kindergarten through twelve (K-12) career, were enrolled in an ALE for a total of twenty (20) or more days;

(D) The number of students:

(i) Enrolled in an ALE program; and

(ii) Participating in workforce/secondary career centers;

(E) The number of students:

(i) Enrolled in an ALE program; and

(ii) Receiving special education services;

(F) The number of students enrolled in an ALE program who had previously exited an ALE program in the second or third prior school year;

(G) The total amount of all funds expended to operate the ALE program for that school year;

(H) The total amount of ALE funding received for that school year;

(I) The total number of ALE students per district with grade improvements after beginning the ALE intervention program;

(J) The total number of ALE students per district with attendance improvements after beginning the ALE program; and

(K) The total number of ALE high school students per district with improved credit attainment after participating in the ALE intervention program.

(e) After June 15 of each year, the division may direct a district to provide the annual report data required under subsection (d) of this section if the information sought is not readily ascertainable from APSCN student management data.

(f)(1) To be eligible for ALE funding under 6 CAR § 272-206, an ALE program shall be approved annually by the division.

(2) Program approval shall be contingent on a satisfactory review of the program description, annual report data, and assurance statement submitted pursuant to this section.

(3) Program approval shall be for a term of up to three (3) years, running from July 1 or the date of program approval, whichever is later, through June 30 of the designated year.

(4) The division shall give notice of approval or disapproval of an ALE program ~~no later than July 15 of the year of program approval~~ according to the posted three-year cycle, contingent on the ALE program timely submitting all required information.

(g)(1) Each school district that provides an alternative learning environment shall submit a description of the ALE program or programs utilized by its students to the division.

(2) Each school district shall evaluate programs supported by ALE funds annually to ensure that the programs are providing a nonpunitive environment that:

(A) Is conducive to learning;

(B) Eliminates traditional barriers to learning; and

(C) Complies with this part.

(3) The total ALE funds shall be budgeted in the school district's financial management software.

(h) As part of the division's accreditation review of each school district under Arkansas Code § 6-15-202, the division shall evaluate each ALE to ensure that the ALE is:

(1) Established and operated in compliance with:

(A) This part; and

(B) Arkansas Code § 6-48-101 et seq.; and

(2) Effective under the measurements established by the division.

(i) The division shall identify a school district's noncompliance on the school district's annual report card.

(j) The division shall:

(1) Identify information concerning best practices for educating students in alternative learning environments; and

(2) Disseminate that information to teachers and administrators working in alternative learning environments.

(k) On or before September 15 of each year, the division shall provide to the interim House Committee on Education and the interim Senate Committee on Education a report on the:

(1) Information reported to it under this section; and

(2) Effectiveness of ALE programs evaluated by the division.

6 CAR § 272-206. ALE funding.

(a) The ALE funding amount shall be:

(1) The amount authorized by law; multiplied by

(2) The district's eligible ALE students' full-time equivalents (FTE) in the previous school year as defined in this part.

(b) An ALE student shall be counted as no more than one (1) student for ALE funding purposes.

(c)(1) An eligible ALE student's FTE shall be calculated as follows:

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- (A) The sum of the total number of days:
 - (i) An eligible ALE student attends an eligible ALE; plus
 - (ii) Absent while enrolled in an eligible ALE program; divided by
- (B) The number of school days actually taught in the district's school year.

(2) If an eligible ALE student has less than six (6) hours per day of student/teacher interaction time in an eligible ALE, the student's FTE shall be calculated as:

- (A) The result of the calculation in subsection (c); multiplied by
- (B) The number of hours that student is taught in an eligible ALE each day; divided by
- (C) Six (6) hours.

(3) In no case shall an eligible ALE student's FTE be calculated as greater than one (1.0).

(4)(A) If an eligible ALE student is educated in an eligible ALE for fewer than twenty (20) consecutive days, no ALE funding may be paid for that student unless:

(i) The student:

(a) Leaves the school district to transfer to another eligible ALE;

and

(b) Is enrolled in an ALE for a combined total of twenty (20) or more consecutive days; or

(ii) The student is placed in a residential treatment program.

