DIVISION OF ELEMENTARY AND SECONDARY EDUCATION RULE GOVERNING THE EDUCATIONAL FREEDOM ACCOUNT PROGRAM

Effective date:

1.00 PURPOSE

1.01 The purpose of this rule is to establish guidelines for the implementation and operation of the Educational Freedom Account (EFA) Program, established pursuant to Arkansas Code § 6-18-2501 et seq., to provide Arkansas families with more educational options for their children as they seek educational solutions and curricula that fit the needs of their families.

2.00 DEFINITIONS

2.01 "Account holder" means the parent of a participating student, or a participating student who has attained the age of majority, who signs the EFA agreement and is responsible for complying with all of the requirements of the EFA.

2.02 "Agreement" means a contract signed by an applicant outlining their contractual obligations as the account holder of an EFA and the acceptable uses of EFA funds.

2.03 "Applicant" means a prospective participating student, or the prospective participating student's parent when he or she is applying to the EFA Program on behalf of the student.

2.04 "Education service provider" means an individual, business, nonprofit organization, or other entity, not to include a private school, which offers educational materials or services that are qualifying expenses reimbursable by EFA funds.

2.04.1 Education service providers may include without limitation:

2.04.1.1 Public school districts, in-person or virtual;

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, and contracted educators) which provide the majority of a participating student's instructional time;

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); and

2.04.1.4 Vendors (entities that do not directly interface with students, such as retailers, curriculum providers, etc.).

2.04.2 A public school district may participate as an education service provider to the extent that the public school district provides eligible services to a participating student who is not enrolled full-time in the public school district.

2.05 "EFA" means an Educational Freedom Account established for a participating student.

2.06 "EFA funds" means money from one or more EFAs.

2.07 "Foster care" means the care of a child on a twenty-four-hour-a-day basis away from the home of the child's parent or parents. The care may be by a relative of the child, by a non-related individual, by a group home, by a residential facility, or any other entity, and for whom the child welfare agency has placement and care.

2.08 "Home School" means a school provided by a parent or legal guardian, who has filed a Notice of Intent to homeschool, for his or her own child.

2.09 "Individualized education program (IEP)" means a written plan for each student with a disability identified pursuant to the Individual with Disabilities Education Act (IDEA), that is developed, reviewed, and revised in accordance with IDEA, 34 CFR §§ 300.320 through 300.324.

2.10 "Learning pod" means a community of homeschool students, such as a homeschool co-op or support group, created by a voluntary association of parents, taught by instructors or facilitators, that provides part-time or full-time academic services, including without limitation:

2.10.1 Core academic subjects of mathematics;

2.10.2 English language arts;

2.10.3 Social studies; and

2.10.4 Science.

2.10.5 A learning pod is not a micro-school, a daycare facility, or a private school.

2.11 "Micro-school" means a tuition-based organization that serves a community of homeschool students, simultaneously in the same space, and that maintains

responsibility for employing instructors or facilitators to provide part-time or full-time academic services, including without limitation:

2.11.1 Core academic subjects of mathematics;

2.11.2 English language arts;

2.11.3 Social studies; and

2.11.4 Science.

2.11.5 A micro-school is not a learning pod, a daycare facility, or a private school.

2.12 "Nationally recognized 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.

2.13 "Parent" means any one the following:

2.13.1 A biological or adoptive parent;

2.13.2 A legal guardian or custodian;

2.13.3 A person standing in loco parentis to a participating student; or and

2.13.4 Another person with legal authority to act on behalf of a participating student.

2.14 "Qualifying expenses" means all expenses that an account holder can pay from an EFA on behalf of the participating student who is enrolled in private school, or a home school under Arkansas Code § 6-15-501 et seq, including without limitation:

2.14.1 Tuition;

2.14.2 Fees;

2.14.3 Testing costs;

2.14.4 Costs associated with required school uniforms;

2.14.5 Expenses determined to be necessary for the education of the child, including without limitation:

2.14.5.1 Supplies;

2.14.5.2 Equipment;

2.14.5.3 Access to technology;

2.14.5.4 Services provided by or at the participating school, when a student is enrolled in a private school;

2.14.6 Instructional materials required for in-person or virtual instruction provided by a participating service provider or participating school;

2.14.7 Instructional services;

2.14.8 Tutoring services;

2.14.9 Curricula;

2.14.10 Supplemental materials or supplies required by a course of study for a particular content area;

2.14.11 Fees for courses and associated assessments for college credit;

2.14.11.1 A participating student that enrolls in a concurrent enrollment course in their resident school district shall not be charged for the concurrent enrollment course unless the public school district also charges public school students or open-enrollment public charter school students for the concurrent enrollment course.

