

APA-3

**CERTIFICATION OF ADMINISTRATIVE RULES
FILED WITH THE LEGISLATIVE SERVICES AGENCY
OTHNI LATHRAM, DIRECTOR**

(Pursuant to Code of Alabama 1975, §41-22-6, as amended).

I certify that the attached are correct copies of rules as promulgated and adopted on the 8th day of September 2022 and filed with the agency secretary on the 8th day of September 2022.

AGENCY NAME: Department of Education

Amendment New Repeal (Mark appropriate space)

Rule No. 290-2-1-.01

(If amended rule, give specific paragraph, subparagraphs, etc., being amended)

Rule Title: Annual Apportionment of Foundation Program Funds

ACTION TAKEN: State whether the rule was adopted with or without changes from the proposal due to written or oral comments:

The Rule was adopted without changes.

NOTICE OF INTENDED ACTION PUBLISHED IN VOLUME XL ISSUE NO 10 AAM,
Dated July 29, 2022 .

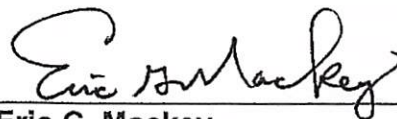
Statutory Rulemaking Authority: Sections 16-3-11 through 16-3-14 Ala. Code (1975)

(Date Filed)
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SEP 8 2022

LEGISLATIVE SVC AGENCY



Eric G. Mackey
State Superintendent of Education

(NOTE: In accordance with §41-22-6(b), as amended, a proposed rule is required to be certified within 90 days after completion of the notice.)

STATE BOARD OF EDUCATION
STATE DEPARTMENT OF EDUCATION

CHAPTER 290-2-1
APPORTIONMENT OF FUNDS

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290-2-1-.01 Annual Apportionment of Foundation Program Funds. Regulations of the State Board of Education pertaining to the annual apportionment of the foundation program funds effective October 1, 2022. The cost of the foundation program shall be determined, and the allotments made in accordance with the provisions of Ala. Acts 95-314, 95-313, 2021-166, 2022-393 and as hereinafter provided:

(1) Cost of the Foundation Program. The cost of the foundation program shall be computed in five categories for each local board of education. The five categories are salaries for foundation program units, fringe benefits for foundation program salaries, classroom instructional support for foundation program, other current expense, and student growth. The total of the cost in the five categories calculated as defined herein is the cost of the foundation program.

(a) Salaries for Foundation Program Units. Teacher units and instructional support units shall be used to calculate the cost of salaries for foundation program units for 187 day contracts.

1. Foundation program weighted grade divisors are established for kindergarten through grade 12. The grade divisors include an adjustment for weighting special education and career and technical education to reflect increased programmatic costs. The adjustment for special education reflects 5% average daily membership (ADM) weighted 2.5 in all grades. The adjustment for career and technical education reflects 7.4% ADM weighted 1.4 in grades seven and eight and 16.5% ADM weighted 2.0 in grades nine through twelve. Foundation program calculations for FY 2023 are based on the following funding divisors: 14.25 in kindergarten through grade three; 20.43 in grades four through six; 19.70 in grades seven and eight; and 17.95 in grades nine through twelve.

(i) Teacher units are calculated by dividing the grade ADM by the grade divisor and summing over all grades in the school. The ADM by grade is the average number of students enrolled on a daily basis for the first 20 scholastic days following Labor Day of the preceding school year.

(ii) Instructional support units are calculated in the classifications of principal, assistant principal, counselor, and librarian as recommended in the accreditation standards for elementary schools, middle schools, and secondary schools, according to the AdvancED standards.

(iii) A principal unit and a counselor unit shall be calculated for each state approved career technical education center (CTE center). A local board that does not operate a CTE center shall receive a pro rata portion of a unit allocation to provide system-wide supervision of career technical education as determined by the students enrolled in career technical education courses in grades 9-12.

(iv) Principal units shall be extended by .45 for secondary schools and CTE centers, by .31 for elementary schools, and by .35 for middle schools for salary calculations. Assistant principal units shall be extended by .10 for elementary schools, middle schools, and secondary schools for salary calculations. Counselor units shall be extended by .03 for secondary schools and CTE centers for salary calculations.

(v) The total of teacher units, instructional support units, and CTE center units shall constitute the foundation program units at each school in the foundation program cost calculations.

