

**DIVISION OF ELEMENTARY AND SECONDARY EDUCATION RULE GOVERNING  
EDUCATION FREEDOM ACCOUNTS  
PUBLIC COMMENTS AND RESPONSES**

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Commenter Name: Jodi Cobb, 7/31/23

Comments: Ms. Cobb disagrees with the program and believes the program will not be beneficial to students in failing schools due to transportation, believes homeschool children should not be eligible for the program, and argues homeschool students should take the same exact assessment as public school students.

Division Response: **Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: Lea Crisp, 7/31/23

Comments: Mrs. Crisp opposes the use of EFA funds for parochial schools and believes those funds should go to public schools.

Division Response: **Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: Ethel Simpson, 7/31/23

Comments: Mrs. Simpson believes EFA funds would be better used in public education. She also expressed rural communities be considered for EFA providers. Lastly, Mrs. Simpson commented the principles of separation of church and state, equal opportunity, fairness, and common sense are worth serious consideration.

Division Response: **Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: Martha Hartwick, 8/7/23

Comments: Ms. Hartwick opposes the use of EFA funds for private schools and opposes kindergartners being eligible for the program. Mrs. Hartwick commented the rules should include income caps.

Division Response: **Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: Lucas Harder, Arkansas School Boards Association, Policy Services Director, 8/7/23

Comments: 2.09 - “Arkansas Code Annotated” should be shortened to “Ark. Code Ann.” to align with the other occurrences in the Rules.

2.19 - I would recommend combining this with 2.19.1 as there is no 2.19.2 so it seems unnecessary to split the definition here.

6.01.2 - I would recommend replacing “GED” here with “high school equivalency exam” to more closely align with the definition found in 6-16-118, as amended by Act 115 of 2015.

6.02 - The oxford comma is missing from between “rules” and “or procedures”.

6.03 - I would recommend changing this to read, “Following the student’s placement in a public school, the account holder” as it otherwise feels like two entirely separate statements than two related ones.

7.01.3.a - As 42 U.S.C. § 200D only prohibits discrimination based on race, color, and national origin, I would recommend removing the reference to the Civil Rights Act and only using the citation as that could lead to confusion as to what discrimination is prohibited and is more closely aligned to the statutory language in Act 237.

8.04 - The opening line for 8.04 is at the very end of 8.03 instead of being on its own line.

9.03.1 - “Foregoing” is unnecessary here.

9.03.2 - “Foregoing” is unnecessary here.

Division Response: **Comment considered. Nonsubstantive changes were made.**

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Commenter Name: Jennie Whisnant, Mammoth Spring School District, Superintendent, 8/8/2023

Comments: I proposed a change to the draft rule to be 30 or 60 days from the start of the 2023-2024 school year. A shorter deadline would reduce the risk of an individual who is not suitable to work with children from being employed for a prolonged period. It would also create a sense of urgency for schools to complete the background check promptly.

Division Response: **Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: Kathy Powers, Conway Public Schools, Middle School Literacy Teacher, 8/8/2023

Comments: My concern is for students with special needs. If a family uses an EFA to attend a charter or private school, as it stands now, that school is under no legal obligation to accommodate any special needs modifications. That needs to change so that wherever a family sends their child to school in AR, that child’s special needs will be accommodated.

Division Response: **Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: Jim Buie, Fouke School District, Superintendent, 8/8/2023

Comments: Public School Districts should be permitted under these rules to be considered an Education Service Provider. Districts should create pricing/tuition lists for services that participants in the EFA Program may use at their discretion and be reimbursed. Public School Districts employ Mental Health Providers, any number of norm referenced testing batteries, high quality instructors in high-level math and science classes. Some districts have cultivated award winning, highly sought-after programs in Agriculture, Music, Athletics, Computer Science and other STEM Courses. Some districts also provide students basic medical services via school based health clinics. When a public school develops and maintains supports and programs that are desirable products for parents/students, they should not be excluded from billing for those desirable services when a non-public school student (for whom we no longer receive funding) desires to participate. I just want a more level playing field for public schools. A mechanism by which we can charge those who have elected to opt out of our public education system when they choose to utilize our supports and services seems like a fair way to give public schools a fighting chance in the competitive world of education.

Division Response: **Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: Don K. Berry, Col, USAF(Ret), Military Officers Assn of America, 8/15/2023

Comments: 3.01.5 - A child of active-duty military uniformed services personnel, as identified by Title 10, or Title 32, Title 33, or Title 42 of the United States Code and residency as provided by Ark. Code Ann. § 6-18-202;

Justification:

- (1) Replacing ‘military’ with ‘uniformed services’ with additional U.S.C. Titles as reflected by Ark Code Ann. § 6-18-2506(a)(3)(A)(i)(e). This code section was amended by Act 2023 No. 649 subsequent to Act 2023, No. 237.
- (2) Residency provision added. Rule Section 3.01 provides that “An individual who is a resident of the State of Arkansas and the parent of a student who is eligible to enroll in a public elementary or secondary school”
  - a. However, nearly all uniformed services families relocating to or based in Arkansas have a state other than Arkansas as their state of legal residency.
  - b. Ark Code Ann § 6-18-202 (a)(3) provides residency eligibility for families already stationed in Arkansas while § 6-18-202 (b)(5) provides residency eligibility for families inbound to Arkansas to permit Advance Enrollment.

Division Response: **Comment considered. A nonsubstantive change was made.**

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Commenter Name: Shelley Smith, 8/22/2023

Comments: Embedded in Section 14 of the Arkansas constitution, the section in which certain concrete truths about PUBLIC education are law, it clearly states that money intended for public education cannot be used for any other purpose.

EFAs are for private education. Private schools and home schools are not public schools, and they are NOT mentioned at all in Section 14. That's because public education funds are not intended for them.

This entire program is in violation of the state constitution.

Division Response: **Comment considered. No changes made.**

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Commenter Name: Laura Lee, The Reform Alliance, 8/25/23

Comments: Helped 1500 families transition from the Succeed scholarship to the EFAs. Submitted letters from parents across the state expressing their gratitude for the program.

Division Response: **Comment considered. No changes made.**

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Commenter Name: Emmy Hunley, The Reform Alliance, 8/25/23

Comments: Families they work with are grateful and in favor.

Division Response: **Comment considered. No changes made.**

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Commenter Name: Kristy Corbell, The Reform Alliance, Title, and 8/25/23

Comments: In favor of the rules.

Division Response: **Comment considered. No changes made.**

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Commenter Name: Kashana Milton, The Reform Alliance, 8/25/23

Comments: In favor of the rules.

Division Response: **Comment considered. No changes made.**

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Commenter Name: Cynthia Howsley, The Reform Alliance, 8/25/23

Comments: In favor of the rules.

Division Response: **Comment considered. No changes made.**

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Commenter Name: Spencer Watson, The Reform Alliance, 8/25/23

Comments: In favor of the rules.

Division Response: **Comment considered. No changes made.**

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Commenter Name: Dallas Green, 8/25/23

Comments: In favor of the rules as written.

Division Response: **Comment considered. No changes made.**

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Commenter Name: Carmen Joslin, 8/25/23

Comments: In favor of the rules. Helps her family a great deal.

Division Response: **Comment considered. No changes made.**

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Commenter Name: Karyn Maynard, Moms for Liberty, 8/25/23

Comments: In favor of the rules as written. Want parents to have the choice.

Division Response: **Comment considered. No changes made.**

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Commenter Name: Darlene Kurtz, 8/25/24

Comments: Programs for special education students could have been funded better. "To take state money and put it into private enterprises, private schools, these newly formed programs, schools that are being set up in such a short period of time. Where's the quality? Are we not truly concerned about the education that children will receive? Quality develops over a period of time. And who are the teachers, what are their credentials, who are the superintendents?" "Putting together the LEARNS Act in such a short period of time with the new administration of the new governor, again, where's the quality? Where is the thinking through?" Thinks the taxpayers' money should go to the public schools.

Division Response: **Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: Veronica McClain, Friends of Public Education Network, 8/25/23

Comments: They've not defined "indoctrination." Will private schools accepting voucher money be held to the same indoctrination standards as public schools? Should be included in these rules. Any school that accepts public money should be held to the same standards including full financial reporting of the use of the money for public viewing. Every school must take any student using the same admissions standards as a public school. Every student in a school must have the same testing and the scores for the entire school (not just voucher students) must be published in the same manner as public schools. No student shall be exempt from state testing, and it should be the same state testing that public schools are expected to take, unless that same waiver would be given to a public school student. All students accepting vouchers must be reported demographically. Need to have the same demographic reporting as we do for public schools. No private school that accepts vouchers should be able to charge more than the voucher costs, less the 5%. Students that accept these vouchers should not be asked to sign away their federal protections.

**Division Response: Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: Julia Taylor, Arkansans for World Class Education, 8/25/23

Comments: Rules made very quickly. Concerned about students having to sign away their IDEA rights. If private schools are going to receive vouchers they need to have the same requirements as public schools - provide transportation, provide free lunch and breakfast, provide aftercare at a very discounted price; they need to be judged by the same standards and therefore take the same state testing as public schools. Private schools should also have to follow the same requirements as public schools, such as offering the same programs to their students as public schools, like the Career Education Program.

**Division Response: Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: Anika Whitfield, 8/25/23

Comments: These rules should be more equitable and inclusive. It's an issue that funds may be used only by "eligible" families. Students shouldn't be asked to forego their IDEA rights in order to access the funds.

**Division Response: Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: Michelle Linch, 8/25/23

Comments: In favor of the rules. Help students get into a school that's best for them. Appreciate there being accountability of the schools built into the rules.

Division Response: **Comment considered. No changes made.**

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Commenter Name: Lia Bell, 8/25/23

Comments: How can we improve public schools when we are taking money away from them and giving to the to private schools who don't have to meet the same standards as public schools. For example, the required community service hours is not required for private schools. Students should be able to change their paths more than twice before graduation.

Division Response: **Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: Debby Goolsby, 8/25/23

Comments: Concerned that tax dollars will be going to fund church schools.

Division Response: **Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: Kim Crutchfield, 8/25/23

Comments: Public funds should go to public schools.