2.14.12 Fees for assessments related to admission to postsecondary educational institutions;

2.14.13 Fees for courses and assessments for participation in career and technical education, including without limitation career training;

2.14.14 Fees for assessments to obtain industry-based credentials;

2.14.15 Fees for educational services provided by a licensed or accredited practitioner or participating service provider to a student with a disability;

2.14.16 Fees for account management by participating service providers;

2.14.17 Costs for technological devices used to meet educational needs;

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

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.

2.14.17.3 All technology purchases will be reviewed by the department for appropriateness and need. Personal devices including without limitation: laptops, Chromebooks, or iPads, with a cost of more than one thousand dollars ($1,000) will not be allowed unless the participating student can demonstrate to the department's satisfaction that there is a specific school requirement or that the technology is deemed necessary for the participating student by a qualified professional.

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; and

2.14.19 Fees for academic courses a participating student enrolls in at a public school or open-enrollment public charter school.

2.14.19.1 A public school or an open-enrollment public charter school that enrolls a participating student in an academic course, is eligible to receive an amount equal to one-sixth (1/6) of the state foundation funding amount for each academic course in which the student is enrolled in the public school or open enrollment public charter school, pursuant to Arkansas Code § 6-18-232.

2.15 "Participating student" means an eligible student approved to participate in the EFA program.

2.16 "Resident" means an individual physically residing in the State of Arkansas, including uniformed service members stationed and living in Arkansas who keep property outside of the State of Arkansas.

2.17 "Standard application form" means the form used by the department for applicants seeking to establish an EFA on behalf of a participating student.

2.18 "Student-facing" means a service provider in which the proprietor or other personnel directly interface with a participating student (either in-person or

virtually) in the course of delivering an eligible good or service (e.g., tutors, transportation providers, instructors).

2.19 "Student with a disability" means a student who has been:

2.19.1 Identified as having a disability consistent with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401 et seq., as it existed on January 1, 2023, as evidenced by:

2.19.1.1 An Individualized Education Program developed by a public school within three (3) years prior to the date the student applies for an EFA;

2.19.1.2 Evaluation results from a public school district that indicate a disability, conducted within three (3) years prior to the date the student applies for an EFA; or

2.19.1.3 Diagnosis of a disability under IDEA as determined by a qualified licensed provider specific to the student's disability type.

3.00 STUDENT ELIGIBILITY

3.01 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 may apply on behalf of a prospective participating student to participate in the EFA program for the 2024-2025 school year, if the prospective participating student is:

3.01.1 A student with a disability as defined by section 2.19;

3.01.2 Considered homeless under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11431 et seq., as it existed on January 1, 2023;

3.01.3 A student in foster care, as defined in section 2.07, or who has been in foster care and subsequently achieved permanency through adoption, reunification, or permanent custody or guardianship;

3.01.4 A student who participated in the Succeed Scholarship Program, Arkansas Code § 6-41-901 et seq., during the 2022-2023 school year;

3.01.5 A child of active-duty uniformed services personnel, as identified by Title 10 or Title 32 of the United States Code;

3.01.6 A student who was eligible to enroll in kindergarten in a private school for the first time during the 2023-2024 school year or who is enrolling in kindergarten for the first time in the 2024-2025 school year;

3.01.6.1 In order to be eligible to enroll in the EFA program under section 3.01.6, a student must:

3.01.6.1.a Be at least five (5) years of age on or before August 1 of the school year in which a parent intends to enroll the student in Kindergarten;

3.01.6.1.b Turn six (6) years of age during the school year in which a parent intends to enroll the student in first (1st) grade; or

3.01.6.1.c Meet alternate eligibility requirements set forth in Arkansas Code § 6-18-207 for entering Kindergarten or first grade.

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

3.01.7.1 Public school that has a rating of "D" or "F" under Arkansas Code §§ 6-15-2105 and 6-15-2106 and Division of Elementary and Secondary Education rules; or

3.01.7.2 Public school district classified as in need of Level 5 - Intensive support under Arkansas Code §§ 6-15-2913 or 6-15-2915; or

3.01.8 A student with a parent, or a student, who is:

3.01.8.1 A veteran as identified under Title 38 of the United States Code;

3.01.8.2 In the uniformed services reserve components;

3.01.8.3 A first responder as defined by Arkansas Code § 5-13-101; or

3.01.8.4 A law enforcement officer.

3.02 Any individual who is both 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 may apply on behalf of a prospective participating student to participate in the EFA program for the 2025-2026 school year and all subsequent school years.

4.00 STUDENT APPLICATION

4.01 To apply to participate in the EFA program, a parent shall fully complete the standard application form available on the Department of Education's website and submit the application to the department during a window established by the department.