(B) No school district may receive ALE funding for an eligible ALE student for any day the student is not enrolled in an eligible ALE in that district.

(d) Each student participating in an ALE hybrid program for the required time specified in 6 CAR § 272-204(d)(3)(B) shall be counted as one-half (0.5) FTE for funding purposes.

(e) ALE funding is restricted state aid.

(f) ALE funding shall be spent on eligible ALE programs identified in this part except as otherwise allowed by law or rule.

(g) ALE funding may be carried over from one (1) fiscal year to the next, but these funds shall remain restricted to the priority areas as defined in this part except as otherwise allowed by law or rule.

Subpart 3. Special Needs — English-Language Learner

6 CAR § 272-301. Home Language Usage Survey.

A school district shall conduct a Home Language Usage Survey for each student upon initial enrollment to identify students who need to be screened for English-language learner status.

6 CAR § 272-302. ELL funding.

(a) The ELL funding amount shall be:

- (1) The amount authorized by law; multiplied by
- (2) The district's identified ELL students in the current school year.

(b) The number of identified ELL students shall be a total of all students identified as not proficient in the English language based upon the statewide Entrance and Exit Procedures criteria, including an approved English proficiency assessment instrument.

(c)(1) The number of identified ELL students used for the funding calculation will be the Cycle 2 data submitted to the Division of Elementary and Secondary Education each school year.

(2) Districts must also have a clear APSCN Language Minority Student Error Report in order for funds to be released by the division.

(d) An ELL student shall be counted as no more than one (1) student for ELL funding purposes.

6 CAR § 272-303. ELL documentation.

School districts shall maintain documentation of each student identified as a current or former ELL.

6 CAR § 272-304. Assessment.

For ELL funding purposes, the state-approved English proficiency assessment is the English Language Proficiency Assessment for the 21st Century, screener or summative version.

6 CAR § 272-305. ELL activities eligible for funding.

ELL funding shall be expended for eligible activities including, but not limited to, the following:

- (1) Salaries for ELL-skilled instructional services (not supplanting district financial obligations for providing teachers for ELL students);
- (2) Funds for teacher training, consultants, workshops, and ELL coursework, including Division of Elementary and Secondary Education-sponsored training programs;
- (3) Released time for ELL program development;
- (4) Selection and purchase of language-appropriate instructional and supplemental (enrichment) materials for ELL students, including computer-assisted technology and library materials;
- (5) Language and cultural skills training for school-based health service providers, counseling service providers, and community liaison staff as needed to serve ELL students;
- (6) Assessment activities, which include:
 - (A) Test administration, identification, placement;
 - (B) Review of ELL student academic progress; and
 - (C) Evaluation activities to determine the effectiveness of the district's ELL program; and
- (7) Funds for the implementation of supplemental instructional services for ELL students.

6 CAR § 272-306. Carryover of funds.

ELL funding may be carried over from one (1) fiscal year to the next, but these funds shall remain restricted to those priority areas defined in this part except as otherwise allowed by law or rule.

6 CAR § 272-307. Description and budget.

A description and budget of ELL activities and funding shall be included in the district's financial management software.

6 CAR § 272-308. Language Instruction Educational Program.

A public school district shall offer a Language Instruction Educational Program for identified ELL students in accordance with all applicable federal laws and regulations, including without limitation:

- (1) The Equal Educational Opportunities Act of 1974, Pub. L. No. 93-380, 20 U.S.C. § 1703;
- (2) Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq.; and
- (3) Title III, Part A of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. §§ 6801 – 6871.

6 CAR § 272-309. Core English-language learner plan.

A description of the school district's core ELL plan identifying the district's chosen English Language Development Model and the district's Access to Core Content Program Model shall be submitted to the Division of Elementary and Secondary Education no later than October 1 each year.