Division Response: **Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: Jacqueline Bailey, The Reform Alliance, 8/25/23

Comments: In favor of the rules

Division Response: **Comment considered. No changes made.**

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Commenter Name: Jamie Thomas, The Reform Alliance, 8/25/23

Comments: In favor of the rules - student has been able to get one-on-one instruction to fit his needs at a private school and the EFA has made that possible

Division Response: **Comment considered. No changes made.**

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Commenter Name: Angela Jackson, The Reform Alliance, 8/25/23

Comments: The EFA has helped them afford a private school for their special needs student

Division Response: **Comment considered. No changes made.**

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Commenter Name: Randa Howlett, The Reform Alliance, Title, and 8/25/23

Comments: The EFA has helped them afford a private school for their special needs student

Division Response: **Comment considered. No changes made.**

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Commenter Name: Debbie Benson, The Reform Alliance, Title, and 8/25/23

Comments: The EFA has helped them afford a private school for their special needs student

Division Response: **Comment considered. No changes made.**

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Commenter Name: Dana Brown, The Reform Alliance, Title, and 8/25/23

Comments: The EFA has helped them afford a private school for their special needs student

Division Response: **Comment considered. No changes made.**

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Commenter Name: Carmen Kay, The Reform Alliance, Title, and 8/25/23

Comments: The EFA has helped them afford a private school for their special needs student. Student has needed one-on-one intervention and couldn't get effective intervention at the public school that they were zoned for.

Division Response: **Comment considered. No changes made.**

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Commenter Name: Amber Odom, The Reform Alliance, Title, and 8/25/23

Comments: The EFA has helped them afford a private school for their special needs student. Student has needed special care for a disability that public schools weren't equipped for.

Division Response: **Comment considered. No changes made.**

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Commenter Name: Carmen Joslin, The Reform Alliance, Title, and 8/25/23

Comments: The EFA has helped them afford a private school for their special needs student

Division Response: **Comment considered. No changes made.**

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Commenter Name: Sara Jondro, The Reform Alliance, Title, and 8/25/23

Comments: The EFA has helped them afford a private school for their special needs student

Division Response: **Comment considered. No changes made.**

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Commenter Name: Rachel Pallen, The Reform Alliance, Title, and 8/25/23

Comments: Parents have several students with special needs. The EFA has helped them afford a private school with smaller class sizes for their students' needs.

Division Response: **Comment considered. No changes made.**

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Commenter Name: Whitney Nicole, The Reform Alliance, Title, and 8/25/23

Comments: The EFA has helped them afford a private school for their special needs students.

Division Response: **Comment considered. No changes made.**

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Commenter Name: Lauren Harter, The Reform Alliance, 8/25/23

Comments: In favor of the rules. Allows parents to afford private schools if they choose to use them.

Division Response: **Comment considered. No changes made.**

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Commenter Name: Tonya Devine, The Reform Alliance, 8/25/23

Comments: In favor of the rules. Allows parents to afford private schools if they choose to use them.

Division Response: **Comment considered. No changes made.**

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Commenter Name: Chelsey Mewbourn, The Reform Alliance, 8/25/23

Comments: In favor of the rules. Allows parents to afford private schools if they choose to use them.

Division Response: **Comment considered. No changes made.**

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Commenter Name: Valerie Laisure, The Reform Alliance, 8/25/23

Comments: In favor of the rules. Allows parents to afford private schools if they choose to use them.

Division Response: **Comment considered. No changes made.**

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Commenter Name: Ashley Kelly, The Reform Alliance, 8/25/23

Comments: The EFA has helped them afford a private school for their special needs student

Division Response: **Comment considered. No changes made.**

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Commenter Name: Misty Mitchell, The Reform Alliance, 8/25/23

Comments: The EFA has helped them afford a private school for their special needs student

Division Response: **Comment considered. No changes made.**

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Commenter Name: Kerri Jackson Case, 8/26/2023

Comments: Rule 5.05 states private schools will be paid quarterly. If a student leaves the private school to enroll in public school, Rule 5.06.1 seems to indicate money paid to the school not used by the student will be returned to ADE, but where does that money go? And where does the money for the remaining quarters go?

Public schools report enrollment October 1 and are paid according to the census at that time for the entire school year. There is no spring true up for supplemental funding that I can find in the LEARNS Act. So public schools will be required by law to take the students that private schools failed, but without any funds to do it.

If the promoters of this law are to be believed, the state can soon expect a whole new crop of private schools and coops to pop up to take advantage of vouchers. They view this as a metric of success. How will public schools be able to educate the students left in the wake of these by these fly by night enterprises with no funds?

**Division Response: Comment considered. Substantive changes were made to address funding accountability for education service providers.**

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Commenter Name: Kerri Jackson Case, 8/26/2023

Comments: Rule 5.07 indicates that 5% of voucher money will be given to banks. This is just usurious on its face. Credit cards long known for outrageous service fees rarely take more than 2-3%.

**Division Response: Comment considered. No changes made.**

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Commenter Name: Kerri Jackson Case, 8/26/2023

Comments: According to rule 7.01.3.a, a private school cannot violate the Civil Rights Act of 1964. According to a list published in the Arkansas Democrat Gazette newspaper, Little Rock Christian Academy is an approved private school. However, LRCA has a documented history of doing just that when they would not allow a Mormon child to enroll in their school because they weren't Christian enough. I presume they are not the only religious school who does not accept students based on religion.

While I would defend that decision as unseemly but legal if they were merely a private institution, rule 7.01.3.a would indicate now that they take public money, they must change their admissions policy. Except, there's rule 7.07.1 which states they don't have to change their admissions policy. Which rule will ADE enforce? Are private schools allowed to discriminate or not?

Section 11, with regard to evaluating the effectiveness of the vouchers is problematic for both what it includes and what it does not.

The "OR" conjoining 11.01.1 and 11.01.2 is doing a lot of work.

If the goal is actually to give families choice, then private schools that accept voucher money need to give students the same standardized tests as public schools. They also need to disclose the same socioeconomic metadata that public schools do. Otherwise there is no way for parents to be able to see an accurate comparison of both student populations and success of methodology in the schools.

Section 11 notably in its survey of parents in Rule 11.05 does not collect data on what school the student attended prior to taking a voucher. It also does not collect data on students' previous academic achievement relative to grade level norms before and after enrolling in a private school.

Without these pieces of data, there is no way to know if the voucher program is achieving its stated goals of improving overall student achievement as well as allowing students who could not previously afford private school to be able to do so.

In other states where this data was collected, student overall achievement did not improve and most of the students who got vouchers were already enrolled in private school. Why does Arkansas not want to accountability for the program to track its success beyond parent "satisfaction"?

**Division Response: Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: Loren Newberry-MSE/SPED, 8/27/2023

Comments: As a public school special educator, I have concerns regarding the rules set in place for students who have disabilities but choose to use an AFE account. In the rules it states that parents are acknowledging that they're giving up FAPE in exchange for a private education but if each student is receiving close to \$7,000, how exactly is that money being used to support these students in a private education environment? Are private schools still responsible for maintaining IEPs and accommodation requirements? What if a student chooses to move back to a public school? How will their education plans and rights be monitored in this setting if they're giving up FAPE?

**Division Response: Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: Mary Vickerson, 8/27/2023

Comments: Taking public taxpayer funds for religious education is a blatant violation of church and state. I vehemently oppose the use of taxpayer funds for this purpose. In addition, if private educational institutions accept these funds they should be required to 1) accept ANY students who wish to attend 2) refund ALL funding received for any student who is removed from the school and 3) use the exact testing and reporting requirements of our existing public schools. As an aside, indoctrination goes both ways and religious dogma is the epitome of teaching children to blindly believe what they are fed by overzealous so called leaders.

**Division Response: Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: Winston F. Simpson, 8/27/2023

Comments: 1. The rules should make clear how the Educational Freedom Account Program applies to home schooling. Much talk during the legislative session by legislators and the media indicated that the Educational Freedom Accounts would be available to support homeschooling. The applicable section of the rules is 2.06 "Education Service Provider". If a person meeting the definition of a Parent in section 2.14 can qualify as an Education Service Provider the rules should make that clear. Section 3.01.6 clearly defines a first-time kindergarten student as an eligible student. I can find no portion of the rules or law that prohibits home schooling a first-time kindergartener in school year 2023-24. Yet I've seen no public reporting of home school student approved for an Educational Freedom Account for the 2023-2024 school year.

2. Sections 7.01.3 and 7.07.1 appear ripe for conflict. The rules should make clear that section 7.01.3 is the ruling provision.

**Division Response: Comment considered. Substantive changes were made with respect to clarifying home school student eligibility and eligibility for first-time kindergarten students.**

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Commenter Name: Casey Shepard, 8/27/2023

Comments: Using public taxpayer monies for religious education purposes is a BLATANT violation of church and State. I vehemently oppose and am disgusted by the notion to use taxpayer monies for this purpose as it is UNCONSTITUTIONAL. This proposal will add insult to injury to our already BLEEDING public school system, and it will greatly hurt those children that need it most, especially our disabled and disadvantaged students.

If private educational institutions were to accept these funds they should be required to adhere to the following conditions:

1. Accept ANY students who wish to attend;
2. Refund ALL monies received for any student who is dismissed or otherwise leaves the school, and
3. Use the exact testing and reporting requirements of the State of Arkansas' existing public schools.

Last but not least, indoctrination indeed goes both ways, and religious dogma is the epitome of teaching children to blindly believe what they are fed by overzealous so-called "leaders." Those in office pursuing this agenda should be ASHAMED of themselves for knowingly and willingly attempting to violate the U.S. Constitution for personal, political, religious or otherwise similar gain at the expense of this State's schoolchildren.

**Division Response: Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: George West, 8/28/2023

Comments: DESE proposed rules start with definitions of terms that include:

“Succeed Scholarship” ... on DESE website, the following is included

“...the Succeed Scholarship Program:

Enables public school students with an IEP to attend a private school of choice through a scholarship.

How much is the scholarship? How much of the curriculum of the private school of choice is based on the IEP? What and who do the scholarship funds pay for? Does the scholarship pay for any religious instruction materials or instructor salary? Are the instructors of Succeed Scholarship students licensed and how does DESE verify this? Does the ADE maintain an updated register of all current instructors of all Succeed Scholarship students in each school district? Is this current register readily accessible to: the parents/guardians of the scholarship students seeking full accountability from the educational provider for their child, the private schools seeking to hire appropriately trained instructors for the scholarship students they enroll, and community stakeholders and taxpayers seeking confirmation of proper use of public funds?