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

4.01.2 The standard application form shall include, at a minimum, information and documentation necessary to establish an applicant's:

4.01.2.1 Residency in the State of Arkansas; and

4.01.2.2 Eligibility pursuant to the criteria set in section 3.00.

4.01.3 The department may assist an applicant in completing the standard application form as needed.

4.01.4 The department may request additional information from an applicant at any time to verify eligibility.

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:

4.02.1 First priority shall be given to students who:

4.02.1.1 Participated in the Succeed Scholarship Program, Arkansas Code § 6-41-901 et seq., during the 2022-2023 school year; or

4.02.1.2 Are otherwise students with a disability under section 2.19.

4.02.2 Second priority shall be given in descending order to students who:

4.02.2.1 Are considered homeless under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11431 et seq., as it existed on January 1, 2023.

4.02.2.2 Are foster children or formerly in foster care;

4.02.2.3 Are children of active-duty uniformed services personnel, as identified by Title 10 or Title 32 of the United States Code;

4.02.2.4 Are children who were enrolled in a public school that has a rating of "F" or a public school district classified in need of Level 5 – Intensive support immediately preceding their application for an EFA; and

4.02.2.5 Are children who were eligible to enroll in kindergarten in a private school for the first time during the 2023-2024 school year or who are enrolling in kindergarten for the first time in the 2024-2025 school year.

4.02.3 Third priority will be given in descending order to students who:

4.02.3.1 Are or who are children of:

4.02.3.1.a Uniformed veterans as identified under Title 38 of the United States Code;

4.02.3.1.b Uniformed reservists;

4.02.3.1.c First responders;

4.02.3.1.d Law enforcement officers; and

4.02.3.2 Are children who were enrolled in a public school that has a rating of "D".

4.02.4 Fourth priority will be given to students who have been in the EFA program the longest after priority has been given to students identified in sections 4.02.1, 4.02.2, and 4.02.3.

4.02.5 All additional applications shall subsequently be approved in the order in which they are received until the maximum number of participating students is cumulatively reached.

4.02.5.1 If the total number of applicants exceeds the number of students that can be funded, the department shall provide notice on its website and to participating schools that:

4.02.5.1.a A maximum of three percent (3%) of the total 2022-2023 public-school enrollment may participate in the program.

4.02.5.1.b The total number of applicants exceeds the number of students that can be funded in that given school year.

4.02.5.1.c Funding will be prioritized as set by section 4.02.

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.

4.04 The department shall notify applicants when their application is approved, and it shall inform parents of participating students how they may activate the account and identify the amount of EFA funding the participating student will receive.

4.04.1 The department shall continue to approve eligible student applications as funding remains available and the conditions for continuing eligibility are met by the applicant pursuant to section 6.00.

4.05 Once a completed standard application form has been approved by the department, the applicant shall complete the enrollment procedures set by the department to become enrolled in the EFA program, including execution of an agreement to participate in the program as outlined in section 5.00.

5.00 AGREEMENT AND FUNDS TRANSFER

5.01 Upon notification by the Department of Education that an EFA program application has been approved, the applicant shall sign an agreement outlining the applicant's contractual obligations as the account holder upon enrolling in the EFA program, including the acceptable uses of EFA funds and expense reporting requirements.

5.01.1 The agreement shall remain in effect until one or more of the conditions for terminating eligibility are met under section 6.00.

5.02 In the agreement, the department shall provide account holders with the following:

5.02.1 A written explanation of qualifying expenditures for EFA funds, as defined in Arkansas Code § 6-18-2503(11) and this rule;

5.02.2 A written explanation of the responsibilities of account holders, as outlined in section 5.03;

5.02.3 A written explanation of the applicability, to the extent they apply, of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1412, 29 U.S.C. § 794, and the procedural rights to a Free and Appropriate Education (FAPE) to non-public institutions and that participation in the program is a parental placement pursuant to 20. U.S.C. § 1412.

5.02.4 A written explanation of the respective duties of the department and, if applicable, of any vendor or other supplier the department has contracted with to administer all or part of the program.

5.03 In the agreement, an account holder shall:

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;

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;

5.03.3 Agree to use EFA funds on behalf of the participating student strictly for qualifying expenditures, as defined in Arkansas Code § 6-18-2503(11) and this rule; and

5.03.4 Further agree, unless otherwise enrolled full-time in a participating school, to use a substantial amount of the funds each year, as compared to other eligible expenses, 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.

5.04 The agreement shall not become effective and the first EFA payment shall not be disbursed until the agreement is:

5.04.1 Submitted to the department, along with any other information required by the department; and

5.04.2 Signed by the account holder and a designee of the department.

5.05 After the agreement is fully executed by the account holder and the department, the department shall make payments in installments from the participating student's EFA to the participating school or service provider as provided for in section 11.00.

5.05.1 Payments shall only be suspended if one or more criteria to terminate the agreement under section 6.00 are met.

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.