2. Units shall be converted to dollars in the cost calculations through the use of a salary matrix (state minimum salary schedule) as specified in the FY 2023 Education Trust Fund (ETF) appropriations act.

(i) The state minimum salary schedule gives consideration to experience, certification, and the degree level at which a certificated employee is employed for a standard 187 day contract. The degree levels are Bachelor's, Master's, Sixth-year Program, Doctoral, and non-degree.

(I) Teachers holding career and technical education certificates endorsed in technical education or healthcare science and technology shall be paid at the appropriate degree equivalency in accordance with Rule 290-3-2.

(II) Experience shall be considered in three year increments up to 9 years and one year increments up to 35 years. Experience is defined as public education experience with fractional year as defined by the Alabama Teachers' Retirement System for earning years of service. Local boards shall place employees holding positions requiring certification on the salary schedule considering the highest degree earned from a regionally accredited institution and years of experience served in public education. Employees advance to the next experience step of the salary schedule on the anniversary date of experience. Local boards shall notify the State Department of Education of the earned advanced degree for each employee in a timely fashion. An employee shall be paid for an advanced degree in the pay period that begins after the advanced degree is recognized by the State Department of Education, provided that, if an employee has completed service under contract for the scholastic year, the advanced degree pay shall begin with the first pay period for service under contract in the subsequent scholastic year.

(ii) A percentage of each year's foundation program units shall be calculated at each cell of the state minimum salary schedule. The percentage is the actual number of state and local certificated personnel employed by a school in each cell divided by the total number of state and local certificated personnel employed by the same school in the prior year. The product of units, percentage by cell, and state minimum salary amount for the cell summed over all cells is the foundation program salary cost for each school.

(b) Fringe Benefits for Foundation Program Salaries. Fringe benefits costs shall be computed on salaries for foundation program units at rates established in the ETF appropriations act or as otherwise required by state or federal law. Fringe benefits are computed for FICA, Medicare, health insurance (PEEHIP), matching retirement, unemployment compensation, and leave (sick and personal). The total of fringe benefits in the categories listed for all foundation program units at a school shall be the fringe benefits costs on foundation program units at each school.

(c) Classroom Instructional Support for the Foundation Program. Classroom instructional support costs are calculated for all foundation program units in the category of student materials, technology, professional development, and library enhancement at a rate per unit and for textbooks or digital resources at a rate per ADM, specified in the ETF appropriations act.

(d) Other Current Expense for Foundation Program Units. Other Current Expense (OCE) cost shall be calculated as a fixed amount multiplied times the number of foundation program units. OCE may be used to pay salaries and fringe benefits for support personnel.

(e) Foundation Program Allowance for Student Growth. The Foundation Program allowance for student growth shall be determined by multiplying the combined allowance in paragraphs a. through d. (salaries, benefits, classroom instructional support, and other current expenses) on a per ADM basis times the net year over year growth of ADM for non-virtual students for the two preceding school years. The net ADM growth attributable to full-time virtual students shall be funded at a rate determined by the State Department of Education based on the average cost to districts of educating a full-time virtual student beginning in fiscal year 2022.

(f) Total Local Board Foundation Program Funds. The sum of the calculated foundation program costs (salaries, fringe benefits, classroom instructional support, other current expenses, and student growth) for a local board is the total foundation program funds for the local board in FY 2023.

(2) Allotment of the Foundation Program Cost. The local board foundation program cost from (1)(f) above less the required local effort shall be the foundation program allotment for each local board from the ETF to be allocated to local boards on a monthly basis in twelve installments. The required local effort for each local board for its share of the cost of the foundation program shall be the equivalent of 10 district mills of ad valorem tax.

(3) Requirements for Expending Foundation Program Funds. In expending foundation program funds, each local board shall meet the following conditions:

(a) provide a school year of at least 180 full instructional days, or the hourly equivalents thereof;

(b) provide the equivalent of at least 10 district mills of local ad valorem tax support;

(c) adopt a salary schedule for certificated personnel that reflects at least 100% of the state minimum salary schedule per cell as well as 100% of the state minimum salary schedule adjusted for extended contracts for career and technical education personnel

(d) meet federally mandated maintenance of effort requirements;

(e) spend all calculated salaries for foundation program units for instructional salaries;

(f) continue operations at all career and technical education centers in existence in FY95 and pay a pro rata share of the cost of any CTE center providing service to more than one school system;

(g) distribute foundation program allocated funds based on current year student population and programs needed to serve the current year students.