Are all instructional materials used by the private provider to educate the Succeed Scholarship student inspected by the ADE? Do the school’s instructors have to provide lesson plans for the current school year in September of that year for advance approval by the ADE? Are the classrooms of the private education providers observed twice a year (one drop-in & one formal visit) and are the written evaluations accessible to parents, ADE administrators and other community stakeholders and taxpayers? What public records verify that all expenditures of scholarship funds to each private provider are available for public inspection?

**Division Response: Comment considered. No changes made. The Succeed Scholarship Program was an existing program that was replaced by the Educational Freedom Account as a result of the LEARNS Act. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: George West, 8/28/2023

Comments: Requires participating private schools to specify the grade levels and services available for students with severe disabilities. What qualifies as a “severe disability”? Does the school’s services include: transportation to school? wheel-chair ramps and elevators? bathroom facilitators? an appropriately trained adult to assist the student?

Are all instructional materials used by the private provider to educate the Succeed Scholarship student inspected by the ADE on an annual basis?

Are the updated records of the current year ADE inspections readily accessible to: the parents/guardians of the scholarship students seeking full accountability from the educational provider for their child, the private schools seeking to hire appropriately trained instructors for the scholarship students they enroll, and community stakeholders and taxpayers seeking confirmation of proper use of public funds?

**Division Response: Comment considered. No changes made. The Succeed Scholarship Program was an existing program that was replaced by the Educational Freedom Account as a result of the LEARNS Act. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: George West, 8/28/2023

Comments: Requires participating private schools to be accredited.

Does these proposed rules for EFA vouchers to private school require the require the private school to do the same “nationally norm-referenced” standardized testing of all students enrolled who using public taxpayer EFA scholarship funds, as is required of all public schools in the state?

Do these proposed rules require the ADE to assess and evaluate the educational services of all participating private schools on a current and annual basis to insure that the student using public taxpayer funds to attend the school is receiving the adequate and fair education required by the Arkansas Constitution for all Arkansas students?

Do these rules evaluate and exclude from participation in this voucher program any private school whose educational services fall into the category of an educationally or financially failing school as described in Sections 301.7a or 301.7b of this Act?

“(3.01.7 A student who was enrolled in the previous school year in a:

3.01.7.a Public school that has a rating of “F” under Ark. Code Ann. §§ 6-15-2105 and 6-15-2106 and State Board of Education rules; or

3.01.7.b Public school district classified as in need of Level 5 — Intensive support under Ark. Code Ann. §§ 6-15-2913 or 6-15-2915.”

**Division Response: Comment considered. No changes made.**

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Commenter Name: George West, 8/28/2023

Comments: Creates a program very similar to a 1999 Florida law, the McKay Scholarship Program, with proven benefits for students with special needs:

Do any objective studies since the mentioned 2008 and 2012 studies show the effectiveness of the “Succeed Scholarship” for students choosing to enroll in private schools?

Do these studies include analysis of the students’ performance on a “nationally norm-referenced tests”, as defined by section 2.11 of the LEARNS Act?

“(2.11 “Nationally Norm-Referenced Test” means a standardized test designed to compare and rank test takers in relation to one another as determined by comparing scores against the performance results of a statistically selected group of test takers, typically of the same age or grade level, who have already taken the exam.)”

Does the selected private school assign the student an instructor currently certified in the specific training used in the “effective” program of instruction for the students with disabilities”?

**Division Response: Comment considered. No changes made.**

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Commenter Name: George West, 8/28/2023

Comments: Regarding Section 5 of the proposed rules describing the amount of EFA funds provided for use at the participating private school...

“5.06 The total allocation to each participating student’s EFA for the 2023-2024 school year shall be \$6,672, unless either:

5.06.1 The total qualifying expenditures, as outlined in Ark. Code Ann. § 6-18-2503(11)(A), published by the participating school or service provider where a participating student is enrolled an amount equal to ninety percent (90%) of the prior year's statewide foundation funding allotted per student under § 6-20-2305. Any excess funds allocated to the private school shall be refunded to the Department.

5.06.2 The participating student is eligible under Section 3.01.4; in which case the allocation shall total the same amount awarded to the student as a Succeed Scholarship during the 2022-2023 school year.”

Given that the statewide foundation funding allotted per student to public schools is based on a public school’s costs for providing multiple services, including bus transportation, library

services and librarians, school counselors, nurses & health care professionals school lunches, physical education programs and facilities, career counselors, etc., the proposed rules should be amended to state that:

“If the private school does not provide the full range of services provided for by the transferring student’s public school, then the amount of EFA available to the participating private school shall be reduced proportional to reflect the services it does not provide. The participating school must submit in writing to the ADE a list of services not provided so that it can prevent EFA funds from being misspent in excess of the amount of statewide foundation funding allotted to public schools for every other Arkansas student.”

**Division Response: Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: George West, 8/28/2023

Comments: Regarding Section 7 of the proposed rules describing requirements of a private school to be eligible to participate and receive public taxpayer funds through an EFA account... In Section 7.01.2, wording should be changed from “comply with one or more of the following” to instead state “ALL OF THE FOLLOWING” in order to prevent public taxpayer funds from being paid to a school that may be in operating under conditions of a financially failing school as described above by Arkansas Code 301.7b for public school districts:

“(3.01.7.b Public school district classified as in need of Level 5 — Intensive support under Ark. Code Ann. §§ 6-15-2913 or 6-15-2915.)”

**Division Response: Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: Ali Noland, 8/28/2023

Comments: The notice provided for the adoption of these rules fails to meet the requirements of the Arkansas Administrative Procedure Act. The notice was not posted by the Secretary of State online for 30 days as required. The Secretary of State’s website has a section titled “Notices” in which previous rulemaking notices and notices of public meetings have appeared. No notice of this rulemaking is posted there. It is also not posted in the Secretary of State’s Calendar of public meetings and events, nor was it posted on the BLR website. See A.C.A. § 25-15-204(a)(1)(D)(ii).

**Division Response: Comment considered. No changes made.**

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Commenter Name: Ali Noland, 8/28/2023

Comments: Section 1.01, Purpose, should accurately reflect the purpose of the program as a means to transfer taxpayer funds to relatively wealthy families and undemocratic private institutions. It is false to state that the purpose of this program is to provide educational



opportunities to achieve success when there has been no empirical evidence demonstrating that students who use vouchers to transfer from public schools to private schools perform better academically. In fact, four rigorous studies of four different voucher programs in Louisiana, D.C., Ohio, and Indiana all showed that students' test score declined after they used a voucher to transfer to a private school. See Mark Dyanarski and Austin Nichols, "More Findings About School Vouchers and Test Scores, and They Are Still Negative," Brookings, July 13, 2017, available at <https://www.brookings.edu/articles/more-findings-about-school-vouchers-and-test-scores-andthey-are-still-negative/>.

**Division Response: Comment considered. No changes made.**

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**Commenter Name:** Ali Noland, 8/28/2023

**Comments:** Section 2.02, Definition of "Agreement," the voucher should not be presented as a contract between the account holder and the State when, as discussed below, all of the consideration being provided by the account holder comes in the form of a waiver of the child's legal rights. Furthermore, presenting this as an agreement or contract misleads the public into believing that the State will be held accountable for upholding its end of the bargain and/or that the contract is enforceable against the State. Due to current caselaw regarding sovereign immunity in Arkansas, it is virtually impossible for an account holder to obtain any legal remedy if the State breaches this contract. The language used here should be changed to reflect the fact that the EFA vouchers are conditional on legislative appropriations, that the State can change the terms of the "agreement" at any time, and that account holders have no recourse if they erroneously rely on this "agreement" to their detriment.

**Division Response: Comment considered. No changes made.**

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**Commenter Name:** Ali Noland, 8/28/2023

**Comments:** Section 2.06, Definition of "Education Service Provider," excludes public schools from acting as an education service provider if/when the school develops educational materials that EFA account holders want to use. If there is a market for these materials, traditional public schools should be able to obtain fair market value for the educational content they create.

**Division Response: Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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**Commenter Name:** Ali Noland, 8/28/2023

**Comments:** Section 2.11, Definition of "Nationally Norm-Referenced Test," should be changed to require EFA recipients to use the same specific test and testing procedures mandated for public schools in Arkansas. The definition here indicates that the test is intended to allow for the comparison of students against each other, but that is not feasible when they are not taking the

same test. In order to get accurate data regarding the impact, benefits, success, or outcome of the EFA voucher program, Arkansans need to be able to accurately compare the academic performance of voucher recipients to their own academic performance before using vouchers and to the general academic performance of the students in the traditional public schools that area. An accurate comparison cannot be made if they are not using the same tests.

**Division Response: Comment considered. No changes made.**

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**Commenter Name:** Ali Noland, 8/28/2023

**Comments:** Section 2.12, Definition of “Norming Studies,” should be changed to reflect the inaccuracies inherent in attempting to “norm” raw testing data that was obtained from different types of standardized tests administered using different testing procedures and in different settings. If the State intends to pull norm-referenced scores from the standardized tests administered to EFA recipients in order to reach any conclusions about the success of the individual student and/or the success of the EFA voucher program, it should require EFA recipients to take the same test(s) required of students ascending traditional public schools.

**Division Response: Comment considered. No changes made.**

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**Commenter Name:** Ali Noland, 8/28/2023

**Comments:** Section 2.19, Definition of Student with a Disability, lacks standards to prevent fraud and abuse. Specifically, DESE should add strict guidelines for disability eligibility for students who have previously attended the private or home school they now seek a voucher to attend, and who are alleging eligibility based on a disability diagnosis that they did not previously have when they attended that school without a voucher. For example, a disability diagnosis that occurred less than a year prior to applying for the voucher should trigger additional scrutiny, especially when the student is seeking a voucher for the school he or she has already been attending and that student would not be eligible for the voucher without that disability diagnosis.