5.06 The total allocation to each participating student's EFA shall be from funds appropriated to the Arkansas Children's Educational Freedom Account Fund, or otherwise made available for the EFA program, and distributed as an amount equal to ninety percent (90%) of the prior year's statewide foundation funding allotted per student under Arkansas Code § 6-20-2305.

5.06.1 Any excess funds allocated to the private school shall be refunded to the department.

5.06.1.1 In the event a participating student withdraws from a private school and the school has received a quarterly disbursement on behalf of that student, the Department will determine any excess funds that should be refunded to the state based on the number of weeks the student was enrolled at school prior to withdrawal.

5.06.1.2 In the event a participating student withdraws from a private school and the school has not received a quarterly disbursement on behalf of that student, the Department will determine any excess funds that should be refunded to the state based on the number of weeks the student was enrolled at school prior to withdrawal.

5.06.2 A student who participated in the Succeed Scholarship Program, Arkansas Code § 6-41-901 et seq., during the 2022-2023 school year shall continue to receive one hundred percent (100%) of the prior year's statewide foundation funding amount allotted per student under Arkansas Code § 6-20-2305 until:

5.06.2.1 The participating student graduates from high school;

5.06.2.2 The participating student receives a certificate of completion; or

5.06.2.3 An event that requires an account to be closed under section 6.00 occurs.

5.07 The department may withhold up to five percent (5%) of the funds allocated to each EFA for the purpose of the EFA program administration.

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

5.08 The department shall provide information on how much of these funds were spent, and for what purposes, in its annual legislative report.

5.09 An EFA shall remain in force, and any unused funds shall roll over from quarter-to-quarter and from year-to-year, until:

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

5.09.2 The agreement is terminated under section 6.00, which shall result in the department closing the account and any remaining funds being returned to the department.

6.00 TERM OF EFA ELIGIBILITY

6.01 For purposes of continuity of educational choice, a student who enrolls in the EFA program shall remain eligible until the participating student:

6.01.1 Enrolls full-time in a public school;

6.01.2 Graduates with a high school diploma or receives a passing score on all subtests of a high school equivalency assessment under Arkansas Code § 6-16-118; or

6.01.3 Reaches twenty-one (21) years of age;

6.01.3.1 A student shall not be enrolled in the EFA program past June 30 after reaching twenty-one (21) years of age.

6.02 The department may immediately remove any participating student from eligibility for an EFA if the:

6.02.1 Account has been inactive for two (2) consecutive school years;

6.02.2 Participating student is no longer a resident of Arkansas; or

6.02.3 Account holder submits written notification to the department to withdraw a participating student from the EFA program and completes the procedures for withdrawal set by the department.

6.03 The department may immediately remove any participating student from eligibility for an EFA if the account holder:

6.03.1 Fails to comply with the terms of the agreement in section 5.00 or any other applicable laws, rules or procedures; or

6.03.2 Is found to have substantially misused EFA funds.

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.

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.

7.00 PARTICIPATING SCHOOLS AND SERVICE PROVIDERS

7.01 A private school shall notify the Department of Education of its intent to become a participating school in the EFA program, the department shall certify a private school as a participating school if the private school:

7.01.1 Offers in-person classroom instruction within the geographic limits of the State of Arkansas or is a school that operates exclusively as a virtual school and maintains a registered agent who is a resident of the State of Arkansas.

7.01.1.1 A school located outside the State of Arkansas that was approved under the Succeed Scholarship Program shall only be considered approved for students who attended the school under the Succeed Scholarship Program and continue to be enrolled. The school shall not be approved for any new students.

7.01.2 Complies with one of the following:

7.01.2.1 Meets accreditation requirements established by the State Board of Education, the Arkansas Nonpublic School Accrediting Association, Inc., or its successor; or another accrediting association recognized by the state board that meets the following minimum criteria:

7.01.2.1.a Has been accrediting schools for at least three (3) years;

7.01.2.1.b Requires as part of its accreditation process both a school self-study and an onsite review by a visiting team, or a virtual review for a fully virtual school, and makes the results available to the department; or

7.01.2.1.c Periodically reviews participating schools' accreditation status, including an on-site visit and review at least every seven (7) years.

7.01.2.2 Is an applicant for accreditation to or is an associate member of, the Arkansas Nonpublic School Accrediting Association, Inc., or its successor, or another accrediting association recognized by the state board; and

7.01.2.2.a Files a report with the department detailing the school's progress towards accreditation annually by September 30.

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.

7.01.2.2.c A participating school that fails to attain accreditation within four (4) years after being approved to participate in the program shall notify the department within thirty (30) days and will be deemed ineligible to participate in accordance with section 7.02.

