

**ARKANSAS DEPARTMENT OF EDUCATION DIVISION OF ELEMENTARY AND
SECONDARY EDUCATION RULES GOVERNING HOME SCHOOLS**

**PUBLIC COMMENTS AND RESPONSES OF THE DIVISION OF ELEMENTARY AND
SECONDARY EDUCATION**

Commenter Name: Rebecca Miller-Rice, Bureau of Legislative Research (10/30/2019)

Comment: (1) Section 3.03.3 – Should the reference be to the “Division” of Higher Education in accord with Ark. Code Ann. § 6-16-1202(2)(C), as amended by Act 910 of 2019, § 1352?

(2) Section 7.02.2 – This section contains a reference to “private school” when the remainder of the rules speak only to home-schooled students. Was this intended?

(3) Section 7.04.1 – Should the request for waiver be mailed to the Division of Elementary and Secondary Education, per Section 7.04?

(4) Section 7.06 – Reference to “private school” student?

Division Response:

(1) Division added

Non-substantive change made.

(2) “Private School” is included in Acts 429 and 430 but being removed for Home School Rules.

Non-substantive change made

(3) Yes, it should be the Division of Elementary and Secondary Education

Non-substantive change made

(4) Private School” is included in Acts 429 and 430 but being removed for Home School Rules

Non-substantive change made

Commenter Name: Lucas Harder Arkansas School Board Association (10/28/2019)

Comment:

3.03.3: “Department” should be “Division”.

3.05.1: This should actually be 3.06.1.

3.05.2: This should actually be 3.06.2.

4.01: There is an “e” missing from the “well” in “as well as”.

5.03.3: This section is missing the new final “4” so that it would read “5.03.4”.

98.02.1: The reference to “8.05” should actually be changed to “9.05”.

98.03.2.3: The reference to “8.01.2” should actually be 9.01.2”.

98.04.1.2: The reference to “8.04.3” should be to “9.04.3”.

8.05.1: The new “9” is missing from the front of the subsection marker.

12/10/2019

1.02: 6-18-232 was placed on the wrong side of the et seq that should follow 6-15-501.

I would recommend changing “Act 429 of 2019, and Act 430 of 2019” to read “and Acts 429 and 430 of 2019”.

3.02: I would recommend changing “policy” to read “academic calendar” to more closely match the language in 6-10-106(f).

5.03.1: I would recommend breaking this into two separate items so that it would read:

5.03.1 Electronically:

5.03.1.1 Through the Division of Elementary and Secondary Education’s online process, which is located on the Division’s Home School webpage; or

5.03.1.2 By email;

5.03.1.3~~5~~: The final five here should be a four.

~~5.06.6~~: This language is still required by A.C.A. § 6-15-503(a)(3)(F)(i).

~~5.06.7~~: This language is still required by A.C.A. § 6-15-503(a)(3)(G).

~~5.07~~: This language is still required by A.C.A. § 6-15-503(a)(3)(F)(ii).

~~5.08~~~~6~~: The six here should be a seven but should actually remain 5.08 as 5.07 is still required by law.

- 5.097: The seven here should be an eight but should actually remain 5.09 as 5.07 is still required by law.
- 7.06: “Private school or” should be removed as no other place in the rules refers to the enrollment of courses by private school students.
- 98.09: There is a reference to 8.08 here that should be to 9.08.

Division Response:

All comments considered and Non-substantive corrections made. Removed sections 5.06.6 and 5.07 and substituted 5.06.7. “Any other information that may be required under Ark. Code Ann. § 6-15-503” to refer to those sections that are still required.

Commenter Name: Dr. Fred Worth, Henderson State University (11/05/19)

Comment: Thank you for the opportunity to submit comments on the proposed rules and regulations for the new homeschool laws in Arkansas. I don't have any huge issues but there are a two topics that need attention.

The proposed rules say that homeschoolers have to bring a notarized copy of their Notice of Intent when applying for a driver's license. It is my understanding that state law no longer requires this. As such, that ought to be changed.