Subpart 4. Special Needs — Enhanced Student Achievement Funding

6 CAR § 272-401. Basis for enhanced student achievement funding.

(a)(1) Except as provided in subsection (f) and subdivision (g)(2) of this section, enhanced student achievement funding under Arkansas Code § 6-20-2305(b)(4) shall be based on the:

(A) Number of national school lunch students for the immediately preceding school year determined under 6 CAR § 272-102(21); divided by
(B) District's total enrolled students for the immediately preceding school year.

(2) If the school district is a Provision 2 district, this funding is based on:

(A) The school district's percentage of national school lunch students submitted in the base year; multiplied by

(B) The number of enrolled students for the immediately preceding school year.

(3) If the school district is a Community Eligibility Provision (CEP) district, this funding is based on:

(A) The school district's percentage of national school lunch students submitted in the year prior to implementing CEP; multiplied by

(B) The number of enrolled students for the immediately preceding school year.

(4) If a school district, open-enrollment public charter school, or school within a district or charter is changing from Provision 2 to CEP, the enhanced student achievement funding percentage used during the final year of Provision 2 will be the enhanced student achievement funding percentage for the:

(A) Four-year CEP cycle; and

(B) Year following the four-year CEP cycle.

(5) For determination of the per-student amount of enhanced student achievement funding, the percentage shall be:

(A) Calculated to one-tenth of one percent (0.1%); and

(B) Rounded:

(i) Up to the nearest whole number from five-tenths of one percent (0.5%) or above; or

(ii) Down to the nearest whole number from less than five-tenths of one percent (0.5%).

(b) For school districts in which ninety percent (90%) or greater of the previous school year's enrolled students are national school lunch students, per-student enhanced student achievement funding shall be the amount authorized by Arkansas Code § 6-20-2305(b)(4)(A)(i).

(c) For school districts in which less than ninety percent (90%) but at least seventy percent (70%) of the previous school year's enrolled students are national school lunch students, per-student enhanced student achievement funding shall be the amount authorized by Arkansas Code § 6-20-2305(b)(4)(A)(ii).

(d) For school districts in which less than seventy percent (70%) of the previous school year's enrolled students are national school lunch students, per-student enhanced student achievement funding shall be the amount authorized by Arkansas Code § 6-20-2305(b)(4)(A)(iii).

(e) Districts must participate in the United States Department of Agriculture's National School Lunch Program to receive enhanced student achievement funding.

(f) For an open-enrollment public charter school in its initial year of operation, first year operating under a new license, first year adding a new campus, or in any year in which the charter school adds a grade level, per-student enhanced student achievement funding under Arkansas Code § 6-20-2305(b)(4) shall be based on the school's current school year enrollment as verified in Cycle 2.

(g) Calculating percentage of national school lunch students for districts wherein at least one (1) school, but not the entire district, uses Provision 2 and/or at least one (1) school, but not the entire district, uses CEP.

(1) For some districts, calculating the district's percentage of national school lunch students for any one (1) fiscal year will require combining data from schools in the district, each of which may accept surveys or may use a different method to calculate that school's percentage as a result of that school's participation in Provision 2 or the Community Eligibility Provision (CEP) of the National School Lunch Program.

(2)(A) If implementing CEP in a year that enhanced student achievement funding is based on current-year Cycle 2 data, open-enrollment public charter schools

will be required to accept and report Alternative Income Forms by October 1 from all students in the school to enable calculation of enhanced student achievement funding.

(B) The number of students eligible for enhanced student achievement funding as determined by the Alternative Income Forms is used to determine the CEP base-year percentage.

(C) This percentage is used every year of the four-year CEP cycle and, if the charter is then funded using previous-year data, the year following the four-year CEP cycle.

(3)(A) For a school district or open-enrollment public charter school that opens a new school that participates in CEP in its first year of operation, district-level enhanced student achievement funding is calculated using previous-year data.

(B) For the second year in operation, the school would need to accept and report Alternative Income Forms by October 1 from all students.