**Division Response: Comment considered. Substantive changes were made to the definition of student with a disability and to address testing exemptions for students with a disability.**

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**Commenter Name:** Ali Noland, 8/28/2023

**Comments:** Section 3.01.4 uses “the 2022-2023 school year” while section 3.01.7 uses “the previous school year,” which is less exact. Both sections should use the precise designation for the actual school year intended.

**Division Response: Comment considered. No changes made. This language mirrors the statutory language.**

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Commenter Name: Ali Noland, 8/28/2023

Comments: Section 4.01 contains rules that, by their language, are only applicable between June 20, 2023, and August 1, 2023. DESE cannot adopt retroactive rules and should not adopt permanent rules that, on their face, are already outdated.

Division Response: **Comment considered. No changes made. The Department promulgated emergency rules to implement the Educational Freedom Account Program for the 2023-2024 school year.**

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Commenter Name: Ali Noland, 8/28/2023

Comments: Section 4.01.4 again contains a deadline, August 1, 2023, that has already passed.

Division Response: **Comment considered. No changes made. The Department promulgated emergency rules to implement the Educational Freedom Account Program for the 2023-2024 school year.**

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Commenter Name: Ali Noland, 8/28/2023

Comments: Section 4.02.3 governs approval of EFA applications for only the 2023-24 school year, making the rule effectively retroactive and not useful for future application.

Division Response: **Comment considered. No changes made. The Department promulgated emergency rules to implement the Educational Freedom Account Program for the 2023-2024 school year.**

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Commenter Name: Ali Noland, 8/28/2023

Comments: Section 5.00, which describes an “agreement” that the applicant (which means the parent if the child is under 18) must sign in order to obtain EFA funds, cannot and should not be used to induce a parent to waive his or her child’s legal rights under state or federal law in exchange for money.

Division Response: **Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: Ali Noland, 8/28/2023

Comments: Section 5.02.3 requires the parent to waive his or her child’s federal IDEA rights in order to receive EFA voucher money. This raises both legal and ethical concerns, as it

incentivizes the parent to waive a right that belongs to should be used for the protection and benefit of the student. By creating the Education Freedom Account voucher program, the State of Arkansas is using taxpayer money to publicly fund and regulate private education as a means of educating some of the young people in Arkansas. By requiring this waiver, the State of Arkansas is providing that public benefit in a way that violates federal law and incentivizes parents to waive their children's federal rights. Additionally, this provision discriminates against disabled applicants, as nondisabled applicants are not forced to give up any equivalent state or federal legal rights as consideration for the voucher funds. Finally, any such contract would be preempted by federal law and void as against public policy, because this scheme creates a publicly funded education system that refuses to meet the needs of disabled students.

**Division Response: Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: Ali Noland, 8/28/2023

Comments: Section 5.03.3 again specifies a specific school year (2023-2024). These are proposed permanent rules, so it does not make sense to limit the application to a specific school year.

**Division Response: Comment considered. Substantive changes were made to implement the Educational Freedom Account Program for the 2024-2025 school year and beyond.**

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Commenter Name: Ali Noland, 8/28/2023

Comments: Section 5.05 specifies that the EFA funds will be paid out in four installments, and that payments will stop if/when a student meets the criteria for terminating the agreement. This rule anticipates that some students will lose their EFA funds mid-year. Many of those students will likely need to enroll or re-enroll in a traditional public school or public charter school upon losing their EFA voucher funds. A provision should be added to allocate additional per-pupil funding to the traditional public school to provide for the education of these mid-year transfer students. One avenue to do this would be to allocate the remainder of the student's EFA voucher funds to the traditional public school or public charter school at which he or she enrolls upon termination of the EFA agreement. As the rule stands now, the State simply keeps the remainder of the funds and the public school is responsible for educating that student without receiving additional funding to cover the cost of providing that education. Ideally, a public school receiving a mid-year transfer of an EFA voucher student who has lost his/her voucher through termination of the EFA agreement would receive the full per-student funding amount for that student, but at the very least, the public school should receive the remainder of the student's EFA funds allocated for that school year.

**Division Response: Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: Ali Noland, 8/28/2023

Comments: Section 5.07 allows the Department to withhold up to 5% of the allocated EFA funds for program administration. First, this rule does not accurately reflect which entity would actually be withholding the funds if the Department would, in reality, be allocating the funds to the third-party organization with which it has contracted to provide management services for the EFA program, and the third party would then withhold the funds. The language of the rule and the language of the statute allows the Department to withhold “up to” 5%, but this rule contains no criteria or process for deciding exacting how much is withheld. The rules should be amended to add specific requirements that the Department and/or third-party management organization provide a detailed annual accounting of exactly what percentage of each EFA fund was withheld, how that amount was decided upon, and how that withholding was necessary to administer the program.

Division Response: **Comment considered. Substantive changes were made to detail the funding mechanism.**

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Commenter Name: Ali Noland, 8/28/2023

Comments: Section 6.00 fails to address the fact that poor academic performance could render a student ineligible for continued EFA participation. Arkansas Code Annotated section 16-18-2505(h) states that, “The division shall create procedures to ensure that a fair process exists to determine whether a participating student is no longer eligible for participation in the program, including without limitation a participating student who is no longer eligible for participation in the program due to his or her failure to demonstrate academic achievement or academic growth.” This provision clearly anticipates that students who are not performing well academically will lose eligibility for EFA voucher funds. Section 6.00 should spell out the academic standards that will be expected for continued participation in the program and should make clear to the participants and the public that a student who is struggling academically will lose his or her EFA voucher funds and will be sent back to public school.

Division Response: **Comment considered. Substantive changes were made to detail how a student who consistently fails to demonstrate academic achievement or growth may be removed from the Educational Freedom Account Program.**

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Commenter Name: Ali Noland, 8/28/2023

Comments: Section 7.01.1 fails to establish sufficient eligibility requirements to ensure that all participating private schools meet minimum standards for safety and quality. These rules do not require a private school to be accredited or to become accredited within any specified period of time. They merely require schools to apply for accreditation and to file reports articulating what steps, if any, the school is taking to gain accreditation. While the intent may be that the Department will then render any school not taking sufficient steps toward accreditation ineligible

for continued participation in the EFA program, the rules do not establish that as a basis for terminating eligibility. Under these rules, a private school could turn in a report that says “we have made no meaningful progress toward accreditation; maybe next year we will do better,” and the school would still have technically complied with Section 7.01.1.b because it had applied for accreditation and submitted a progress report, which is all that is required. Second, the language of the rules allows any of the accrediting organizations to substantially change their accreditation standards, which would mean that accreditation could be rendered virtually meaningless if these rules do not articulate a baseline or minimum that must be met.

**Division Response: Comment considered. Substantive changes were made to address the accreditation process.**

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Commenter Name: Ali Noland, 8/28/2023

Comments: Section 7.01.3.a is insufficient to prevent discrimination. The rule requires that the private school “attest” that they do not discriminate but does not create any mechanism to test or evaluate the accuracy of that statement. This rule needs to be greatly expanded to task the Department with an affirmative duty to investigate every claim of discrimination. It should also make clear that evidence of discrimination will render a school ineligible to participate. The Department must ensure that all participating schools are not discriminating in admissions, hiring, promotion, or any other way. Further, the Department should amend this rule to prohibit discrimination based on characteristics not covered by the Civil Rights Act. Specifically, a private school that accepts taxpayer EFA funds should not be permitted to make admissions decisions that discriminate or differentiate based on a student’s religious beliefs, sexual orientation or gender identity, income, disability, or academic performance.

**Division Response: Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: Ali Noland, 8/28/2023

Comments: Section 7.01 should be expanded and revised to require private schools accepting EFA voucher funds to meet the same requirements regarding teacher qualifications, teacher pay, background checks, building safety, financial safeguards, academic requirements for graduation, etc. that traditional public schools in Arkansas are required to meet. It is inequitable for the State to fund two education systems with significantly different rules. To be eligible to receive state EFA voucher funds, the private school must demonstrate that it provides an equivalent level of student safety, academic rigor, and responsible stewardship of public funds.

**Division Response: Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: Ali Noland, 8/28/2023

Comments: Section 7.07.1 should be stricken and removed from the proposed rules. First, it should be made explicitly clear that Section 7.01.3 trumps this provision, and that if a private school's current policies amount to discrimination under the Civil Rights Act, that school must alter those policies or it will not be eligible to receive EFA funds. Second, if this section remains in the rules that are formally adopted by the State, the State will be using taxpayer money to sanction and endorse private-school policies that discriminate and differentiate based on religious beliefs, sexual orientation and gender identity, disability, income, academic performance, mental or physical health, behavioral history, athletic ability, or a host of other factors that are not permitted as factors for determining admission, discipline, advancement, hiring, etc. in traditional public schools in Arkansas. Again, this creates and funds an unequal and inequitable two-tier education system in which public schools are held to one set of standards and constrained by one set of rules while publicly funded private schools are held to completely different standards.

Division Response: **Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: Ali Noland, 8/28/2023

Comments: Adoption of the proposed rules, as written, will violate the State's duty, under the Arkansas Constitution and the Lakeview cases, to provide an adequate and equitable education to all students.

Division Response: **Comment considered. No changes made.**

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Commenter Name: Ali Noland, 8/28/2023

Comments: Adoption of the proposed rules, as written, will violate students' federal rights under the IDEA.

Division Response: **Comment considered. No changes made.**

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Commenter Name: Ali Noland, 8/28/2023

Comments: Adoption of the proposed rules, as written, will violate students' First Amendment and Fourteenth Amendment rights by publicly funding schools that are permitted to discriminate and differentiate based on a students' religious beliefs, sex, gender, race, ethnicity, national origin, income, sexual orientation, gender identity, political ideology, or other classification.

Division Response: **Comment considered. No changes made.**

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Commenter Name: Ali Noland, 8/28/2023

Comments: Section 11.01.2 should be removed, and all participating schools should be required to administer the same standardized test(s) that are required to be given in traditional public schools. Allowing private schools to utilize different tests makes it virtually impossible to gather reliable and useful data about whether the EFA program is benefitting students. All references in 11.01 to standardized tests should be changed to reflect the fact that participating schools must administer the same test that public schools are required to give.

