

ARKANSAS DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND RELATED SERVICES
18.00 REGULATIONS GOVERNING RESIDENTIAL PLACEMENT
20142017

18.01 REGULATORY AUTHORITY

- 18.01.1 These regulations shall be known as Arkansas Department of Education Regulations Governing Residential Placement.
- 18.01.2 These regulations are enacted pursuant to the State Board of Education's authority under Ark. Code Ann. §§ 6-11-105, 6-41-202, 6-18-202, 6-20-104, and 6-20-107.

18.02 PURPOSE

- 18.02.1 It is the purpose of these regulations to allocate public school funds for the education of residentially placed students.
- 18.02.2 It is further the purpose of these regulations to define the educational services in such placements.

18.03 DEFINITIONS

- 18.03.1 In addition to the definitions provided in Section 2.00 of these Regulations, the following definitions apply specifically to this Section 18.00.
- 18.03.2 Juvenile - a person who is eighteen (18) years old or younger.
- 18.03.3 Juvenile Detention Facility (JDF) - Any facility operated by a political subdivision of the State for the temporary care of juveniles alleged to be delinquent, or adjudicated delinquent and awaiting disposition, who require secure custody in a physically restricting facility. Under Ark. Code Ann. § 9-27-330(a)(11), such facility shall afford opportunities for education, recreation, and other rehabilitative services to adjudicated delinquents who may be ordered by the court to remain in the juvenile detention facility for an indeterminate period not to exceed ninety (90) days.
- 18.03.4 Student without disabilities – For purposes of these regulations, a student who has NOT been identified as disabled in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. (IDEA) and Ark. Code Ann. § 6-41-202 et seq., shall be considered nondisabled, including any student not previously enrolled in an Arkansas public school but who meets the residency requirements of Ark. Code Ann. § 6-18-202 upon entering the residential facility and enrolls in the resident district.

- 18.03.5 Student with disabilities - For purposes of these regulations, a student with a disability means a student age 3 to 21 who qualifies as disabled under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. and Ark. Code Ann. § 6-41-202 et seq.
- 18.03.6 Residential placement in state - For purposes of these regulations, residential placement in state means -
- 18.03.6.1 One of the following licensed facilities -
- A. Inpatient psychiatric treatment facilities licensed by the Arkansas Department of Human Services (DHS);
 - B. Alcohol and drug treatment facilities licensed by the Arkansas Department of Human Services;
 - C. Easter Seals of Arkansas;
 - D. Arkansas State Hospital;
 - E. Facilities licensed as Intermediate Care Facilities for the Mentally Retarded (ICFMR) by the Arkansas Department of Human Services;
 - F. Residential facilities licensed as sexual rehabilitation programs for children by the Arkansas Department of Human Services;
 - G. Psychiatric hospitals licensed by the Arkansas Department of Health.
- 18.03.6.2 That has a special education component approved by the ADE, Special Education Unit, on an annual basis. Such placement does not include the Arkansas School for the Blind, the Arkansas School for the Deaf, or the Arkansas School for Mathematics, Sciences and the Arts.
- 18.03.7 Residential Placement Out-of-State - For purposes of these regulations, when a student with disabilities is placed in a residential treatment facility outside the State of Arkansas, the special education component of such a facility must be approved by the ADE, Special Education Unit, and must be operating under the appropriate

licensure of the state in which it is located.

- 18.03.8 Residency - Ark. Code Ann. § 6-18-202 establishes residency requirements for students attending public schools in the State of Arkansas. Students affected by this statute include both those with and without disabilities.

18.04 RESIDENTIAL PLACEMENT IN STATE - STUDENTS WITHOUT DISABILITIES

18.04.1 Assignment of responsibility.

- 18.04.1.1 When a nondisabled student is placed for non-educational reasons in a residential treatment facility for treatment, the district where the residential treatment facility is located is the student's resident district. This district is responsible for educating the student.

- 18.04.1.2 When a nondisabled student who is a ward of the State is placed in a residential treatment facility, the district where the facility is located is responsible for educating the student.

- 18.04.1.3 When a nondisabled student is placed in a residential treatment facility for educational purposes by a parent or agent other than the school district, the parent or agent remains responsible for the education of the student.

18.04.2 Procedures for educational management.

- 18.04.2.1 Each school district must designate an individual who will be responsible for ensuring compliance with these regulations. This may be the district superintendent or a designee.

- 18.04.2.2 When a nondisabled student is placed in a residential facility, the facility must notify the responsible school district (superintendent or designee) within seven (7) calendar days of the student's admission.