(C) This would establish the CEP base-year percentage for the school that would be in effect for the:

- (i) Remainder of the four-year CEP cycle; and
- (ii) Year following the four-year CEP cycle.

(4)(A) For districts and schools wishing to renew the CEP cycle, during the fourth year of the four-year CEP cycle, if there is a difference of five (5) percentage points or greater between the percentage of identified students in the April calculations from the Child Nutrition Unit, multiplied by the CEP multiplier, and the current enhanced student achievement funding percentage, then a new enhanced student achievement funding percentage would need to be calculated.

(B) The new percentage would be calculated in the following year (Year Five (5)) by accepting and reporting Alternative Income Forms by October 1.

(C) The number of eligible students is divided by the October 1 enrollment.

(D) This new percentage would be applicable during:

- (i) Year Six (6); and

(ii) The duration of the four-year CEP cycle (Year Six (6), Year Seven (7), and Year Eight (8), and, if renewed, Year Nine (9)).

(E) If there is a difference of less than five (5) percentage points between the percentage of Identified Students in the April calculations from the Child Nutrition Unit, multiplied by the CEP multiplier, and the current enhanced student achievement funding percentage, then the enhanced student achievement funding percentage used during the fourth year of the CEP cycle would be used for:

(i) The following four-year CEP cycle; and

(ii) If renewed, the year immediately following that cycle.

(5) If a school district, open-enrollment public charter school, or school or schools transition from CEP, the enhanced student achievement funding percentage used during the last full year the school district, open-enrollment public charter school, or school or schools participated in CEP will be used for the year following the year of discontinuance of CEP.

(6)(A) For purposes of enhanced student achievement funding, an Alternative Income Form, developed by the Division of Elementary and Secondary Education and available on the division's website, will be used any time there is not a meal status established or there is a change in meal status for an individual student.

(B) For Provision 2 and CEP school districts and schools, an Alternative Income Form will be used in years after the last meal applications were taken by the school district, or for open-enrollment public charter schools, if a school district requests a review of the overall income status of the school district's students.

(C) Alternative Income Forms shall go through a verification process at the school district that includes, at a minimum, a review of a standard sample size of three percent (3%) of the Alternative Income Forms approved by the open-enrollment public charter school or school district for the school year as of October 1 of the school year.

(D) The verification process shall be subject to review by:

(i) The Child Nutrition Unit; and

(ii) Arkansas Legislative Audit.

(E) Alternative Income Forms are considered student education records for purposes of:

(i) The Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g; and

(ii) All applicable confidentiality provisions.

(F) Alternative Income Forms may be used to determine eligibility for other qualifying programs that require a specific percentage of NSLA eligibility provided that the income verification criteria are met.

6 CAR § 272-402. Determining percentage of NSLA-eligible students.

(a) Except as provided in subsection (d) of this section, the district percentage of NSLA-eligible students shall be determined from the Arkansas Public School Computer Network's Cycle 2 report for the previous school year.

(b) The Child Nutrition Unit shall verify the Cycle 2 report for accuracy.

(c) Adjustments to the Cycle 2 report shall be made by the Division of Elementary and Secondary Education based on documentation provided by the school district.

(d) For an open-enrollment public charter school in its initial year of operation, first year operating under a new license, first year adding a new campus, or in any year in which the charter school adds a grade level, the school's percentage of NSLA-eligible students shall be determined by the school's certified Cycle 2 free or reduced-price meal eligibility data for the current school year.

6 CAR § 272-403. Enhanced student achievement state growth funding.

(a) The Division of Elementary and Secondary Education shall use the Cycle 2 enrollment data for the previous four (4) years to calculate a three-year trend in district enrollment.

(b) If a district has grown at least one percent (1%) for each of the three (3) previous years, it shall qualify for enhanced student achievement state growth funding.

(c) Districts that qualify for funding shall receive enhanced student achievement state growth funding.