Division Response: **Comment considered. No changes made.**

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Commenter Name: Ali Noland, 8/28/2023

Comments: A reasonable alternative to the proposed rules would be to require all participating private schools, as a condition of eligibility, to accept all applicants (and use a blind, random lottery system if applications exceed available seats) in order to prevent discrimination and selective admissions.

Division Response: **Comment considered. Substantive changes were made to address priority of students who are enrolled in the Educational Freedom Account Program, should the number of students enrolled exceed the amount of funding available.**

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Commenter Name: Ali Noland, 8/28/2023

Comments: A reasonable alternative to the proposed rules would be to require all participating private schools, as a condition of eligibility, to administer the same exams required of public schools and abide by all laws, rules, and regulations applicable to traditional public schools, including laws and rules related to teacher qualifications, safety, curriculum, transportation, disability services, and discipline.

Division Response: **Comment considered. No changes made.**

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Commenter Name: Ali Noland, 8/28/2023

Comments: A reasonable alternative to the proposed rules would be to require all schools to be fully accredited before becoming eligible to accept EFA voucher funds.

Division Response: **Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: Ali Noland, 8/28/2023



Comments: A reasonable alternative to the proposed rules would be to affirmatively and strictly prohibit any publicly funded school (i.e., any school receiving EFA voucher funds) from teaching religious content in a way that would not be legal or permitted in a traditional public school. Otherwise, the EFA program will fund religious education in violation of the Arkansas Constitution and United States Constitution.

Division Response: **Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: Ali Noland, 8/28/2023

Comments: A reasonable alternative to the proposed rules would be to require all participating private schools, as a condition of eligibility, to provide disability and special-education services in a manner that complies with and meets federal IDEA requirements.

Division Response: **Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: Ali Noland, 8/28/2023

Comments: A reasonable alternative to the proposed rule would be to not require families to waive their child's federal IDEA rights in order to accept EFA funds but instead to administer the program in a way that complies with the IDEA and does not violate the child's rights.

Division Response: **Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: Ali Noland, 8/28/2023

Comments: The proposed rules impermissibly deviate from the authority granted under the LEARNS Act because they do not adequately ensure that the schools participating in the program are accredited and they do not adequately prevent discrimination.

Division Response: **Comment considered. No changes made. The rule as written complies with the enabling legislation in the LEARNS Act.**

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Commenter Name: Ali Noland, 8/28/2023

Comments: The EFA program, if administered in accordance with these proposed rules, will violate the Arkansas Constitution and the precedents set in the Lakeview cases by creating, funding, endorsing, and perpetuating an inequitable two-tiered education system with significantly different requirements for public schools versus publicly funded private schools.

This inequality will be exacerbated by the fact that these rules allow participating private schools to continue to use selective admissions policies that reduce or eliminate access for some students.

**Division Response: Comment considered. No changes made.**

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Commenter Name: Ali Noland, 8/28/2023

Comments: In some areas of the proposed rules, they are presented as permanent rules that will govern the EFA program for years to come, and in some areas, the rule is specifically applicable only to the 2023-2024 school year. While that makes sense for provisions that will change the following school year, this language is used in provisions that should not change. If the rules are passed as written, another rulemaking process will have to occur in order for the Department to adopt rules for the 2024-2025 school year and beyond.

**Division Response: Comment considered. Substantive changes were made to implement the Educational Freedom Account Program for the 2024-2025 school year and beyond.**

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Commenter Name: Jerry Cox, Education Alliance, President, 8/28/2023

Comments: The stated purpose of these rules is to “establish guidelines for the initial implementation and operation of the Educational Freedom Account...” In their current form, these rules are inadequate as guidelines for anything more than the 2023-24 school year. Example: For the 2024-25 school year, these rules do not address the expanded eligibility for students that include students who were enrolled in a “D” or “F” school, children of veterans, military reservists, first responders, and law enforcement. Example: for the 2025-26 school year, these rules do not address the unlimited student participation.

**Division Response: Comment considered. Substantive changes were made to implement the Educational Freedom Account Program for the 2024-2025 school year and beyond.**

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Commenter Name: Jerry Cox, Education Alliance, President, 8/28/2023

Comments: 2.06 - “Education Service Provider” means a business, nonprofit organization, or other entity, not to include a nonpublic or public school, which offers educational materials or services that are qualifying expenses reimbursable by EFA funds pursuant to Ark. Code Ann. § 6-18- 2503(11)(A).

Comment: “Education Service Provider” is defined in the rules but the term does not appear in the rules. It would be beneficial for the rules to provide greater clarity defining and clarifying the roles of a service provider, an education service provider, and a participating service provider. This may be complicated since the LEARNS Act does not mention an “educational service provider,” and it seems to use “service provider” and “participating service provider” synonymously.

Comment: “Education Service Provider” is not mentioned or defined in the LEARNS Act. It does mention in 6-18-2503 (11)(B)(vii) educational services provided by a licensed or accredited practitioner. The Act seems to view the terms “participating service provider” and “service provider” as synonymous. Under the LEARNS Act, a school can be a “participating service provider,” but under the rules a school cannot be an “educational service provider.”

**Division Response: Comment considered. Substantive changes were made to outline the scope of an education service provider.**

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**Commenter Name:** Jerry Cox, Education Alliance, President, 8/28/2023

**Comments:** 2.15 - “Participating school or service provider” means a school or other service provider that is approved by the Department to receive EFA funds.

Comment: The definition of “participating school” and “participating service provider” is inconsistent with the definition found in 6-18-2503: According to the LEARNS Act:

“Participating school” means a private elementary school or private secondary school that:

- (A) Offers enrolled students a full academic curriculum and full academic year experience; and
- (B) Receives payments from Arkansas Children's Educational Freedom Account Program accounts to provide goods and services that are covered as qualifying expenses under this subchapter;

“Participating service provider” means a person or an entity, including a participating public or private school, that receives payments from program accounts to provide goods and services that are covered as qualifying expenses under this subchapter;

**Division Response: Comment considered. Substantive changes were made to outline the scope of an education service provider.**

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**Commenter Name:** Jerry Cox, Education Alliance, President, 8/28/2023

**Comments:** 3.01 - Even though a few students who are enrolled in a homeschool in the 2023-24 school year are clearly eligible for EFA funds under the definition of student eligibility, the Department of Education EFA Family Handbook states on Page 9, Question #17 that homeschool children are not covered in the 2023-24 school year. This is partially the case. Homeschoolers who meet the eligibility requirements for the 2023-24 school year, and who are taking classes part time at participating private schools, are eligible for EFA funds to cover tuition, fees, testing, and uniforms during the 2023-24 school year. Repeated requests to have the EFA Family Handbook corrected failed. In the 2024-25 school year, more homeschoolers will be eligible for EFA funds. The rules for the EFA should clearly articulate that homeschoolers are eligible for EFA funds.

**Division Response: Comment considered. Substantive changes were made to clarify home school student eligibility.**

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Commenter Name: Jerry Cox, Education Alliance, President, 8/28/2023

Comments: 5.02 - The “written explanation of qualifying expenditures for EFA funds” is broadly outlined in the LEARNS Act. It would be good for the rules to list the categories for expenditures from the LEARNS Act and elaborate on each of them so as to provide guidance for individuals who are making and updating the list of approved expenditures. The rules need to provide more guidance for those who are crafting “written explanations.”

Division Response: **Comment considered. Substantive changes were made to detail qualifying expenditures.**

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Commenter Name: Jerry Cox, Education Alliance, President, 8/28/2023

Comments: 5.03 - The LEARNS Act does not address this. Under Arkansas law, public schools must allow students who are enrolled in a homeschool to take academic courses at their resident public school. Also, students who are enrolled in a homeschool must be allowed the opportunity to participate in interscholastic activities. Requiring the parent of a homeschool student to sign this waiver could jeopardize their child’s opportunities guaranteed elsewhere in the law.

Division Response: **Comment considered. No changes made. The rule as written complies with other provisions of law with respect to home school students.**

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Commenter Name: Jerry Cox, Education Alliance, President, 8/28/2023

Comments: These rules focus on evaluating students who are enrolled in a participating school or participating service provider. They do not address the evaluation of students who are enrolled in a home school.

Division Response: **Comment considered. No changes made. This change would require legislative action and is outside the scope of rulemaking.**

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Commenter Name: Jerry Cox, Education Alliance, President, 8/28/2023

Comments: The rules go into considerable detail regarding the norm-referenced test to be used while they provide much less guidance in other significant areas.

Division Response: **Comment considered. No changes made.**

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Commenter Name: Candice Hillman, 8/28/2023

Comments: In favor of program. Her family has benefitted from the program. People who previously couldn't afford to go to private school may be able to have tuition paid for in full now.

Division Response: **Comment considered. No changes made.**

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Commenter Name: Robin Elam, 5/11/24

Comments: As a homeschooling mother of two (one with a learning disability), I would love to share my hopes for the EFA.

1. That it would cover an updated dyslexia/disability testing, since this needs to be updated every 2-3 yrs, and it's so expensive.
2. That it would cover co-ops that may not choose to be official vendors.
3. That it could be used for web based typing programs and classes online.
4. For the technology needed for the classes, such as laptops, etc. (preferably laptop of choice as graphic design, art, and music classes require Macs - or at least pay a set amount towards this expense.)
5. That music or art lessons could be covered (online or in person), and potentially the purchase of an instrument.
6. That we could use the funds for educational day camps or summer programs with preapproval as needed.
7. That PE class could be an expense: archery team fees, gym membership, track club fees, etc.

Division Response: **Comment considered. Many of the points raised in this comment are addressed by the rule. To the extent that the rule does not contemplate these concerns, the rule gives the Department discretion to consider certain qualifying expenses.**

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Commenter Name: Haley French, 05/11/24

Comments: Thank you for taking the time to read my concern and voice my comment. It means a great deal to me that this platform is available to help make decisions.

I am a mother of two children. One of my children will be eligible for the EFA through 3.01.6. and I am depending on this to be able to homeschool my children because this will at least help me with costs for one of my children (both will not qualify, as my oldest child will be in 3rd). As a public school teacher and school counselor, I have decided to take a step back from my public school, not only as my job and source of income, but I will remove my children to be able to homeschool them myself.