(4) Requirements to Receive State Funds. In order to receive state funds, local boards of education are required to furnish information and file reports and records required by the State Board.

(a) Local boards of education are required to prepare budgets and financial statements that meet reporting requirements of the State Department of Education. The State Superintendent shall prepare the forms and procedures for completing budgets and financial statements.

1. Local boards of education are required to maintain a supplemental inventory of equipment items not classified as fixed assets.

2. Local boards of education are required to reconcile bank statements on a timely basis.

3. Local boards of education are required to maintain accounting records and to follow accounting and internal control procedures that comply with generally accepted accounting principles.

(b) Local boards of education are required to provide the annual accountability reports required by Ala. Code §16-6B-7 (1975). The State Superintendent shall prepare the procedures for completion and distribution of annual accountability reports.

(c) Local boards of education are required to be audited in accordance with state laws, federal laws and regulations, and the audit standards issued by the State Department of Education. The State Superintendent shall issue audit standards requiring a single audit of local school funds, federal funds, state funds, local funds, and other funds under the control of school officials.

(d) Local boards of education are required to provide attendance data, personnel data, and other information necessary to calculate the cost of the Foundation Program and other state funds. The State Superintendent shall establish procedures for collecting this information.

(e) Local superintendents are required to provide monthly financial reports, monthly check register report, and other information for the local boards of education as required by the Act No. 2006-196.

(f) The State Superintendent may withhold state funds from a local board of education that fails to provide data necessary to calculate the cost of the Foundation Program and other state funds.

(g) The State Superintendent may withhold state funds from a local board of education that fails to successfully complete other reporting requirements set forth by the State Superintendent.

(5) Penalties. Penalties shall be imposed against local boards for:

(a) Failure to operate schools the minimum 180 full instructional-day term, or hourly equivalent thereof, pursuant to Ala. Acts 2011-235 or 2015-430;

(b) Deficit spending pursuant to Ala. Code § 16-13-144 (1975), however, the State Superintendent may waive all or part of the penalty if the school system has made a substantial effort to remove the deficit and agrees to develop an approved financial plan; and,

(c) Assigning a teacher to teach a subject for which the teacher does not hold proper certification as defined in Rule 290-3-2-.02(2)(d). The penalty will be a minimum of \$500 per teacher per year.

(d) Failure to timely notify parents of the options available for a parent of a student enrolled in or assigned to attend a failing school as required by Act No. 2013-265.

(6) **Flexibility.** For FY 2023, local boards of education may exercise flexibility among line item expenditures, according to the provisions of Section 11 of the Education Trust Fund Budget approved in Alabama Legislative Act No. 2022-393.

Author: Ed Richardson.

Statutory Authority: Ala. Code §§16-13-230 et. seq. (1975).

History: Amended 8-12-93, effective 9-17-93; emergency rules 7-21-94, new rules 9-8-94, effective 10-13-94; emergency rules 9-14-95, effective 9-14-95; amended 4-11-96, effective 5-16-96; emergency rules 7-9-96, effective 7-9-96; emergency rules 10-10-97, effective 10-10-97; emergency rules 7-14-98, effective 8-7-98; amended 11-18-99, effective 12-23-99; amended 12-14-00, effective 1-18-01; amended 11-8-01, effective 12-13-01; amended 9-12-02, effective 10-17-02; amended 1-8-04, effective 2-12-04; amended 9-9-04, effective 10-14-04; amended 11-10-05, effective 12-15-05; amended 11-9-06, effective 12-14-06; amended 9-13-07, effective 10-18-07; amended 11-13-08, effective 12-18-08; amended 9-10-09, effective 10-15-09; amended 11-18-10, effective 12-23-10; amended 12-8-11, effective 1-11-12; emergency rule 9-13-12; amended 11-8-12, effective 12-13-12; amended 9-12-13, effective 10-17-13; amended 9-10-14, effective 10-15-14; amended 10-8-15, effective 11-12-15; amended 10-3-15, effective 11-7-15; amended 10-13-16, effective 11-27-16; amended 10-12-17, effective 11-27-17; amended 9-13-18, effective 10-29-18; amended 11-14-19, effective 1-14-20; amended 11-12-20, effective 1-12-21; amended 10-14-21, effective 12-15-21; amended 9-8-22, effective 11-15-22

290-2-1-.02 Annual Apportionment of Current Units. (Repealed)

Author: Ed Richardson.