(d) The funding shall be calculated as:

- (1) The three-year average growth in enrollment; multiplied by
- (2) The district's previous-year percentage of students eligible for the United States Department of Agriculture's National School Lunch Program; multiplied by
- (3) The per-student funding amount determined in 6 CAR § 272-401.

6 CAR § 272-404. Transitional enhanced student achievement funding methods.

(a) If a school district would receive, in the current school year, enhanced student achievement funding under Arkansas Code § 6-20-2305(b)(4)(A) that is based on a different per-student amount of enhanced student achievement funding than the school district received in the immediately preceding school year due to a percentage change in national school lunch students, the Division of Elementary and Secondary Education shall adjust the funding to the school district in a transitional three-year period.

(b) The amount of enhanced student achievement funding under Arkansas Code § 6-20-2305(b)(4)(A) shall be increased or decreased in each year of a three-year transition period by one-third ($1/3$) of the difference between the amount of enhanced student achievement funding per student for the current year and the amount of enhanced student achievement funding per student for the immediately preceding year, adjusted for changes to the funding rates in Arkansas Code § 6-20-2305(b)(4)(A).

6 CAR § 272-405. Required use of enhanced student achievement funds.

(a) Each school district receiving enhanced student achievement funds shall use such funds for evidence-based program or programs or purpose or purposes for students at risk in order to improve instruction and increase academic achievement of those students.

(b) This does not prohibit use of funds in performing schools to continue doing those strategies that are sustaining or enhancing that performance.

6 CAR § 272-406. Impermissible use of enhanced student achievement funds.

Enhanced student achievement funding shall not be used to meet, satisfy, or supplant the Rules Governing Standards for Accreditation of Arkansas Public Schools and School Districts, 6 CAR pt. 61, as required by The Quality Education Act of 2003, Arkansas Code § 6-15-201 et seq., or the Arkansas minimum teacher salaries required by Arkansas Code § 6-17-2403 except as otherwise allowed herein.

6 CAR § 272-407. Eligible programs and purposes for enhanced student achievement funding.

(a) Enhanced student achievement funding shall be expended for eligible program or programs or purpose or purposes that are aligned to the needs of the students in the district based on evidence from the district's needs assessment.

(b) Eligible expenditures must include strategies to:

- (1) Increase student achievement;
- (2) Reduce gaps in achievement among student subgroups; or
- (3) Create conditions that support student learning with a direct tie to improved student outcomes.

(c) Eligible expenditure types include without limitation personnel, materials, supplies, services, and equipment including technology to implement or support the purposeful use of funds as outlined in the following categories:

(1) If the school district meets the teacher compensation requirements according to the minimum salary schedule under Arkansas Code § 6-17-2403 for teachers serving in positions required by the Rules Governing Standards for Accreditation of Arkansas Public Schools and School Districts, 6 CAR pt. 61, without using enhanced student achievement funding:

(A) The hiring of additional teachers for core academic subject areas, as identified in the Rules Governing the Arkansas Qualified Teacher Requirements, 6 CAR pt. 182, that are not required by the Rules Governing Standards for Accreditation of Arkansas Public Schools and School Districts, 6 CAR pt. 61; and

(B) The enhancement of teacher salaries for recruitment and retention purposes or additional compensation for teachers who assume identified leadership roles or additional responsibilities that support student academic achievement;

(2) Academic supports and interventions, including without limitation:

(A) Curriculum specialists;

(B) Facilitators;

(C) Tutors;

(D) Dyslexia interventions; and

(E) Response to Intervention;

(3) Social, emotional, and behavioral supports;

(4) Physical and mental health resources, including without limitation personnel;

(5) Early intervention resources, including without limitation:

(A) Prekindergarten programs;

(B) School tutoring programs that take place before or after school; and

(C) Early literacy interventions; and

(6) Access to post-secondary opportunities, including without limitation access to:

(A) Career coaches;

(B) Concurrent credit courses;

(C) College entrance support; and

(D) Career-readiness support.