My daughter who is 5 years old struggles with PTSD (incident at her previous preschool) when it comes to crowds and loud noises. I know that she would struggle greatly in a public school system and worry about her growth, as well as potential set backs. With that said, the EFA will help my family greatly as it would fund her curriculum, supplies and materials, field trips, and whatever else we would need to start her academic foundation strong.

I appreciate the development of this Education Freedom Account to be able to teach my children myself, which is something I thought I would never be able to do.

This absolutely matters because parents should have a say and voice when it comes to their children. Especially when children don't have a voice themselves or see the bigger picture of what we, as a nation, are allowing them to be exposed to. It terrifies me enough to leave my job. My children will not grow up naive, but I will not let their innocence be taken.

Again, I appreciate that time to hear my voice and my deep gratitude.

**Division Response: Comment considered. No changes made.**

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**Commenter Name:** Lauren Carter, 05/12/24

**Comments:** I am writing to express my concern at the eligibility of kindergarteners to use EFA funds for homeschool and microschool expenses.

I was recently told that kindergarteners would not be eligible to use funds for anything but private school expenses, but I see nothing in the rules that explicitly prohibits this. The reasoning I was originally given was that kindergarteners do not enroll in a grade level as a homeschool student; however, kindergarteners are eligible to go to a public school and enroll in kindergarten based on their age AND parents must indicate a grade level when filing their notice of intent. It seems counterintuitive that kindergarteners would be eligible for funding but not to use this funding for all qualifying expense.

What's more, it is a senseless caveat that sets an unfair precedent that, by this reasoning, kindergarteners will never be able to use funds for anything but private school in subsequent years when the program is supposed to become less restrictive. This unfairly targets kindergarteners who are arguably the most impressionable and vulnerable population of students because of their age.

There is nothing in the wording of the rule nor the language of the law that explicitly prohibits kindergarteners using funds for any specific approved expense. Please do not deny kindergarteners the opportunity to use their EFA funds for all the creative education options they so deserve.

**Division Response: Comment considered. No changes made. The substance of this comment addresses changes that would require legislative action, which is beyond the scope of rulemaking.**

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**Commenter Name:** Ileana Dobbins, Diocese of Little Rock, Associate Superintendent, 05/13/24

**Comments:** 7.01.2.2.b – “However, a private school under 7.01.2.2 must be fully accredited by July 1 of the fourth year after applying for participating in the EFA program.”

I would like to recommend changing “applying” to read – However, a private school under 7.01.2.2 must be fully accredited by July 1 of the fourth year after beginning participating in the EFA program.

It is my understanding that there are schools that applied to participate in the 2023-2024 school year but did not actually participate. If they actually begin participating in the 2024-2025 school year, it leaves them with three years to gain accreditation. This may not be doable.

**Division Response: Comment considered. A nonsubstantive change was made.**

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Commenter Name: Theresa Hall, Diocese of Little Rock, Superintendent of Catholic Schools, 05/13/24

Comments: 7.01.2.2.b – “However, a private school under 7.01.2.2 must be fully accredited by July 1 of the fourth year after applying for participating in the EFA program.”

I would like to recommend changing “applying” to read – However, a private school under 7.01.2.2 must be fully accredited by July 1 of the fourth year after participating in the EFA program.

Some schools that applied to participate in the 2023-2024 school year did not actually participate. If they actually begin participating in the 2024-2025 school year, it leaves them with three years to gain accreditation. This may not be doable.

Division Response: **Comment considered. A nonsubstantive change was made.**

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Commenter Name: April Reisma, Arkansas Education Association, President, 05/17/24

Comments: 4.02 - “For the 2024-2025 school year, pursuant to Arkansas Code § 6-18-2506(a)(3)(B)(ii) if the number of applications received by the department from eligible students, exceeds the maximum number of students that may participate in the EFA program or otherwise exceeds three percent (3%) of 2022-2023 total public school student enrollment, then the department shall award accounts in the following order:”

Will this only be a rule for 24-25? Will the 3% cap be lifted after that?”

Division Response: **Comment considered. No changes made. This comment is addressed by the rule as currently written.**

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Commenter Name: April Reisma, Arkansas Education Association, President, 05/17/24

Comments: 4.02 - “The department shall conduct an annual analysis to forecast the level of funds available for the EFA prior to the start of the application window.”

What will this analysis entail? As the EFAs become open to all, will the “funds available” become unlimited as well?

Division Response: **Comment considered. No changes made. This comment is addressed by the rule as currently written.**

---

Commenter Name: April Reisma, Arkansas Education Association, President, 05/17/24

Comments: 5.03.1 - “Agree not to enroll a participating student full-time in a public school while the student is participating in the EFA program”

If the student does enroll in a public school, will the money be transferred to that public school from the EFA?

**Division Response: Comment considered. No changes made. This comment is addressed by the rule as currently written.**

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Commenter Name: April Reisma, Arkansas Education Association, President, 05/17/24

Comments: 5.03.2 - “Acknowledge that the federal requirement that students receive a free and appropriate education applies to public schools and not to private schools; and that upon enrolling in the EFA program, a participating student may no longer be entitled to a free appropriate public education, including special education and related services, from their public school district of residence, as long as the child remains in the EFA program.”

This is a major concern. Students with disabilities need these services to grow, thrive, and learn. We cannot deny our most vulnerable students the services they need. The narrative was that the EFA would help these students, but this wording tells us that they would be giving up their rights. That is not helping them at all.

**Division Response: Comment considered. No changes made. The federal requirement for a free and appropriate education as currently exists, only applies to public schools. The change requested would require legislative action which is beyond the scope of rulemaking.**

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Commenter Name: April Reisma, Arkansas Education Association, President, 05/17/24

Comments: 5.03.4 - “Further agree, unless otherwise enrolled full-time in a participating school, to use a substantial amount of the funds each year for the benefit of the participating student to satisfy the compulsory attendance requirement in Arkansas Code § 6-18-201, providing an education in at least the subjects of English language arts, mathematics, social studies, and science.”

What is considered “substantial”?

**Division Response: Comment considered. A nonsubstantive change was made.**

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Commenter Name: April Reisma, Arkansas Education Association, President, 05/17/24

Comments: 5.05.2 - “If a student subsequently enrolls in a public school or is otherwise removed from the program, any of the student’s remaining EFA funds that are unused will be returned to the EFA fund in accordance with section 11.00.”

Why wouldn’t those unused funds go to the public school the student is going to?

**Division Response: Comment considered. A nonsubstantive change was made.**

---

Commenter Name: April Reisma, Arkansas Education Association, President, 05/17/24

Comments: 5.06.1 - “Any excess funds allocated to the private school shall be refunded to the department.”



What constitutes “excess” funds?

**Division Response: Comment considered. A nonsubstantive change was made.**

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**Commenter Name:** April Reisma, Arkansas Education Association, President, 05/17/24

**Comments:** 5.07.1 - “The specific amount withheld will be set by the contract procured with a third-party processing vendor.”

What is the procedure for having a contract? Is that subject to some sort of oversight? If so, who is providing that oversight?

**Division Response: Comment considered. No changes made. The Department of Education is subject to state procurement law and Office of State Procurement rules and procedures as they relate to contracting for services.**

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**Commenter Name:** April Reisma, Arkansas Education Association, President, 05/17/24

**Comments:** 5.09.1 - “The EFA has a balance of more than twenty thousand dollars (\$20,000) or three times the amount set forth in Arkansas Code § 6-18-2505(a), whichever is greater; or”  
Then what happens to it?

**Division Response: Comment considered. No changes made. This comment is addressed by the rule as currently written.**

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**Commenter Name:** April Reisma, Arkansas Education Association, President, 05/17/24

**Comments:** 6.04 - “The department may also remove a participating student who consistently fails to demonstrate academic achievement or growth on a valid and reliable assessment relative to the assessment’s scale.”

Who determines what is valid and reliable? Why wouldn’t they also take the ATLAS test that public schools take?

**Division Response: Comment considered. No changes made.**

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**Commenter Name:** April Reisma, Arkansas Education Association, President, 05/17/24

**Comments:** 7.01.2.1.c - “Periodically reviews participating schools’ accreditation status, including an on-site visit and review at least every seven (7) years.”

The review needs to happen much sooner than 7 years. That is too long to not monitor accreditation. A lot can happen in seven years.

**Division Response: Comment considered. No changes made.**

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Commenter Name: April Reisma, Arkansas Education Association, President, 05/17/24

Comments: 7.01.2.2.b - “However, a private school under 7.01.2.2 must be fully accredited by July 1 of the fourth year after applying for participation in the EFA program.”  
Four years is too long to allow to gain accreditation.

Division Response: **Comment considered. No changes made.**

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Commenter Name: April Reisma, Arkansas Education Association, President, 05/17/24

Comments: 7.01.4.4 - “The private school only employs or contracts with teachers who hold at least a baccalaureate degree or have equivalent documented experience, as determined by the private school;”  
Allowing each school to determine what is acceptable or comparable to a teacher with a degree is allowing too much leeway. All students deserve a teacher who is degreed and certified.

Division Response: **Comment considered. No changes made. The rule contemplates similar flexibility in teacher licensure as currently exists for public schools.**

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Commenter Name: April Reisma, Arkansas Education Association, President, 05/17/24

Comments: 7.04.4.5.e.2 - "Evidence is found that the individual has subject matter expertise in their field or can otherwise demonstrate possession of, or a satisfactory plan to acquire, the necessary skills, knowledge, or resources to teach a particular course or tutor in a particular subject area.”  
Who determines this?

Division Response: **Comment considered. No changes made. This comment is addressed by the rule as currently written.**

---

Commenter Name: April Reisma, Arkansas Education Association, President, 05/17/24

Comments: 7.05 - “The department’s approval of a school or education service provider shall serve as statewide approval of such provider for purposes of the EFA Program.”  
Blanket approval could lead to issues with individual sites that do not meet standards.”

Division Response: **Comment considered. No changes made. This comment is addressed by the rule as currently written.**

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Commenter Name: April Reisma, Arkansas Education Association, President, 05/17/24

Comments: 7.06 - “Private schools that were approved under the Succeed Scholarship program outside of the State of Arkansas may continue to receive funds for participating Succeed Scholarship students for the remainder of the participating students’ eligibility but shall not admit new students or otherwise participate in the EFA program.”

We should not be giving our money to out-of-state schools.