Failure of the facility to notify the responsible district in a timely fashion may result in loss of ADE approval of the residential treatment facility's special education program.

- 18.04.2.3 The district superintendent or designee shall convene

a conference by a review team within seven (7) calendar days of notice by the residential treatment facility that the student is in a residential program. This conference may be conducted face- to-face or via a telephone call.

- 18.04.2.4 The review team shall be composed of, at a minimum, a representative from the district and a representative from the residential treatment facility. A DHS representative shall also be invited if the student is receiving services from one or more DHS Divisions.
- 18.04.2.5 The review team shall review information available on the student and determine whether a referral for consideration of eligibility for special education and related services is warranted.
- 18.04.2.6 When the review team determines the student should be referred for consideration of eligibility for special education, a referral form must be completed and a referral conference conducted following the process in § 4.00 of State Special Education regulations.
- 18.04.2.7 When the review team determines that the student should not be referred for consideration for special education and related services, it must identify the general educational and non-educational needs of the student.
- 18.04.2.8 Based on the identified needs of the nondisabled student, the review team will determine and document where the educational program of the student will be implemented. The inter-linkage of the treatment program needs and educational programming must be discussed in reaching a decision on an appropriate educational setting.
- 18.04.2.9 Should the local review team be unable to agree upon where the educational program of the student will be implemented, a determination must be requested from the state level review panel. Requests for a determination from the state level review panel shall be submitted in writing to the Associate Director, ADE Special Education Unit.
- 18.04.2.10 From the time of the request for a state level review until a determination is made, the student will remain

in his/her present educational setting.

18.04.2.11 The state level review panel will be composed of three (3) persons: one (1) from the ADE, one (1) from DHS and one (1) person selected by the Associate Director of the ADE Special Education Unit.

18.04.2.12 Within 30 calendar days of receipt of the written request, the state level review panel shall convene, review all information and render a final decision as to where the education program of the student will be implemented. The panel may extend the process by an additional 15 days should circumstances warrant.

18.04.2.13 The state level review panel's decision will be considered final, will be rendered in writing and will be sent to the local review team for implementation.

18.04.3 Assignment of costs.

18.04.3.1 For nondisabled students, "educational costs" are limited to only those costs incurred for direct educational instruction of the student.

18.04.3.2 All other services provided for the student are considered non-educational and are not reimbursable under these regulations. Such other costs will be borne by DHS, Medicaid, private insurance, the parent or by any combination thereof.

18.04.3.3 Residential treatment facilities must submit a bill to the school district for educational costs only. The invoice must be itemized to reflect the specific services provided. Invoices must be submitted to the school district in a timely manner in order for the district to seek reimbursement from the ADE, Special Education Unit.

18.04.3.4 The State Department of Education, a public school district, or an open-enrollment charter school shall not be liable for any education costs associated with the placement of a juvenile in an in-state residential or inpatient facility for any care and treatment, including psychiatric treatment, unless:

- A. The Department authorizes public payment for educational costs based on a determination that the educational program and facilities are

appropriate for the juvenile and the Department has approved the facility's education program; and

- B. Each program authorization precedes the placement.
- C. If the program is not authorized prior to the placement, the Department, public school districts, or open-enrollment charter schools shall not be responsible for education or other related costs, nor shall they be subject to any order to pay for educational or other related costs.

18.04.3.5 The liability of the Department, a public school district, or an open-enrollment charter school for the educational costs or other related costs shall be limited to -

- A. The reimbursement rate established by the Department for a juvenile placed in a residential or inpatient facility.

18.04.4 Funding.

18.04.4.1 A local school district may request reimbursement from the ADE, Special Education Unit for the educational costs of nondisabled students placed in residential treatment facilities.

18.04.4.2 The local school district shall not be responsible for educational costs exceeding the maximum reimbursement rate for nondisabled students receiving educational services in a residential treatment facility, as determined by the Department.

18.04.4.3 When the requests for reimbursement exceed the amount of funds available, the reimbursement will be prorated.

18.04.5 Extended School Year Services (ESY).

18.04.5.1 There is no provision for extended school year (educational) services to nondisabled students when schools are not in session. This applies to nondisabled students in residential placements, as well as their nondisabled peers who attend the local public school.

Therefore, there is no need for a district to convene a review team during the summer months when school is not in session.

- 18.04.5.2 Residential treatment facilities cannot bill school districts for educational services provided to nondisabled students during the summer months.