6 CAR § 272-408. Three-year enhanced student achievement plan.

(a) By July 1, 2022, each public school district shall submit a three-year enhanced student achievement plan to the Division of Elementary and Secondary Education describing:

(1) The school district's intended and implemented strategies to enhance student achievement; and

(2) How enhanced student achievement funds will be used to support the strategies of the school district:

- (A) As permitted by law; and
- (B) In accordance with this part.

(b) A school district shall:

- (1) Conduct a needs assessment developed by the division; and
- (2) Use district-specific data to identify areas where enhanced student achievement funds need to be directed.

(c) The plan shall specify the categories and types of expenditures, including without limitation personnel, programs, materials, supplies, services, and equipment including technology the district intends to use to meet the needs:

- (1) Identified through the assessment; and
- (2) Supported by the data.

(d) The plan shall include goals and measures of success for the areas where enhanced student achievement funds will be directed.

(e) A school district shall provide justification for the use of enhanced student achievement funds in areas not:

- (1) Identified by the needs assessment; or
- (2) Supported by data.

(f) A school district shall review:

- (1) Annually the school district's enhanced student achievement plan; and
- (2) The progress of the school district's enhanced student achievement plan.

(g) The enhanced student achievement plan of a school district shall be updated as necessary by the school district, and amendments to the enhanced student achievement plan shall be submitted annually to the division with the annual budget of the school district.

(h) The division shall monitor the implementation and progress of the enhanced student achievement plan of a school district, including without limitation the categories and types of expenditures for enhanced student achievement funds.

(i) A school district that does not demonstrate progress toward the goals of the enhanced student achievement plan of the school district for three (3) consecutive years may be subject to one (1) or more of the following:

- (1) Additional monitoring by the division;
- (2) An increased level of support as provided in Arkansas Code § 6-15-2913;

or

(3) A corrective action plan that shall be developed in collaboration with the division.

(j) The division shall provide a report on the progress of school districts in meeting plan goals to the House Committee on Education and the Senate Committee on Education by October 1 of each odd-numbered year beginning in 2023.

6 CAR § 272-409. Including enhanced student achievement funds in district support plan.

Use of enhanced student achievement funds shall be included within the school district's support plan if required under:

- (1) Arkansas Code § 6-15-2914; and
- (2) The Rules Governing the Arkansas Educational Support and Accountability Act, 6 CAR pt. 60.

6 CAR § 272-410. Restricted state aid.

Enhanced student achievement funding is restricted state aid, except as otherwise allowed by law or rule.

6 CAR § 272-411. Monitoring and compliance for use of ESA funds.

(a) At any time during a school year, the Division of Elementary and Secondary Education may review:

- (1) A school district's support plan;
- (2) Reports and information required by this part;
- (3) Test data;

- (4) Financial data; and
- (5) Other indicators of a school district's compliance with:

- (A) This part; and

- (B) The purpose of meeting the needs of students served by enhanced student achievement funds.

(b) Upon review, the Commissioner of Elementary and Secondary Education or his or her designee may take one (1) or both actions allowed in subsection (c) of this section if the commissioner determines that a school district:

- (1) Has not met the needs of students who may be served by enhanced student achievement funds;

- (2) Provided false or misleading information; or

- (3) Failed to comply with the provisions of the district's submitted plans without obtaining division approval.

(c) Upon a determination under subsection (b) of this section, the commissioner may require the school district to redirect the enhanced student achievement funds to meet other educational needs of the students of that district.

6 CAR § 272-412. Budgeting enhanced student achievement funds.

(a) A school district shall budget one hundred percent (100%) of enhanced student achievement funds each year to provide the supports and resources described in 6 CAR § 272-407.

(b) If a school district intends to transfer enhanced student achievement funds to other programs not described in 6 CAR § 272-407, the school district shall provide justification for the transfer of funds to the Division of Elementary and Secondary Education.

6 CAR § 272-413. Annual expenditure of enhanced student achievement funds.

(a) By June 30 of each year, a school district shall expend a minimum of eighty-five percent (85%) of the school district's current-year enhanced student achievement funding allocation in a manner permitted under this part.