Division Response: **Comment considered. No changes made.**

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Commenter Name: April Reisma, Arkansas Education Association, President, 05/17/24

Comments: 7.10.3 - “Demonstration of a gross or persistent lack of academic competence, as determined by the department based on a student’s academic achievement and growth;”

How will this be accurately measured?

Division Response: **Comment considered. No changes made.**

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Commenter Name: April Reisma, Arkansas Education Association, President, 05/17/24

Comments: 7.11.1 - “A participating school or service provider shall not be required to alter its creed, practices, admissions policy, or curriculum to receive approval from the department or to accept payments from an EFA; however, the participating school shall not discriminate against a student or applicant in a way that would violate section 7.04.1.1.”

How will this be monitored?

Division Response: **Comment considered. No changes made.**

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Commenter Name: April Reisma, Arkansas Education Association, President, 05/17/24

Comments: 10.01 - “In compliance with all state procurement laws and procedures, the Department of Education retains the authority to contract with a vendor or other supplier for the purpose of administering all or part of the EFA program, including but not limited to:”

How much extra will this cost? Does that come out of the original amount budgeted and take away the amount available to EFAs?

Division Response: **Comment considered. No changes made. This comment is addressed by the rule as currently written.**

---

Commenter Name: April Reisma, Arkansas Education Association, President, 05/17/24

Comments: 11.02 - “In the event an account holder, parent, or participating student is found to be ineligible to participate in the program or in the event the participating student enrolls in a public school, the account will be frozen, and any EFA funds within the account shall be returned to the department.”

Will the money then follow the student to the public school?

**Division Response: Comment considered. No changes made. This comment is addressed by the rule as currently written.**

---

**Commenter Name:** April Reisma, Arkansas Education Association, President, 05/17/24

**Comments:** 12.01.2 - “A nationally recognized norm-referenced test approved by the State Board, that measures, at minimum, achievement in literacy and mathematics and provides information that compares the performance of students against the performance of a sample of students from across the country.”

All schools should have to take the same test so that accurate data can be gathered about growth.

**Division Response: Comment considered. No changes made. This comment is addressed by the rule as currently written.**

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**Commenter Name:** April Reisma, Arkansas Education Association, President, 05/17/24

**Comments:** 12.02.1 - “A list of participating students who have taken an examination or norm referenced test pursuant to section 12.01, the name of the assessment taken, and the achievement results for each student; and”

How will this be monitored in private schools? Will it be monitored like it is in public schools?

**Division Response: Comment considered. No changes made. This comment is addressed by the rule as currently written.**

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**Commenter Name:** April Reisma, Arkansas Education Association, President, 05/17/24

**Comments:** 12.03.2 - “An exempt participating student shall take an alternate assessment approved by the state board or prepare a portfolio that provides information on the participating student's progress to his or her parent.”

What are the requirements of the portfolio?

**Division Response: Comment considered. No changes made. This comment is addressed by the rule as currently written.**

---

**Commenter Name:** April Reisma, Arkansas Education Association, President, 05/17/24

**Comments:** 12.06 - “Survey results may be shared with the public at an aggregated school level, unless the school has fewer than fifteen (15) students participating in the program.”

Why are schools with less than 15 exempt? All schools need to share the survey results since they are using public funds.

**Division Response: Comment considered. No changes made. Federal student privacy laws requires that student information be protected from public disclosure absent specific exemptions.**

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**Commenter Name:** Nathan Schmedake, 05/22/24

**Comments:** My name is Nathan Schmedake, and I am commenting as a parent of a current kindergarten student in regard to rule 3.01.6. My daughter and two other children in her current kindergarten class at Christ Little Rock will be starting first grade, but were ineligible for the EFA program last year because they turned 5 in August, after the state cutoff date of 1 August but before the school cutoff date in September. We were told last year after our applications were rejected (after initially being accepted) that they would be eligible this year for first grade funding since they would now be of public school age and had completed kindergarten. However the rewrite of rule 3.01.6 states that to be eligible for first grade funding next year, students needed to be eligible for kindergarten funding this year, which is not the case for our children. Our online applications have already been reviewed and accepted this year, and my concern is that with the current definition, we will again have our eligibility overturned for first grade, and the only way to receive EFA funding would be to have our children repeat kindergarten, even though they already successfully finished it and it would be detrimental to their overall education.

**Division Response: Comment considered. No changes made. This comment is addressed by the rule as currently written.**

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**Commenter Name:** Nathan Schmedake, 05/22/24

**Comments:** "Good morning. My name is Nathan Schmedeke. I'm here as a parent, with regard to rule 3.01.6. My daughter and 2 other children at her current kindergarten class at Christ Little Rock would be starting 1st grade next year. But they were determined to be ineligible last year for the EFA program due to them turning five in August. After the States' 1st of August cutoff date, we were told last year after our applications were rejected, after initially being accepted in May, that they would be eligible for 1st grade funding this year, since they would now be of public school age. However, with the rewrite of the rule 3.01.6 that states that in order to get 1st grade funding this year they would have needed to be eligible last year, which for these three students is not the case. Our applications for next year have already been reviewed and accepted. However, our concern is that we'll just have a repeat of last year, and be informed that since our students are not at 1st grade age this year they will not be eligible. And the only way to get this EFA funding would be to have them repeat kindergarten this year. Even though they already successfully finished it and that would overall be detrimental to their education. That's my only concern. I appreciate your time."

**Division Response: Comment considered. No changes made. This comment is addressed by the rule as currently written.**

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Commenter Name: Spencer Watson, 05/22/24

Comments: My name is Spencer Watson. I'm the communications director for the Reform Alliance, a nonprofit organization that works to make sure that children have access to the best education to fit their specific educational needs. I appreciate the opportunity to be here this morning. Since well, throughout the process of LEARNS Act, introduction and passage and through the rulemaking process last year and this year, we have had the opportunity to speak with literally hundreds thousands of families. Educators. Entrepreneurs. Education service providers. To try and answer their questions. We appreciate the opportunity to comment on the rules as they are certainly an invaluable tool and resource in providing those answers and letting folks know where they need to go to find things. After a review of the rules, I'm happy to say that we are supportive of the rules as written and we appreciate the opportunity to comment."

Division Response: **Comment considered. No changes made.**

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Commenter Name: Aiden Fleming, Deputy Director of Policy Operations, Yes. Every Kid. Foundation., 05/28/24

Comments: 2.04.1.3 - Part-time student-facing providers (e.g., part-time home school co-op, part-time homeschool instructional support group, tutors, educational therapists, transportation providers).

Comment: This provision restricts tutors to part-time status.

Recommendation: It is not uncommon that the primary educator may be a tutor. Tutors should be added to the definition of full-time student-facing providers.

Division Response: **Comment considered. A nonsubstantive change was made.**

---

Commenter Name: Aiden Fleming, Deputy Director of Policy Operations, Yes. Every Kid. Foundation., 05/28/24

Comments: 2.14.17.1 - Technological devices do not include televisions, video game consoles or accessories, home theater equipment, or audio equipment.

Comment: Students with special needs regularly need audio equipment (e.g. headphones) which may be discussed or outlined in the students' IEP. Additionally, schools often purchase headphones for students with take home computers so they can do their work undisturbed. Many students do not have the luxury of private working space and audio equipment makes learning possible.

Recommendation: Strike audio equipment from the prohibited list.

Division Response: **Comment considered. A nonsubstantive change was made.**

---

Commenter Name: Aiden Fleming, Deputy Director of Policy Operations, Yes. Every Kid. Foundation., 05/28/24

Comments: 2.14.17.2 - Technological devices must be approved by the department or a licensed physician in the State of Arkansas to be a qualifying expense.

Comment: This requirement may create logistical challenges when seeking approvals. Many licensed physicians will not engage in recommendations outside of a child's medical need. Educational technological devices may not fall within those bounds leaving decision making solely to the department.

Recommendation: Remove provision. Focus on auditing technological devices post-purchase rather than requiring preapproval.

Division Response: **Comment considered. No changes made.**

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Commenter Name: Aiden Fleming, Deputy Director of Policy Operations, Yes. Every Kid. Foundation., 05/28/24

Comments: 2.14.18 Transportation costs from an approved service provider, to and from a participating school or provider, not to exceed the reimbursement rate adopted by the State for state employees.

Comment: The current state employee reimbursement rate is 52 cents/mile, which may be insufficient.

Recommendation: Specify a flat cap (per ride or per quarterly disbursement) for transportation costs to simplify the process for families, considering the average cost of a private rideshare ranges from \$1 to \$2 per mile.

Division Response: **Comment considered. No changes made.**

---

Commenter Name: Aiden Fleming, Deputy Director of Policy Operations, Yes. Every Kid. Foundation., 05/28/24

Comments: 4.01.1 The standard application form may be submitted via web portal available on the department's website.

Comment: The provision only allows for an online application option.

Recommendation: Include additional application formats (e.g. paper, mobile friendly) upon parental request to accommodate customer needs.

Division Response: **Comment considered. A nonsubstantive change was made.**

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Commenter Name: Aiden Fleming, Deputy Director of Policy Operations, Yes. Every Kid. Foundation., 05/28/24

Comments: 4.02.3.1(c) First responders;  
Comment: First responders are not defined.  
Recommendation: Define or reference statutory definition.

Division Response: **Comment considered. No changes made. The term is defined elsewhere in the rule.**

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Commenter Name: Aiden Fleming, Deputy Director of Policy Operations, Yes. Every Kid. Foundation., 05/28/24

Comments: 4.03 The department shall conduct an annual analysis to forecast the level of funds available for the EFA prior to the start of the application window.  
Comment: It is recommended that this forecast be made available to parents upon completion.  
Recommendation: Post the forecast publicly to assist parents on the waiting list in planning their child's education for the upcoming school year. This provision may be reevaluated once the program achieves universal status in 2025.

Division Response: **Comment considered. No changes made. Notice to parents does not require a rule change.**

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Commenter Name: Aiden Fleming, Deputy Director of Policy Operations, Yes. Every Kid. Foundation., 05/28/24

Comments: 5.00 Agreement and fund transfers.  
Comment: The agreement section outlines the department's requirements but lacks details on appeal procedures within the contract.  
Recommendation: Include details on appeal procedures to provide clear guidance to parents prior to signature.