18.05 RESIDENTIAL PLACEMENT IN STATE - STUDENTS WITH DISABILITIES

18.05.1 Assignment of responsibility.

18.05.1.1 For students with disabilities in state-operated Human Development Centers, the facility is responsible for procedural safeguards and the provision of FAPE.

18.05.1.2 When a student with a disability is placed for non-educational reasons in a residential treatment facility for treatment, the district where the facility is located is the student's resident district. The district shall be responsible for procedural safeguards and the provision of FAPE.

18.05.1.3 When a student with a disability who is a ward of the state is placed in a residential treatment facility, the district where the residential treatment facility is located is responsible for educating the student.

18.05.1.4 When a student with a disability is placed in a residential treatment facility for educational purposes by a school district, the placing district remains responsible for procedural safeguards and the provision of FAPE.

18.05.1.5 When a student with a disability is placed in a residential treatment facility for educational purposes by a parent or agent other than the school district, the parent may petition the district where the student permanently resides (home district, usually that of the student's parent or guardian) for provision of procedural safeguards and FAPE.

18.05.2 Procedural safeguards.

18.05.2.1 The procedural safeguards specified in § 9.00 of these regulations shall be followed.

18.05.3 Assignment of costs.

- 18.05.3.1 The State Department of Education, a public school district, or an open-enrollment charter school shall not be liable for any education costs associated with the placement of a juvenile in an in-state residential or inpatient facility for any care and treatment, including psychiatric treatment, unless:
- A. The Department authorizes public payment for educational costs based on a determination that the educational program and facilities are appropriate for the juvenile and the Department has approved the facility's education program; and
 - B. Each program authorization precedes the placement.
 - C. If the program is not authorized prior to the placement, the Department, public school districts, or open-enrollment charter schools shall not be responsible for education or other related costs, nor shall they be subject to any order to pay for educational or other related costs.

18.05.3.2 The liability of the Department, a public school district, or an open-enrollment charter school for the educational costs or other related costs shall be limited to -

- A. The reimbursement rate established by the Department for a juvenile placed in a residential or inpatient facility.

18.05.3.3 For identified students with disabilities, those costs defined as being educational in accordance with the IDEA will be borne by the district responsible for provision of procedural safeguards and FAPE. For students in state-operated Human Development Centers, the facility assumes those costs.

18.05.3.4 All other costs will be borne by either DHS, Medicaid, private insurance, the parent, or by any combination thereof.

18.05.4 Funding.

- 18.05.4.1 A school district may request reimbursement for the educational costs of students with disabilities who have been placed in approved residential treatment facilities, as defined by the ADE, Special Education Unit.
 - 18.05.4.2 When the requests for reimbursement exceed the amount of funds available, the reimbursement will be prorated.
 - 18.05.5 Extended School Year Services (ESY).
 - 18.05.5.1 Not all students with disabilities receiving educational services in residential placement will be eligible for or in need of ESY services.
 - 18.05.5.2 Determination of student eligibility for ESY services is made by the resident school district based on the regulations governing ESY in §19.00 of these regulations.
 - 18.05.6 This section shall not apply to a juvenile placed in an Arkansas juvenile detention facility as defined in Ark. Code Ann. § 6-20-104.
- 18.06 RESIDENTIAL PLACEMENT OUT-OF-STATE - CHILDREN WITH DISABILITIES
- 18.06.1 Assignment of responsibility.
 - 18.06.1.1 When a student with a disability is placed in a residential treatment facility for educational purposes by a school district, the placing school district remains responsible for procedural safeguards and the provision of FAPE.
 - 18.06.1.2 When a student with a disability is unilaterally placed in a residential facility for educational purposes by a parent or agent other than the school district, the parent may petition the school district where the student permanently resides (home school district, usually that of the student's parent or guardian) for the provision of procedural safeguards and FAPE.
 - 18.06.1.3 In accordance with the Interagency Agreement between the ADE and DHS, when a child with a disability is a ward of the state and is placed in a residential treatment facility outside the boundaries of the State of Arkansas, the ADE is responsible for

procedural safeguards and FAPE.