7.01.3 Meets one or more of the following criteria:

7.01.3.1 Has been in operation for at least one (1) school year;

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

7.01.3.3 Files with the department a surety bond or letter of credit for the amount equal to the account funds needed by the school for any quarter.

7.01.4 Attests in writing to the following:

7.01.4.1 The private school does not discriminate on any basis prohibited by the Civil Rights Act of 1964, 42 U.S.C. § 2000d, as it existed on January 1, 2023;

7.01.4.2 All private school personnel have cleared a background check every five (5) years and with fingerprinting documentation on file;

7.01.4.2.a Participating schools must comply with section 7.01.4.2 by August 1, immediately preceding the school year.

7.01.4.3 The participating private school does not employ any individual who may reasonably pose a risk to the appropriate use of EFA program funds if disbursed;

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;

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

7.01.4.6 The private school operates according to its published disciplinary procedures that, at a minimum, outline the terms and conditions when a student may be expelled.

7.01.5 Participating schools shall cooperate with the department when complaints are made alleging the participating school has violated any of the attestations made in section 7.01.4.

7.02 A private school will be ineligible to participate in the EFA program if the participating private school:

7.02.1 Loses its accreditation status after having been previously approved under section 7.01.2.1;

7.02.2 Is ineligible or unable to continue the accreditation process, as determined by the accrediting association, after being approved under section 7.01.2.2;

7.02.3 Violates the terms of section 7.01.4;

7.02.4 The participating school fails to cooperate with the department pursuant to section 7.03.3; or

7.02.5 Fails to comply with all applicable state laws and rules governing private schools, or with all applicable health and safety laws and rules.

7.03 A participating private school shall notify the department within thirty (30) days after losing accreditation or taking any action rendering the school ineligible to participate in the EFA program pursuant to section 7.02.

7.03.1 The department will suspend the processing of invoices submitted by a private school upon receipt of notice required under section 7.03.

7.03.2 A private school may apply for reinstatement if it returns to compliance with the requirements of section 7.01.

7.03.2.1 The department shall determine whether the private school is in compliance with the requirements of section 7.01 and issue a formal notice of its determination to the private school and to families of students participating in the EFA program at the private school.

7.03.3 A private school applying for reinstatement under this section shall provide documentation to the department of the private school's efforts to return to compliance with section 7.01.

7.03.4 The private school may request a hearing before the state board or waive its hearing and instead submit evidence to the department.

7.03.4.1 Upon receipt of the evidence, the department shall issue a decision on the private school's reinstatement in writing to the private school.

7.03.4.2 A private school may appeal a final decision by the department to the state board.

7.04 The department shall publish on its website a service provider application form, by which education service providers shall be accepted for review on a rolling basis throughout the year.

7.04.1 An applying education service provider shall attest to the following:

7.04.1.1 The education service provider does not discriminate on any basis prohibited by the Civil Rights Act of 1964, 42 U.S.C. § 2000d, as it existed on January 1, 2023;

7.04.1.2 The education service provider is not an individual who may reasonably pose a risk to the appropriate use of EFA Program funds if disbursed and does not employ any individual who may reasonably pose a risk to the appropriate use of EFA Program funds if disbursed;

7.04.1.3 The education service provider acknowledges whether it offers student-facing services and whether it offers full-time enrollment to participating students; and

7.04.1.4 All personnel of student-facing education service providers have cleared a background check every five (5) years and have fingerprinting documentation on file.

7.04.1.4.a Virtual direct instructional providers, for whom fingerprinting is not required by Arkansas law, are exempt from the fingerprinting requirement in section 7.04.1.1.

7.04.1.4.b Education service providers shall comply with any applicable fingerprinting and background check requirements by August 1, or within 30 days of being approved as providers during a school year.

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:

7.04.2.1 Administer assessments to participating students pursuant to section 11.00; and

7.04.2.2 Provide an education for participating students in at least the subjects of English language arts, mathematics, social studies, and science.

7.04.3 As part of the service provider application form, all full-time student - facing applicant providers shall provide additional details on the provider's resources, services, educational program, or curriculum, as required by the department.

7.04.4 The department's approval of education service providers shall further be based on a review and confirmation that the following requirements are satisfied:

7.04.4.1 The education service provider supplies the department with current and complete contact information;

7.04.4.2 An education service provider that offers therapies or diagnostic services to a student with a disability is licensed or accredited by the appropriate state or national governing body;

7.04.4.3 An education service provider who only provides professional services submits to the department a list of all services offered along with corresponding prices or rates, which the department may make available to the public and therapists and tutors (specialists services);

7.04.4.4 An education service provider who only provides products as a vendor through the marketplace need not provide a list of all products offered so long as all of its products that may be considered eligible expenses are listed, with the price of the item, on the marketplace; and

7.04.4.5 The student-facing education service provider supplies proof of one of the following credentials for any employee or individual that provides instructional or tutoring services:

7.04.4.5.a Holds an Arkansas Standard or Provisional Professional Teaching License or is otherwise qualified through a department-recognized Alternative Route Program;

7.04.4.5.b Meets the requirements set by a tutoring organization accredited by an accrediting association recognized by the State Board;

7.04.4.5.c Is employed in a teaching or tutoring capacity at an accredited institution of higher education; or

7.04.4.5.d Holds a baccalaureate or graduate-level degree.