Division Response: **Comment considered. No changes made. This comment is addressed by the rule as currently written.**

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Commenter Name: Aiden Fleming, Deputy Director of Policy Operations, Yes. Every Kid. Foundation., 05/28/24

Comments: 5.06.1 "Any excess funds allocated to the private school shall be refunded to the department."  
Comment: How will "excess funds" be determined? For example, If a child leaves a private school in the middle of a quarter and that quarterly payment was already remitted, are the parents required to pay back the difference? Will it be prorated? Will there be no action taken?



Recommendation: Include specific language addressing proration or detail that termination shall cause all further payments to be suspended. For example, “Upon termination, any remaining quarterly payments will be suspended.”

Division Response: **Comment considered. No changes made.**

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Commenter Name: Aiden Fleming, Deputy Director of Policy Operations, Yes. Every Kid. Foundation., 05/28/24

Comments: 5.09.1 The EFA has a balance of more than twenty thousand dollars (\$20,000) or three times the amount set forth in Arkansas Code § 6-18-2505(a), whichever is greater.

Comment: This section may be problematic as students with disabilities often receive funding amounts exceeding \$20,000. Additionally, it is common for home school students roll over significant sums since they are largely being educated at home.

Recommendation: Reconsider and adjust the threshold to accommodate all students.

Additionally, the department should outline a process to notify parents when they are within a close proximity of the threshold so they may spend down funds without risking their status on the program.

Division Response: **Comment considered. No changes made.**

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Commenter Name: Aiden Fleming, Deputy Director of Policy Operations, Yes. Every Kid. Foundation., 05/28/24

Comments: 6.04 “The department may also remove a participating student who consistently fails to demonstrate academic achievement or growth on a valid and reliable assessment relative to the assessment’s scale.”

6.04.1 “When a participating student fails to demonstrate academic achievement or growth from year to year, the participating school or homeschool instructional provider, shall implement an intervention plan for the student, developed by the school or student’s guardians.”

6.04.2 “Participating schools enrolling students in intervention plans shall file annual reports with the department identifying the intervention plans for the school year and the academic achievement and growth metrics expected to be met by the end of the school year.”

6.04.3 “In the event that a participating student with an intervention plan does not meet achievement or growth, the intervention plan shall be revised and the student’s EFA account will be placed on probation and reviewed annually for a determination on whether the EFA will be closed.”

Comment: Students switching schools regularly fall behind academically due to the swift change in learning environment. Also, schools will likely take on children already academically behind. This provision disincentives schools from taking on students who are most in need of academic help.

Recommendation: Strike 6.04 and/or define “intervention plan” for parents and schools to understand the outcomes, goals and steps to clearly achieve compliance (See West Virginia Hope Scholarship language). Also, this should be outlined in the contract or as supplemental material before signing an EFA.

**Division Response: Comment considered. No changes made. The suggested changes would require legislative action, which is beyond the scope of rulemaking.**

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**Commenter Name:** Aiden Fleming, Deputy Director of Policy Operations, Yes. Every Kid. Foundation., 05/28/24

**Comments:** 6.05 “The account holder may appeal the department’s decision to close an EFA or remove a student from eligibility pursuant to the procedures outlined in section 9.00.” Comment: While the rules outline an appeals process, it should be added and explained in/with the contract before the parent agrees to the EFA program. Especially since parents may appeal their denial of the EFA. Recommendation: Ensure the appeals process is clearly explained in the contract prior to parent agreement.

**Division Response: Comment considered. No changes made. This change would be outside the scope of rulemaking.**

---

**Commenter Name:** Aiden Fleming, Deputy Director of Policy Operations, Yes. Every Kid. Foundation., 05/28/24

**Comments:** Section 7.00 through 7.01.3.3 - These sections are tailored to widespread enrollment of EFA students in a single well established school or larger school network. Requirements such as accreditation, surety bonds, or financial reviews may discourage suitable private schools from participating if they do not have enough EFA students to justify the additional oversight and paperwork, disproportionately affecting small schools.

Comment: These requirements may discourage participation of small private schools.

Recommendation: Establish a streamlined parallel process for schools enrolling fewer than "x" EFA students. If the school exceeds the cap in future years, then they should be required to complete the full range of requirements.

**Division Response: Comment considered. No changes made.**

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**Commenter Name:** Aiden Fleming, Deputy Director of Policy Operations, Yes. Every Kid. Foundation., 05/28/24

**Comments:** 7.01.3.d – “The private school only employs or contracts teachers who hold a baccalaureate degree or have equivalent documented experience, as determined by the Department.”

Comment: Many private schools also have pre-schools. Would those teachers be required to hold a baccalaureate degree even though these funds are not eligible to be used for those services?

Recommendation: “Employ or contract with teachers who hold baccalaureate or higher degrees, have at least 3 years of teaching experience in public or private schools, or have special skills, knowledge or expertise that qualifies them to provide instruction in subjects taught.”

**Division Response: Comment considered. No changes made.**

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**Commenter Name:** Aiden Fleming, Deputy Director of Policy Operations, Yes. Every Kid. Foundation., 05/28/24

**Comments:** “7.01.3.2 Provides a statement by a certified public accountant confirming that the school is insured and has sufficient capital or credit to operate in the upcoming school year; or”  
**Comment/Recommendation:** Clarify/define “sufficient capital.”

**Division Response: Comment considered. A nonsubstantive change was made.**

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**Commenter Name:** Aiden Fleming, Deputy Director of Policy Operations, Yes. Every Kid. Foundation., 05/28/24

**Comments:** “7.01.4.5 The private school holds valid occupancy of buildings as required by the relevant jurisdiction in which the private school is located; and”  
**Comment/Recommendation:** Define/include proper reference to ensure compliance with “valid occupancy of building.”

**Division Response: Comment considered. A nonsubstantive change was made.**

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**Commenter Name:** Aiden Fleming, Deputy Director of Policy Operations, Yes. Every Kid. Foundation., 05/28/24

**Comments:** 7.04.2 In addition to the requirements in section 7.04.1, all full-time student-facing applicant providers, including parents of homeschool students, shall further attest that they will...  
**Comment:** Clarification is needed on whether EFA parents are subject to all the requirements of full-time student-facing applicant providers outlined in 7.04.2 et seq. Language implies parents must get fingerprints and background checks to be an EFA parent. **Recommendation:** Remove parents of homeschool students from this list, as they should not be held to the same standards as private schools and tutoring facilities or clarify with “A homeschooling parent who has applied for and received an EFA for their own children is not a student facing service provider.”

**Division Response: Comment considered. No changes made.**

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**Commenter Name:** Aiden Fleming, Deputy Director of Policy Operations, Yes. Every Kid. Foundation., 05/28/24

**Comments:** 7.08.3 The department may ask participating private schools and providers for rationale for increases in tuition or fee amounts.

Comment: There is no prohibition to when or how often the department may ask a private school the amount they charge in tuition. Additionally, the school must provide “rationale” that meets an unknown arbitrary standard. If the school wishes to buy a larger building to accommodate more students in the future and it raises tuition on existing students for a non-academic reason, the department may find their private business decision “unreasonable” and remove EFA students. Recommendation: Remove “rational” and require the private school to supply a “legitimate business decision” for a tuition increase. The definition should be written with input from private schools who seek to utilize the EFA. For example: legitimate business decision is an action taken by a company that is based on rational analysis, good faith, and compliance with legal and ethical standards, aimed at promoting the long-term success and sustainability of the business.

**Division Response: Comment considered. No changes made.**

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**Commenter Name:** Aiden Fleming, Deputy Director of Policy Operations, Yes. Every Kid. Foundation., 05/28/24

**Comments:** 7.08.4 The department may prohibit a participating private school or provider from participating in the EFA program if the department determines that tuition or fee increases are unreasonable or arbitrary.

Comment: Tighten the language to ensure private schools have reliance that the department will come to a consistent outcome based on facts brought to bear relating to tuition increases.

Recommendation: See the definition provided in 7.08.3. Amend to read, “The department may prohibit a participating private school or provider from participating in the EFA program if the department determines that the basis for the tuition or fee increases do not meet the definition of a legitimate business decision.”

**Division Response: Comment considered. No changes made.**

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**Commenter Name:** Aiden Fleming, Deputy Director of Policy Operations, Yes. Every Kid. Foundation., 05/28/24

**Comments:** 8.03.2 The department shall conduct an inquiry into any report of fraud or make a referral for an investigation to the Arkansas Attorney General or the Secretary of the Arkansas Department of the Inspector General.

Comment: “Shall” language in the provision removes department discretion from investigating only credible instances of fraud. With a hotline, it is likely the department will receive bogus claims of fraud that can immediately be discredited by department personnel. However, the rule will require a referral to the AG’s office or compel staff to investigate, depleting its resources.

Recommendation: Change “shall” to “may.”

**Division Response: Comment considered. No changes made. This comment is addressed by the rule as currently written.**

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Commenter Name: Aiden Fleming, Deputy Director of Policy Operations, Yes. Every Kid. Foundation., 05/28/24

Comments: 11.01.1.5.f The family shall submit a preapproval request for one of the preapproved eligible expenses. Once approved, the family may incur the cost and submit a receipt for services that match the preapproved expense.

Comment: Clarify and give notice/training to family's reimbursements such as transportation can be considered a taxable expense. Recommendation: Families should be advised prior to signing an EFA through training or notice if any purchase can be considered a taxable event.

Division Response: **Comment considered. No changes made. This comment is addressed by the rule as currently written.**

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Commenter Name: Aiden Fleming, Deputy Director of Policy Operations, Yes. Every Kid. Foundation., 05/28/24

Comments: 2.04.1.2 Full-time student-facing providers (e.g., micro-schools, learning pods), full-time home school co-op, full-time homeschool instructional support group) which provide the majority of a participating student's instructional time.

Comment: The Department's requirements for home-schooled children are excessive, including vague and burdensome requirements for providing details on resources, services, educational programs, or curricula. Recommendation: Remove the requirements that parents have a teaching background, a four-year degree, or be subject matter experts to homeschool their own children using an EFA.

Division Response: **Comment considered. No changes made. This comment is addressed by the rule as currently written.**