Statutory Authority: Ala. Code §§16-13-230 et. seq. (1975).

History: Amended 8-12-93, effective 9-17-93; emergency rules 7-21-94, new rules 9-8-94, effective 10-13-94; emergency rules 9-14-95, effective 9-14-95; emergency rules 7-9-96, effective 7-9-96; emergency rules 10-10-97, effective 10-10-97; emergency rules 7-14-98, effective 8-7-98; amended 11-18-99, effective 12-23-99; amended 2-9-06, effective 3-16-06; amended 11-9-06, effective 12-14-06; amended 9-13-07, effective 10-18-07; amended 11-13-08, effective 12-18-08; amended 10-8-15, effective 11-12-15; amended 10-3-15, effective 11-7-15; amended 10-13-16, effective 11-27-16; repealed 10-14-21; effective 12-15-21

290-2-1-.03 Annual Apportionment of Transportation Funds.

(1) Calculations for the average daily number of transported pupils shall include only the transportation of children who live two miles or more from a school center; provided, however, that the transportation of disabled pupils living any distance from a school shall be included if transported at public expense.

(a) The State Superintendent shall have the authority to exclude the number of children transported to school centers which are unapproved by surveys conducted by the State Department of Education.

(b) The State Superintendent shall have the authority to exclude the number of children transported on dangerous vehicles.

(c) If a survey shows that the reported number of children transported by a local board exceeds the number of children living two miles or more from school centers approved by survey, the State Superintendent shall have the authority to reduce proportionately the number of transported pupils reported by that local board to the transportation saturation point as determined by survey.

(d) The State Superintendent shall have the authority to waive the two mile limit upon petition by the local board to protect the safety of the children.

(e) The count of transported pupils for any year shall be based upon reports of transported pupils for the previous year, subject to the provisions of these regulations.

(2) Calculation of Operating Allocation. The operating allocation for transportation shall be calculated as follows:

(a) Local boards must report transportation data to the State Department of Education on an annual basis. Data reported shall include route number, bus number, chassis model year, type route, number of students transported one way, loaded miles one way, and system number if transporting for another system.

(b) The operating cost per local board is determined from the financial statement non-salary operating cost, route reports for fuel calculations, eligible buses and staffing requirements; personnel reports for salaries and benefits, and full-time transportation counts for PEEHIP calculations.

(3) Calculation of Fleet Renewal Allocation. Fleet renewal allocations are based on a 10 year depreciation schedule. Buses used on daily routes qualify for fleet renewal. New buses ordered on bids awarded before November 1 will be counted towards the fleet renewal allocation.

(4) The Annual Transportation Allowance. The total transportation allocation for each local board is the sum of the operating allocation and the fleet renewal allocation. The amount of the annual transportation allowance resulting from the depreciation of school buses shall be set aside for fleet renewal for new bus purchases or for servicing a debt resulting from new bus purchases. Debt obligations for bus purchases must be approved by the State Superintendent if the school system does not have a one-month general fund balance. Fleet renewal funds may not be used for operating cost and may be carried over to future years.

Author: Ed Richardson.

Statutory Authority: Ala. Code §16-13-233 (1975).

History: Amended 8-12-93, effective 9-17-93; emergency rules 7-21-94, new rules 9-8-94, effective 10-13-94; emergency rules 9-14-95, effective 9-14-95; emergency rules 7-9-96, effective 7-9-96; emergency rules 10-10-97, effective 10-10-97; emergency rules 7-14-98, effective 8-7-98; amended 11-18-99, effective 12-23-99; amended 12-14-00, effective 1-18-01; amended 11-8-01, effective 12-13-01; amended 9-12-02, effective 10-17-02; amended 1-8-04, effective 2-12-04; amended 9-9-04, effective 10-14-04; amended 11-10-05, effective 12-15-05; amended 11-9-06, effective 12-14-06; amended 11-13-08, effective 12-18-08; amended 11-18-10, effective 12-23-10; amended 10-12-17, effective 11-27-17

290-2-1-.04 Annual Apportionment of Public School Funds. The Public School Fund (PSF) shall be apportioned each year to provide funds for capital improvements of public school facilities as hereinafter provided:

(1) Capital Improvement Funds. The PSF shall be apportioned on the basis of a distribution method that uses the ability of the local board to raise local revenues, has a variable matching scale and guarantees each local board will receive the same amount per pupil (ADM) in matched funds.