7.04.4.5.e The department may, on a case-by-case basis, approve providers whose employees do not (or an individual who does not) have one of the credentials set out above if;

7.04.4.5.e.1 The individual has a prior teaching experience of not less than three (3) years, which demonstrates special skills, knowledge, or expertise that qualifies the individual to provide instruction on a specific subject; or

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.

7.04.5 The department may conduct site visits to education service providers.

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.

7.05.1 A list of each participating school and service provider's name, the qualifying materials, services offered, and any relevant credentials shall be available on the department's website, in a format easily accessible to the public.

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.

7.07 To provide proof of financial viability to repay any funds that may be owed to the department, an education service provider that receives a minimum of one hundred thousand dollars ($100,000) in EFA Funds shall file a surety bond with the department named as obligee in an amount equal to the aggregate value of payments expected to be received during the school year.

7.08 Participating schools and service providers shall not charge an account holder tuition or fees for any services on behalf of a participating student in an amount that is different than the amount otherwise charged on behalf of a student who does not participate in the EFA program but may apply discounts to tuition and fees that are generally available to students regardless of their participation in the EFA program.

7.08.1 Participating schools receiving EFA funds shall apply any scholarship awards, tuition rates, and tuition discounts toward an approved student's tuition, costs, and fees before EFA funds are applied to any invoiced charges by the participating school.

7.08.2 The department shall monitor tuition and fee increases from participating private schools and providers annually.

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

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.

7.09 Participating schools and service providers shall not refund, rebate, or share EFA funds directly with account holders.

7.09.1 In the event a participating school or service provider receives funds distributed from an EFA to which it is not entitled, the participating school or service provider shall remit the funds to the EFA from which the funds were originally disbursed.

7.09.2 If a participating school or service provider is required to return funds to an EFA which has been closed, the participating school or service provider shall remit the funds to the department directly.

7.09.3 The department may require a participating school or service provider to remit funds if the department identifies funds distributed to the participating school or service provider to which the participating school or service provider is not entitled.

7.09.3.1 The participating school or service provider shall remit the funds within ten (10) business days of receipt of written notice by the department that the entity is required to refund a payment.

7.09.3.2 When required to refund a payment, a participating school or service provider may also:

7.09.3.2.a Provide documentation or written justification showing that the participating school or service provider was entitled to the refunded payment if the vendor believes the department acted in error; and

7.09.3.2.b Submit a claim with the Arkansas State Claims Commission if the participating school or service provider believes that the entity is entitled to funds which it was required to refund under this rule.

7.10 The department may suspend or terminate a participating school or service provider from participating in the EFA program if the department determines the school has failed to comply with the requirements of Arkansas Code § 6-18-2501 et seq. or this rule pursuant to the following:

7.10.1 For a private school only, disqualification under the terms of section 7.02;

7.10.2 For an education service provider only, failure to comply with any of the criteria detailed in section 7.04 or with all applicable health and safety laws and rules;

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;

7.10.4 Intentional or substantial misrepresentation of information to the department or to account holders;

7.10.5 Failure to refund any overpayments to the department within thirty (30) days of receiving a written request, including request by electronic mail; or

7.10.6 Repeated failure to provide participating students with promised educational goods or services, as determined by the department over the course of the program.

7.11 Nothing shall be construed to expand the regulatory authority of the department to impose additional regulations on participating schools and service providers beyond those expressly set out in these rules to enforce the requirements of the EFA program.

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.

7.12 An accrediting association seeking recognition by the state board shall file a petition for recognition with the state board.

7.12.1 The state board shall vote whether to approve a petition within ninety (90) days from the day the petition is filed.

7.12.2 The petition shall include information necessary to determine that the petitioner satisfies the requirements of section 7.01.2.1.

8.00 MONITORING AND COMPLIANCE

8.01 The Department of Education shall:

8.01.1 Conduct a random audit of EFAs to ensure funds were used only for expenses that were approved or allowed at the time the expense was made; and

8.01.2 Maintain a copy of the audit plan and all associated audit reports.

8.02 The department shall conduct a random financial audit of participating schools and service providers.

8.02.1 If selected, a participating school or service provider shall submit to a financial audit conducted by a certified public accountant within six (6) months of the most recent fiscal year.