(b) Enhanced student achievement funding carried over from one (1) fiscal year to the next shall remain restricted to areas as defined in law or this part unless otherwise allowed by law or rule.

(c) A school district that on June 30 of any year has an enhanced student achievement funding balance in excess of fifteen percent (15%) of the school district's current year enhanced student achievement funding allocation shall reduce its total enhanced student achievement funding balance by at least ten percent (10%) in each year that follows so that by June 30 of each year thereafter, the school district has a balance of no more than fifteen percent (15%) of the school district's current year enhanced student achievement funding allocation.

(d)(1) Under an unusual and limited circumstance, including without limitation an increase in one-time funds or an unexpected decrease in school district revenues during a given year, a school district may request that the Division of Elementary and Secondary Education waive the requirements of this section.

(2) A school district seeking a waiver shall file a waiver request with the Commissioner of Elementary and Secondary Education, accompanied by a resolution adopted by the school district's board of directors, describing the unusual and limited circumstances.

(3) The commissioner may grant a waiver request under this section for up to one (1) year if the commissioner finds that the request is necessary based upon the unusual and limited circumstances.

(e) The division shall monitor on a yearly basis each school district's compliance with the requirements of this section.

(f)(1) If a school district fails to comply with the requirements of this section during a school year, the division may in the following school year withhold from that school district's enhanced student achievement funding allocation an amount equal to the

amount required to be spent by the school district in order to be in compliance with the requirements of this section.

(2) The division may redistribute amounts withheld under this subsection to other school districts entitled to receive enhanced student achievement funding allocations.

6 CAR § 272-414. Enhanced student achievement matching grant program.

(a)(1) A matching grant program has been established for enhanced student achievement expenditures for evidence-based programs to improve the academic achievement of identified national school lunch students.

(2) These programs shall be limited to:

(A) Tutors;

(B) Before-school academic programs and after-school academic programs, including transportation to and from the programs; and

(C) Prekindergarten programs.

(b)(1) Only those expenses coded with the appropriate codes for the allowable uses outlined in subsection (a) of this section will be eligible for matching funds.

(2) The allowable program codes to be used when coding expenditures will be published annually by the Division of Elementary and Secondary Education.

(c)(1) Available funding will be distributed to school districts on a dollar-for-dollar matching basis for allowable expenditures unless the total of statewide expenditures exceeds the amount of funding allowed by the act, at which point funding will be paid on a pro rata matching basis to the districts.

(2) For a pro rata basis, a matching percentage will be calculated by dividing each LEA's allowable expenditures by the statewide total of allowable expenditures and applying that percentage to the amount of funding available in order to determine the funds reimbursed to the district.

(d) In order for the enhanced student achievement matching funds not to be calculated towards the eighty-five percent (85%) enhanced student achievement

expenditure requirements in the fiscal year in which the matching funds are received, the funds must be receipted and expensed using the ESA Matching Grant fund and revenue code specified by the division.

(e) Matching funds:

(1) May be used only for the expenses allowed under this program; and

(2) Are meant to supplement, not replace, the districts' enhanced student achievement spending.

(f) Only expenses incurred from July 1 to June 30 of the previous fiscal year are eligible for reimbursement from any available funding appropriated.

(g) By October 15, the division will publish a commissioner's memo listing the reimbursements each district is expected to receive.

Subpart 5. Finances and Funding

6 CAR § 272-501. Special needs — Professional development.

(a) The professional development funding amount shall be:

(1) An amount up to the amount authorized by law; multiplied by

(2) The district's ADM of the previous school year.