In section seven, there is some wording that is ambiguous regarding a waiver from the requirements of the section. It needs to be made clear that the waiver cannot be to allow the school to charge the student for taking a concurrent enrollment class if the school doesn't charge the public school students.

Division Response:

Act 617 of 2019 does not require the home schooled student to bring the signed notarized notice of intent when applying for a driver’s license. However, it is still required by A.C.A. § 6-15-503(a). Therefore, sections 5.06.6 and 5.07 have been removed and substituted by 5.06.7. “Any other information that may be required under Ark. Code Ann. § 6-15-503” to refer to those sections that are still required.

Non-substantive change made

Added, “may seek a waiver from Sections 7.01 -7.03” under Section 7.04 to clarify that schools may not seek a waiver and charge home school students for taking a concurrent enrollment class if the school doesn't charge the public school students.

Non-substantive change made

Commenter Name: Sherri Norwood (11/13/19)

Comment: I am a homeschooling parent in Siloam Springs and have been homeschooling for 17 years. I've read the proposed Rules Governing Home Schools and have the following comments:

Why are sections 5.06.6 and 5.07 included? It was my understanding that a notarize Notice of Intent is no longer required to get a driver's license. And section 5.07 is confusing. Even if a notarized intent is required to seek a driver's license, the intent form has never had to be notarized prior to submission to the school district. Please clarify these points to align with current Arkansas law.

I'm concerned about Section 7.04. Under what circumstances would a waiver request be approved? If a district can seek a waiver, then what's to keep the rules enforceable? All of the provisions are important, in particular section 7.05.3. Section 7.04.1 seems to be a blanket invitation not to abide by the rules set forth.

Our family has benefited from a wonderful relationship with Siloam Springs School District and are grateful for their willingness to work with homeschoolers.

Division Response:

Comments considered, please see response to Dr. Fred Worth's comment above.

Commenter Name: Cindy Petty (11/5/2019)

Comment: I agree with these points made by the Family Council.

1. The rules still say that home schoolers have to bring a notarized copy of their Notice of Intent when they apply for a driver's license. However, state law no longer requires this.

2. The rules change some of the language about filing the Notice of Intent electronically via email or the department's website. Although the proposed rules would still let home schoolers file their NOI electronically, the rules need to reflect the fact that home schoolers can file their Notice of Intent electronically by any means they want—not just through the Department of Education's website or via email.

3. The rules say that public schools cannot charge a home schoolers to take a concurrent credit course for high school and college credit if the school doesn't require other students to pay a fee to take the course. This tracks with state law. However, Section 7 of the rules contains vague language that says public schools can request a waiver from the requirements found in Section 7. We would like to see the rules changed to make it clear that public schools cannot request a waiver when it comes to charging home schoolers a fee to take concurrent credit courses.

Division Response:

Comments considered on comments 1 and 3, please see response to Dr, Fred Worth's comments above.

Comment 2. Added "5.03.3 By fax" and updated:

5.03.1 Electronically, including without limitation:

5.03.1.1 Through the Division of Elementary and Secondary Education's online process, which is located on the Division's Home School webpage; or ~~including without limitation by email;~~

5.03.1.2 ~~Including without limitation b~~By email:

Non-substantive change made.

Commenter Name: Tanya Smith (11/5/19)

Comment: I am writing to comment on the proposed rules and regulations that affect homeschool students and families in Arkansas.