(a) The ability of the local board shall be defined as the yield of one mill of district ad valorem tax per pupil based on the prior year's financial data and prior year's first 20 scholastic days following Labor Day ADM.

(b) The allotment of PSF funds for capital improvements shall be on the basis of a guaranteed tax yield calculation matched to 2 times the maximum yield per mill per ADM. The number of mills guaranteed will depend on the amount of PSF available after the set aside in (1) above.

1. If Z is the number of guaranteed mills, M is the maximum yield per mill over all local boards, Y is the yield per mill per ADM for a local board, and A is the prior year first 20 scholastic days following Labor Day ADM, the local board shall receive $(Z*(2M-Y)* A)$ state PSF funds and must match with $(Z*Y*A)$ local funds. The local matching funds may be used as debt service. PSF Capital Improvement Funds may be used to service a debt for capital improvements.

2. PSF Capital Improvement Funds must be for capital improvements as identified in Alabama Legislative Act No. 2011-163.

Author: Ed Richardson.

Statutory Authority: Ala. Code §§230 et. seq. (1975).

History: Amended 8-12-93, effective 9-17-93; emergency rules 7-21-94, new rules 9-8-94, effective 10-13-94; emergency rules 9-14-95, effective 9-14-95; emergency rules 7-9-96, effective 7-9-96; emergency rules 10-10-97, effective 10-10-97; emergency rules 7-14-98, effective 8-7-98; amended 11-18-99, effective 12-23-99; amended 12-14-00, effective 1-18-01; amended 11-8-01, effective 12-13-01; amended 9-12-02, effective 10-17-02; amended 1-8-04, effective 2-12-04; amended 9-9-04, effective 10-14-04; amended 11-10-05, effective 12-15-05; amended 11-9-06, effective 12-14-06; amended 9-13-07, effective 10-18-07; amended 11-13-08, effective 12-18-08; amended 9-10-09, effective 10-15-09; amended 11-18-10, effective 12-23-10; amended 12-8-11, effective 11-11-12; emergency rule 9-13-12; amended 11-8-12, effective 12-13-12; amended 9-12-13, effective 10-17-13; amended 9-10-14, effective 10-15-14.

290-2-1-.05 Annual Apportionment of At-Risk Funds. The at-risk funds shall be apportioned to provide funds for development of programs that address the needs of at-risk students as defined by the State Board of Education. These programs shall provide the additional services that increase the amount and quality of instructional time with extended learning time opportunities including but not limited to before and after school programs, summer programs, tutoring programs, weekend programs, and alternative schools. A portion of the appropriation may also be used for training parents and teachers to work with at-risk students and to provide services that meet identified critical needs of at-risk students. School systems receiving special grant funds from at-risk or other fund sources for early intervention/special/innovative/pilot learning projects will be required to submit a written proposal for funds before any release of funds occurs and the funded programs will require a year-end summary of activities so that the project can be evaluated by the Department or its agent before or shortly after the end of the first full year of implementation and thereafter, if continued.

(1) **At-Risk Allotment.** For each school the number of free and reduced price lunch eligible students at the end of the first 20 days of attendance following Labor Day is divided by the first 20 days ADM following Labor Day. The number of students scoring in levels 1 or 2 (not proficient), is divided by the number tested for the grades in the school that are included in the State approved assessment testing program. The two quotients computed are averaged and the result is multiplied by the total ADM for the school to identify the number of students for every school. Schools with no grades tested on the State approved assessment are assigned 0 for the number scoring in levels 1 or 2. The total from all schools within a local school system is used to compute the system at-risk allocation. The system at-risk allocation must be used in accordance with the at-risk plan submitted by the local board to the State Superintendent. Funds are restricted for use at schools within a system that were used to generate at-risk funds unless provisions are included in the system at-risk plan and approved by the State Superintendent.

Author: Ed Richardson.

Statutory Authority: Ala. Code §§230 et. seq. (1975).

History: Amended 8-12-93, effective 9-17-93; emergency rules 7-21-94, new rules 9-8-94, effective 10-13-94; emergency rules 9-14-95, effective 9-14-95; emergency rules 7-9-96, effective 7-9-96; amended 5-13-98, effective 6-24-98; amended 11-9-06, effective 12-14-06; amended 9-13-07, effective 10-18-07; amended 11-13-08, effective 12-18-08; amended 10-8-15, effective 11-12-15; amended 11-14-19, effective 1-14-20