(b) Professional development funding shall be expended for:

(1) Approved professional development activities and materials as required by the Teacher Excellence and Support System, Arkansas Code § 6-17-2801 et seq., by other law or rule, or by the school district, that:

(A) Improve the knowledge, skills, and effectiveness of teachers;

(B) Address the knowledge and skills of administrators and

paraprofessionals concerning effective instructional:

(i) Strategies;

(ii) Methods; and

(iii) Skills;

(C) Lead to improved student academic achievement; and

(D) Improve the knowledge, skills, and effectiveness of Response to Intervention and dyslexia intervention instruction;

(2) Employing instructional facilitators or Literacy, Mathematics, or Science Specialists/Coaches, grades kindergarten through twelve (K-12), as described in this part; and

(3) Training for school bus drivers in compliance with rules promulgated by the Commission for Arkansas Public School Academic Facilities and Transportation.

(c) Districts may expend state professional development funding to provide the requisite hours of professional development required by law or rule.

(d)(1) Professional development funding is restricted state aid.

(2) Professional development funding shall be spent on activities identified in this part except as otherwise allowed by law or rule.

(e) Professional development funding may be carried over from one (1) fiscal year to the next, but these funds shall remain restricted to priority areas as defined in this part except as otherwise allowed by law or rule.

(f)(1) Professional development activities and funding shall be included in the district's support plan.

(2)(A) Use of professional development funds shall be included within the school district's support plan.

(B) The plan must include how the funds will be spent.

(3) The district shall annually evaluate professional development implementation supported by professional development funds to ensure that professional development as implemented by the school or district provides intervention prevention services designed to increase student achievement.

(4) Evaluation data regarding the implementation and effect of professional development and professional growth plans should be utilized in the school improvement process to determine future professional development plans.

(5) The total professional development funds shall be budgeted in the school or school district's financial management software.

6 CAR § 272-502. Financial accounting for special needs state funding.

(a) After having provided programs designed to meet the needs of students in the respective categorical funding areas, a school district may transfer and expend funds on any of the special needs categories allowed for in this part.

(b) Special needs state funding of ALE, ELL, enhanced student achievement, and professional development may be used for any of the expenditures identified in this part.

(c) Districts shall report the funds received under each special needs state funding category.

(d) Districts shall report the expenditures of all special needs state funds as required by law, including but not limited to fund balances remaining on June 30 of each year.

(e) The funds received, transferred, expended, and carried over shall balance.

(f) If the Division of Elementary and Secondary Education determines that a district would lose any federal funding due to these explicated expenditure requirements, the special needs state funds may be expended for other academic programs or salaries as permitted by the division.

6 CAR § 272-503. Categorical fund balances.

(a)(1) As of June 30 of each school year, the total aggregate balance of all state categorical fund sources shall not exceed twenty percent (20%) of the total aggregate annual state categorical fund allocations for the current school year except as provided herein.

(2) On June 30 of each school year, if the total aggregate balance of all state categorical fund sources exceeds twenty percent (20%) of the school district's total aggregate annual state categorical fund allocations for the current school year, the school district shall reduce that total balance by ten percent (10%) each year until the school district's June 30 balance of aggregate annual categorical fund sources is twenty percent (20%) or less of the total aggregate annual state categorical fund allocations for the current school year.

(3) The annual reduction required under subdivision (a)(2) of this section shall be a minimum of ten percent (10%) of the total excess balances of all state categorical fund sources.

(4) ESA Matching Grant funds shall not be included when calculating the total aggregate annual state categorical fund allocation.

(b) A school district may transfer funds received from any categorical fund source to another categorical fund source.

(c)(1) The Division of Elementary and Secondary Education shall monitor on a yearly basis each school district's compliance with the requirements of:

(A) Arkansas Code § 6-20-2305(e); and

(B) This section.

(2) If a school district fails to comply with the requirements of Arkansas Code § 6-20-2305(e) or this section during a school year, the division may in the following school year withhold from that school district's categorical funding allocation an amount equal to the amount required to be spent by the school district in order to be in compliance with the requirements of:

(A) Arkansas Code § 6-20-2305(e); and

(B) This section.

(3) The division may redistribute amounts withheld under Arkansas Code § 6-20-2305(e) and this section to other school districts entitled to receive categorical funding allocations.