Here are some issues with the rules that I believe need to be addressed:

1. The rules still say that homeschoolers have to bring a notarized copy of their Notice of Intent when they apply for a driver's license. However, state law no longer requires this. The rules should reflect the law.
2. The rules change some of the language about filing the Notice of Intent electronically via email or the department's website. Although the proposed rules would still let homeschoolers file their NOI electronically, the rules need to reflect the fact that homeschoolers can file their Notice of Intent electronically by any means they want—not just through the Department of Education's website or via email.
3. The rules say that public schools cannot charge a homeschooler to take a concurrent credit course for high school and college credit if the school doesn't require other students to pay a fee to take the course. This tracks with state law. However, Section 7 of the rules contains vague language that says public schools can request a waiver from the requirements found in Section 7. The rules should be changed to make it clear that public schools cannot request a waiver when it comes to charging homeschoolers a fee to take concurrent credit courses. Homeschool families are already paying property taxes that go toward education that should more than cover concurrent enrollment by homeschool families. A waiver to unfairly charge a fee to homeschool students is unnecessary and not in line with the state law.

Division Response:

Comments considered: Please see response above to Ms. Cindy Petty's comments.

David and Robyn Robyn Porter

Comment: We were made aware that the Department of Education had proposed new rules regarding homeschooled students. One rule involves allowing public schools to get a waiver in order to charge homeschoolers to pay to participate in a course.

Our understanding is that current Arkansas law says public schools cannot charge homeschoolers for a course if the school doesn't require other students to pay a fee.

Would you consider updating Section 7 to remove the vague language that says public schools CAN request a waiver and charge homeschoolers? Money is tight for everyone, including us, and we would like for our kids to be able to participate in a course if they wanted to.

Division Response:

Added, “may seek a waiver from Sections 7.01 -7.03” under Section 7.04 to clarify that schools may not seek a waiver and charge home school students for taking a concurrent enrollment class if the school doesn't charge the public school students.

Non substantive change made

Lisa Crook, Director, Education Alliance (11/18/19)

Comment: Lisa Crook, Director, Education Alliance

Below are public comments concerning the State Board of Education’s proposed rules related to home schooling.

1. On Page 262-3: To avoid confusion, 5.02 should be revised to read that a current year Notice of Intent paper form shall be made available at each Arkansas school district and from the Division of Elementary and Secondary Education. This will ensure that the division continues making updated paper copies of the Notice of Intent form available to home schoolers each year and that the local school districts use this form rather than a different form or outdated version of the Notice of Intent form.
2. On Pages 262-3 and 262-4: The changes proposed in 5.03.1 remove the words “without limitation” from the rules concerning the manner in which the Notice of Intent may be submitted. This change fails to track with state law. Arkansas Code Section 6-15-503(a)(B)(ii)(4) says “A written notice under this subsection may be given: Electronically, including without limitation by email.” This means that there are no limitations on the manner in which a Notice of Intent may be submitted electronically. To reflect this provision in the law, 5.03.1 and 5.03.2 should be revised to clarify that the Notice of Intent may be submitted electronically, including without limitation via the DESE webpage or via email.
3. On Pages 262-4 and 262-5: The proposed rules fail to amend 5.06.6 and 5.07 concerning driver’s license applications by home schooled students. Act 617 of 2019 changed the requirements for students seeking a driver’s license. As a result, Arkansas law no longer requires home schooled students to present a notarized copy of their notice of intent when applying for a driver’s license.
4. On Page 262-7: The language in 6.08 mandating that home schoolers have a teacher of record is not found in the existing home school statute or in Act 429 or Act 430 passed this year. If the State Board of Education insists on including the language from 6.08 in the rules, the language should be placed in Section 7. Section 6 addresses situations in which a student enrolled in a home school decides to stop home schooling and enrolls or re-enrolls in a public school as a full

time student. Section 7 addresses situations in which a home schooled student enrolls in an individual course at a public school. The language in 6.08 presumably is intended to address situations in which a home schooled student is enrolled in an individual course at a public school. It therefore makes more sense for this language to appear in Section 7.