18.06.2 Procedural safeguards.

18.06.2.1 The procedural safeguards specified in §9.00 of these regulations shall be followed.

18.06.3 Assignment of costs.

18.06.3.1 The Department of Education, a public school district, or an open-enrollment charter school shall not be liable for any educational costs or other related costs associated with the placement of a juvenile in an out-of-state residential or inpatient facility for any care and treatment, including psychiatric treatment, unless:

A. At the time of placement:

1. The juvenile qualifies as disabled under the Individuals with Disabilities Education Act, 20 U.S.C. §1400 et seq.; and
2. Payment is required under the Individuals with Disabilities Education Act;

B. The Department authorizes public payment for educational costs based on a determination that the educational program and facilities are appropriate for the juvenile and the Department has approved the facility's education program; and

C. Each program authorization precedes the placement.

1. If the program is not authorized prior to placement, the department, public school districts, or open-enrollment charter schools shall not be responsible for education or other related costs, nor shall they be subject to any order to pay for educational or other related costs.

18.06.3.2 Nothing in this section shall be construed to require

payment by the Department, a public school district, or an open-enrollment charter school for education costs and other related costs associated with the placement of a juvenile in an out-of-state residential or inpatient facility for any care or treatment, including psychiatric treatment, prior to April 7, 2005.

18.06.3.3 For identified students with disabilities, those costs defined as being educational in accordance with the IDEA will be borne by the district/agency responsible for provision of procedural safeguards and FAPE.

18.06.3.4 All other costs will be borne by either DHS, Medicaid, private insurance, the parent or by any combination thereof.

18.06.3.5 The liability of the Department, a public school district, or an open-enrollment charter school for the educational costs or other IDEA related costs shall be limited to the lesser of -

A. The reimbursement rate established by the Department for a juvenile placed in a residential or inpatient facility; or,

B. The normal and customary educational cost reimbursement rate of the state in which a juvenile is placed in an out-of-state residential or inpatient facility as determined by the Department.

18.06.4 Funding.

18.06.4.1 A school district may request reimbursement for the educational costs of a student with disabilities placed in an approved residential treatment facility located outside the boundaries of Arkansas. Reimbursement may be used to fund the cost of such placement incurred by a school district.

18.06.4.2 When requests for reimbursement exceed the amount of funds available, the reimbursement will be prorated.

18.06.5 Extended School Year Services (ESY).

18.06.5.1 Not all students with disabilities receiving

educational services in residential placement will be eligible for or in need of ESY services.

- 18.06.5.2 Determination of student eligibility for ESY services is made by the resident school district/agency based on the regulations governing ESY in §19.00 of these regulations.

18.07 JUVENILE DETENTION FACILITIES

18.07.1 General

18.07.1.1 For the purposes of these regulations, juvenile detention facilities are designated as approved residential treatment facilities.

18.07.1.2 Students detained in a juvenile detention facility for nine (9) days or less.

A. The juvenile detention facility and the district where the juvenile detention facility is located are designated as responsible for educating the student consistent with federal and state laws for any period of time the student is being detained in the facility.

B. The resident district of a student who is being detained in a juvenile detention facility shall work cooperatively with the juvenile detention facility and the district where the juvenile detention facility is located to provide the student with the curriculum, textbooks, or other materials necessary to educate the student for the first nine (9) days that the student is being detained in the facility either awaiting adjudication or pursuant to court order.

C. The resident district shall keep the student enrolled in the district for the first nine (9) days that the student is being detained in the facility.

D. The juvenile detention facility must provide the student's resident school district a weekly attendance record for each of that district's students in the facility, regardless of length of stay.

- 18.07.1.3 Students detained in a juvenile detention facility for ten (10) days or more.
- A. The juvenile detention facility and the district where the juvenile detention facility is located are designated as responsible for educating the student consistent with federal and state laws for any period of time the student is being detained in the facility.
 - B. The district where the juvenile detention facility is located shall work cooperatively with the juvenile detention facility to provide the student with the curriculum, textbooks, or other materials necessary to educate the student.
 - C. Immediately upon receiving notice that a student has been detained in a juvenile detention facility for ten (10) days or more, the resident district shall drop the student from enrollment.

18.07.1.4 The resident district of a student who is being detained in a juvenile detention facility is designated as responsible for the timely transfer of a student's educational records to the district where the juvenile detention facility is located upon notification by the court or district where the facility is located of the student's placement in a juvenile detention facility.

18.07.2 Educational services for nondisabled students.

18.07.2.1 In order to be eligible for public school funds, each juvenile detention facility must provide the following educational services for nondisabled students -

- A. The teachers employed by the juvenile detention facility must hold a valid teaching license from the Arkansas Department of Education.
- B. The maximum teacher/student caseload must be 1 to 15 without a paraprofessional and 1 to 24 with a full time paraprofessional.
- C. The juvenile detention facility must provide

instruction that addresses the State's Curriculum Standards and educational skills needed by students and appropriately address the age ranges and the abilities of the students in the facility.