8.02.2 The auditor shall include in the report a statement that the report is free of material misstatements and fairly represents the participating school or service provider's maximum total tuition and fees.

8.03 The department shall establish an anonymous fraud reporting service.

8.03.1 Individuals may notify the department of any alleged violation by an account holder or participating school or service provider of state laws, rules, or procedures relating to the EFA program.

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.

8.03.2.1 Individuals making a report of fraud shall be informed that their reports of fraud must be credible, and at a minimum, be backed by some reasonable suspicion of wrongdoing.

8.03.2.2 If an account holder or participating school or service provider is found to have violated any state laws, rules, or procedures related to the EFA program, they shall be ineligible to participate in the EFA program and any unspent EFA funds shall be returned to the department.

8.04 The department may contract with a third party to conduct the audits or establish an anonymous fraud reporting service.

8.05 The department shall forward to Arkansas Legislative Audit:

8.05.1 All audits conducted under this section that identify a potential misuse of EFA funds; and

8.05.2 Any reports of fraud, substantial misuse of account funds, or both, that the department investigated or referred for investigation to the Arkansas Attorney General or the Secretary of the Arkansas Department of the Inspector General.

9.00 APPEALS PROCESS

9.01 The following determinations may be appealed to the State Board of Education:

9.01.1 An applicant may appeal the Department of Education's determination that the student does not qualify for priority status under section 4.02.

9.01.2 An account holder may appeal a final determination that the account holder has substantially misused EFA funds or the removal of the participating student from the EFA program.

9.01.3 A prospective participating school or service provider may appeal the department's determination that the prospective participating school or service provider is not eligible to participate in the EFA program.

9.01.4 A participating school or service provider may appeal the department's suspension or termination of the participating school or service provider from the EFA program.

9.02 All appeals shall be submitted using the appeal forms provided on the department's website.

9.02.1 If an appeal is not submitted on the appropriate appeal form, the appeal shall be denied.

9.03 Appeals shall be submitted to the department within thirty (30) calendar days of the adverse decision by the department.

9.03.1 The day that the department sends notice of its determination will not count as part of the thirty (30) calendar days.

9.03.2 If the deadline to submit an appeal falls on a weekend or state holiday, the appeal shall be considered timely submitted if it is received by the next business day after the weekend or state holiday.

9.03.3 If an appeal is not timely submitted, the appeal shall be denied.

9.04 The state board shall hear the appeal at its next scheduled meeting, if the appeal is received at least fourteen (14) calendar days before the meeting date.

9.05 Any appeal shall be held in an open hearing, and the decision of the state board shall be in an open session.

9.06 The following procedures shall apply to state board hearings:

9.06.1 All persons wishing to testify before the state board shall first be placed under oath by the chair of the state board.

9.06.2 The department shall have up to fifteen (15) minutes to present its case to the state board.

9.06.3 The appealing party shall have up to fifteen (15) minutes to present its case to the state board.

9.06.4 The chair of the state board may allow additional time if necessary.

9.06.5 The state board may ask questions of any party at any time during the hearing.

9.06.6 The state board shall then discuss, deliberate, and vote upon the matter.

9.06.7 The state board will grant or deny the appeal based upon the totality of the evidence presented.

9.06.8 The state board may announce its decision immediately after hearing all arguments and evidence or it may take the matter under advisement and announce its decision at a later date, provided that all discussions, deliberations, and votes upon the matter take place at a public hearing.

9.06.9 The state board shall provide a written decision within fourteen (14) days of announcing its decision.

10.00 PROCUREMENT AND CONTRACTING

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:

10.01.1 Implementing a system to collect and compile response data from the standard application form;

10.01.2 Managing a secure payment system for account holders to use as the primary method to direct EFA funds to participating schools and service providers by electronic funds transfer, automated clearinghouse transfer or other commercially viable, cost effective, parent friendly, and easy-to-use online product;

10.01.2.1 The secure payment system shall make the EFA fund balance readily accessible to the account holder through a technology interface with real-time or near real-time balance information, transaction history, including transaction date, the amount deposited or spent, and the name of the participating school or service provider.

10.01.3 Providing account holders with telephone-operated customer service or real time operated online chat response, to answer questions related to the secure payment system and access to participating schools and service providers available beyond conventional business hours;

10.01.4 Establishing and maintaining an online anonymous fraud reporting service and an anonymous telephone hotline for reporting program fraud, pursuant to section 8.03;

10.01.5 Compiling the information necessary for the legislative report regarding the implementation of the Educational Freedom Account, to be submitted annually no later than September 30 pursuant to Arkansas Code § 6-18-2510;

10.01.6 Reviewing applications and expenses; and

10.01.7 General administration and management of the program.

11.00 PAYMENTS UNDER THE EDUCATIONAL FREEDOM ACCOUNT PROGRAM

11.01 Once families and participating schools have been approved to participate in the EFA program, the Department of Education shall continue to make quarterly payments to the Education Freedom Account on behalf of the approved students and families to pay for eligible expenses invoiced by participating schools or service providers with the exception of reimbursable preapproved expenditures as defined in section 11.01.1.5 which can be paid at the time of services rendered or goods purchased.