5. On Page 262-8: The proposed rules in 7.04 concerning an application for a waiver from Section 7's requirements fail to clarify that the waiver only applies to whether or not a school district must let home schooled or private school students enroll in academic courses in general. A school may not seek a waiver from the requirements in 7.05.3 concerning charging students a fee to participate in endorsed concurrent enrollment courses. Act 430 of 2019 gives schools the option of seeking a waiver from its general requirements about enrolling non-public school students in public school courses. It does not apply to the provisions found in Act 429 of 2019 that prohibit a public school from charging a home schooled or private school student a fee to take an endorsed concurrent enrollment course if the public school students enrolled in the course are not charged a fee.

6. On Page 262-8: The address for the Division of Learning Services in 7.04.1 does not match the address publicly listed on the DESE website, which reads: Arkansas Department of Education Division of Elementary and Secondary Education Learning Services Four Capitol Mall, Mail Slot 6 Little Rock, AR 72201

Division Response

1) Added "currently"

2) Added "5.03.3 By fax" and updated:

5.03.1 Electronically, including without limitation:

5.03.1.1 Through the Division of Elementary and Secondary Education's online process, which is located on the Division's Home School webpage; or including without limitation by email;

5.03.1.2 ~~Including without limitation~~ By email:

3) Act 617 of 2019 does not require the home schooled student to bring the signed notarized notice of intent when applying for a driver's license. However, it is still required by A.C.A. § 6-15-503(a). Therefore, sections 5.06.6 and 5.07 have been removed and substituted by 5.06.7. "Any other information that may be required under Ark. Code Ann. § 6-15-503" to refer to those sections that are still required.

4) Moved to section 7:08

5) Added, "may seek a waiver from Sections 7.01 -7.03" under Section 7.04 to clarify that schools may not seek a waiver and charge home school students for taking a concurrent enrollment class if the school doesn't charge the public school students.

6) Corrected to be the Division of Elementary and Secondary Education

Non substantive change made

Lisa Crook, Director, Education Alliance, 4/21/2020.

To better track with state law, 5.03.1 of the proposed rules governing home schools should be rewritten as follows:

5.03.1 Electronically, including without limitation:

5.03.1.1 Through the Division of Elementary and Secondary Education’s online process, which is located on the Division’s Home School webpage; or including without limitation by email;

5.03.1.2 ~~Including without limitation~~ By email:

Here is why this change matters:

Arkansas code § 6-15-503(a)(4) says, “A written notice [of intent to home school] under this subsection may be given . . . Electronically, including without limitation by email;”

The code indicates there is no limitation on the manner in which a notice of intent may be given electronically.

This is the provision in the code that makes it possible for the division to accept notice of intent forms online via the division’s website.

The proposed rules as currently written could be misinterpreted as meaning there is no limitation on the way in which a notice of intent may be emailed.

Adjusting the proposed rules as suggested above will avoid possible confusion and more accurately reflect state law.

Comment Considered: Non-substantive change made:

Updated:

5.03.1 Electronically, including without limitation:

5.03.1.1 Through the Division of Elementary and Secondary Education’s online process, which is located on the Division’s Home School webpage; or including without limitation by email;

5.03.1.2 ~~Including without limitation~~ By email:

Scott A. Woodruff, Senior Counsel, Home School Legal Defense Association

Comment: On behalf of over 580 Arkansas homeschool families who are members of Home School Legal Defense Association, I submit the following comments and request the following changes to proposed home school regulations now under consideration.

Rule 5.03.1

Rule 5.03.1 is proposed to be amended to strike out the phrase “including without limitation”. This phrase is an important part of the legislative structure and it needs to be retained.

The phrase “without limitation” serves an important purpose. It serves to cover contingencies that may not currently be within contemplation. It is intended to give the broadest possible treatment to the subject.

By way of contrast, in proposed Rule 7.02.1, the Department has faithfully followed the legislative framework and included the phrase. It says:

“7.02.1.1 Include provisions that apply to a home-schooled student enrolled in an academic course at a public school including without limitation provisions regarding:...”

Since the Department included the phrase “without limitation” in its proposed Rule 7.02.1.1, it is clear that the Department has no objection to the language itself. It is intended to cover the widest possible array of contingencies.