- D. The juvenile detention facility must provide appropriate instructional and supplemental materials and media as are needed to enhance student instruction. Such materials include, but are not limited to, reference materials, dictionaries, maps, reading materials, and computer enhanced instructional software and/or internet access.
- E. The juvenile detention facility must provide planned instructional time in each school day averaging not less than six (6) hours per day or thirty (30) hours per week.

18.07.2.2 A school district which receives a student after attendance at a juvenile detention facility shall not use absences incurred as a result of detention as a basis for denial of credit.

18.07.3 Educational services for disabled students.

18.07.3.1 In order to be eligible for public school funds, each jurisdictional school district and juvenile detention facility must provide the following educational services for disabled students -

- A. FAPE consistent with the student's IEP.
- B. The teacher, employed by the JDF or local school district, who is implementing the IEP of a student with a disability must either -
 - 1. Hold a valid teaching license as a special education teacher, or
 - 2. Meet the qualifications in §18.07.2.1A above and implement the IEP in collaborative consultation with licensed special education personnel.
- C. The procedural safeguards specified in these regulations shall be followed for those

students identified as disabled and for those suspected of being disabled.

- 18.07.4 Funding for students in juvenile detention facilities.
- 18.07.4.1 The resident district of a student detained in a juvenile detention facility for nine (9) days or less shall continue to receive funding based on the student's enrollment (average daily membership) in the district for those nine (9) days or less for the costs of providing educational services to students in the facility in cooperation with the juvenile detention facility and the district where the facility is located.
- 18.07.4.2 The juvenile detention facility may receive reimbursement from the local school district in which the facility is located for the costs of providing educational services to students in the facility, based upon the following -
- A. For nondisabled students, educational costs are costs incurred for direct educational instruction and include salaries and benefits of teachers and paraprofessionals, staff development costs and substitute pay.
 - B. For students with disabilities under the IDEA, educational costs include all costs incurred in the provision of FAPE.
 - C. For students suspected of having disabilities as defined by the IDEA, educational costs shall include costs incurred in the evaluation process.
- 18.07.4.3 The juvenile detention facility and the local school district in which the juvenile detention facility is located must jointly determine the education costs incurred by the facility.
- 18.07.4.4 The local school district in which the juvenile detention facility is located must reimburse the juvenile detention facility for educational costs incurred up to an amount not to exceed the Formula Foundation Aid, times the approved student capacity of the facility.
- 18.07.4.5 If the juvenile detention facility and the local school

district cannot agree on an amount for reimbursement, either entity may appeal to the ADE for a final decision.

18.07.4.6 The ADE must reimburse local school districts which have juvenile detention facilities on a quarterly basis based upon the district requesting such reimbursements.

- A. The quarterly reimbursement amount will be determined by dividing the amount identified in §18.07.4.43 by four (4).
- B. Should costs decrease, the local school district in which the facility is located must notify the ADE, Special Education Unit within thirty (30) days of revised costs.
- C. Any adjustments to reimbursements will be made in the fourth (4th) quarter.

18.07.4.7 The jurisdictional local school district may request reimbursement for the costs of educational services provided to students in juvenile detention facilities and incurred by the local school district.

18.07.4.8 The juvenile detention facility must provide the jurisdictional local school district a quarterly attendance record for each student in the facility, regardless of length of stay.

18.08 JUVENILE TREATMENT CENTERS (FORMERLY KNOWN AS SERIOUS OFFENDER PROGRAMS)

18.08.1 It shall be the responsibility of each juvenile treatment center to report the attendance of its students in the education program by providing quarterly attendance reports to the Department of Human Services, Division of Youth Services (DYS). DYS will provide the quarterly attendance information to the Arkansas Department of Education. Funding will be disbursed to DYS in support of education services within DYS juvenile treatment centers based upon a legislative appropriation for this purpose.

Emergency Clause

Whereas, Ark. Code Ann. § 6-20-107 requires the Department of Education to authorize public payment for the educational costs associated with the placement of a juvenile in a

residential or inpatient facility for care and treatment; and

Whereas, it is necessary to amend the definition of residential placement in these rules to enable sexual rehabilitation programs to receive funding effective the first day of the 2017-2018 school year.

THEREFORE, the State Board of Education hereby determines pursuant to Ark Code Ann. § 25-15-204 that immediate peril to the welfare of Arkansas public schools and students will result without the immediate promulgation of these rules.

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