11.01.1 The department shall make payments in installments from the participating student's EFA to the participating school or service provider.

11.01.1.1 Participating schools or service providers, or third-party vendors, shall issue an itemized invoice to approved students and families for documentation of expense type, amount, and recipient.

11.01.1.2 Approved students and families shall verify and submit payment requests, identifying the participating school or service provider to receive payment, the payment amount, and the expense type.

11.01.1.3 Approved students and families shall include invoices for review and documentation during the payment submission process.

11.01.1.4 Payment shall be made to the participating school or service provider for authorized expenditures, following review and approval of the expense request and documentation by the department.

11.01.1.4.a A parent of a participating student may not receive payment from their student's EFA account unless it is reimbursement for a preapproved eligible expense.

11.01.1.5 A parent of a participating student may only be reimbursed for preapproved eligible expenses to include the following:

11.01.1.5.a Course and testing fees;

11.01.1.5.b Curriculum;

11.01.1.5.c Online course tuition and fees;

11.01.1.5.d Tutoring fees;

11.01.1.5.e Therapy fees; and

11.01.1.5.f Transportation.

11.01.1.5.g 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.

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.

11.03 In the event EFA funds are pending payment to a participating school or service provider for an authorized expenditure at the time the account holder, parent, or participating student are found to be ineligible, the participating school or service provider shall remit the funds to the EFA from which the funds were originally disbursed.

11.03.1 Funds remitted back to the EFA from a participating school or service provider under section 11.03 shall also be returned to the department in accordance with section 11.02.

11.03.2 The participating school or service provider shall remit the funds within ten (10) business days of receipt of written notice by the department that the entity is required to refund a payment.

11.03.3 When required to refund a payment, a participating school or service provider may also:

11.03.3.1 Provide documentation or written justification showing that the participating school or service provider was entitled to the refunded payment if the vendor believes the department acted in error and services were already rendered; and

11.03.3.2 Submit a claim with the State Claims Commission if the participating school or service provider believes that the entity is entitled to funds which it was required to remit under this rule.

12.00 PROGRAM EVALUATION

12.01 The participating school, parent, or service provider that is responsible for the majority of a student's academic instruction, shall administer the following to all participating students who are enrolled on a full-time basis in kindergarten through tenth grade:

12.01.1 An examination identified by the State Board of Education that is required for students attending public schools; or

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.

12.01.2.1 The Department of Education shall provisionally approve a test for use in the 2023-2024 school year if the participating school or service provider administered the test to students during one or more of the previous three (3) school years.

12.02 Each participating school, parent, or service provider that is responsible for the majority of a student's academic instruction shall provide the following information to the department annually by June 30:

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

12.02.2 A list of participating students who are exempt from standardized testing due to the nature of the student's disability, pursuant to section 12.03, and the alternate assessment results or summary of portfolio information provided for each student.

12.02.3 Information provided to the department may only be released in compliance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.

12.03.3.1 Pursuant to Arkansas Code 6-15-503, information provided in a Notice of Intent to homeschool:

12.03.3.1.a Is confidential and not subject to the Freedom of Information Act of 1967, § 25-19-101 et seq.; and

12.03.3.1.b May be used only for statistical and recordkeeping purposes as required by law.

12.02.4 If the school is a high school, the number of participating students who graduated from high school in a given year and the number of Advanced Placement (AP), International Baccalaureate (IB), Advanced International Certificate of Education (AICE), or other college-level tests taken by participating students.

12.03 A participating student who is determined by a participating school or service provider to need an exemption to standardized testing due to the existence of a significant cognitive disability, is not subject to the requirement of section 12.01.

12.03.1 A testing exemption may only be granted if the participating student meets all four criteria listed in the Arkansas Alternate Assessment Decision-Making Tool, as determined by a certified special education teacher or by an approved education service provider that provides therapies or diagnostic services to a student with a disability.

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.

12.04 The department shall administer a survey to account holders to assess their satisfaction with the department’s administration of the EFA program and their experience with participating schools and service providers, including but not limited to the following:

12.04.1 Satisfaction with program service and communication;

12.04.2 Satisfaction with the quality of private schools or education service providers; and

12.04.3 Satisfaction with value of service provided for money expended, and any concerns with increases to, or misrepresentation of, tuition or fees for service providers.

12.05 The survey shall collect no more than one (1) response from each account holder and shall be conducted between January 1 and May 31 of each school year.

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.