If the “without limitation” phrase is deleted from Rule 5.03.1, as the proposed rule in its current form would do, it is foreseeable that some method of transmitting the notice of intent will be excluded under some set of contingencies we may not currently contemplate.

As merely one concrete example, filing via fax is allowed under Arkansas Code §6-15-503(a)(4)(A), because it is an electronic method of filing. Filing by fax currently falls under the “without limitation” provision. But the proposed rule would outlaw filing by fax because the proposed rule strikes out “without limitation.”

The Department’s proposed rule would, in effect, prohibit one method of transmission—and perhaps others. But no type of transmission is prohibited under current law.

A prohibition thus created would be a violation of Arkansas Code §6-15-503(e) which forbids the Department from imposing mandates not established by statute.

Fidelity to the legislative language requires that the phrase “without limitation” be retained in any rule implementing the statute.

Rules 5.06.6, 5.06.7, and 5.07

There is a need to change these rules to bring harmony where there is currently a discord.

Under Arkansas Code §6-15-503(a)(3)(F)(i) and (ii), the notice of intent to homeschool must state whether the student plans to seek a driver’s license. If so, the parent’s signature must be notarized.

However, this statute has been amended by implication by House Bill 1867 of the 92d General Assembly (Act 617). Prior to its enactment, driver’s license candidates were required to submit certain information about their secondary education—including home schooling (see lines 11-15 on page 3 of the attached). Under that scheme, it made perfectly good sense for the notice of intent to home school to include a reference to plans for seeking a driver’s license.

However, HB 1867 abolished all requirements for all students to provide information about their secondary education—including students receiving home schooling—in connection with obtaining a driver’s license.

The legislature did not, however, explicitly remove the part of the home school law requiring notice of a home school student’s intent to seek a driver’s license, Arkansas Code §6-15-503(a)(3)(F)(i) and (ii). That requirement, however, no longer serves any purpose whatsoever.

There is a principle of statutory construction that a latter enactment takes precedence over an earlier one. There is also a principle known as amendment by implication. And the golden standard for statutory construction is to implement the will of the legislature.

HB 1867 takes precedence because it was enacted later than Arkansas Code §6-15-503(a)(3)(F)(i) and (ii). Furthermore, the legislature amended Arkansas Code §6-15-503(a)(3)(F)(i) and (ii) by implication by enacting HB 1867.

And finally, it is clear beyond any doubt that the legislature no longer wishes homeschool students to be required to indicate their plans for a driver’s license, nor wishes such plans to trigger the requirement for a notarization.

Following the enactment of HB 1867, the Department revised the form (see attached) it makes available to families who wish to file a notice of intent to homeschool. As revised, the form contains no question about plans to seek a driver’s license.

Division Response:

Added “5.03.3 By fax” and updated:

5.03.1 Electronically, including without limitation:

5.03.1.1 Through the Division of Elementary and Secondary Education’s online process, which is located on the Division’s Home School webpage; or including without limitation by email;

5.03.1.2 Including without limitation bBy email:

Act 617 of 2019 does not require the home schooled student to bring the signed notarized notice of intent when applying for a driver’s license. However, it is still required by A.C.A. § 6-15-503(a). Therefore, sections 5.06.6 and 5.07 have been removed and substituted by 5.06.7. “Any

other information that may be required under Ark. Code Ann. § 6-15-503” to refer to those sections that are still required.

Comments considered. Non substantive-changes made

Anne Coletti 11/21/19

Comment: The rules imply all home schooled athletes must wait 365 days for athletic participation, which is not the case. The law was clarified so that anyone homeschooled had ALREADY been sitting out the 365. Rep. Davis sponsored clarification legislation just last session. The new rules should reflect this.

Division Response

Comment considered: Language is taken directly from Ark. Code Ann. 6-15-509. Could be referring to Act 656 of 2019 which addresses home school students participating in private school athletics.

No change made