

**ARKANSAS DEPARTMENT OF DIVISION OF ELEMENTARY AND  
SECONDARY EDUCATION**  
**RULES GOVERNING SPECIAL EDUCATION AND RELATED SERVICES**

**SEC. 18.00 - RESIDENTIAL PLACEMENT**

**Effective June 25, 2018 2020**

**RECEIVED**

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BUREAU OF  
LEGISLATIVE RESEARCH

**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~~ rules are enacted pursuant to the State Board of Education's authority under Ark. Code Ann. §§ 6-11-105, 6-18-202, 6-20-104, 6-20-107, and 6-41-202, and Act 523 of 2019.

**18.02 PURPOSE**

- 18.02.1 It is the purpose of these ~~regulations~~ rules to allocate public school funds for the education of residentially placed students.
- 18.02.2 It is further the purpose of these ~~regulations~~ rules 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~~ rules, 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~~ rules, 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~~ rules, 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~~ rules, 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~~ Division of Elementary and Secondary Education (DESE) 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~~ rules, an out-of-state residential or inpatient facility means:

18.03.7.1 For a student with disabilities, ~~is placed in a facility outside the State of Arkansas, the that has a special education component of such a facility must be approved by the ADE DESE Special Education Unit, on an annual basis, and must be that is operating~~ under the appropriate licensure of the state in which it is located.

18.03.7.2 For a student without disabilities, a facility in a state that borders Arkansas that is operating under the appropriate licensure of the state in which it is located, and approved by the DESE Special Education Unit.

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~~ rules. 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 reimbursement funding.
- 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~~ in person or through technology.
- 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~~ the DESE Special Education regulations rules.
- 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.

### 18.04.3

#### 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 rules. 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 written request to the school district identifying the costs of education and services provided. The request must be submitted to the school district by the deadline established by the ~~ADE~~ DESE in order for the district to seek reimbursement from the ~~ADE~~ DESE Special Education Unit.
- 18.04.3.4 The ~~State Department of Education~~ DESE, 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 in-state residential or inpatient facility for any care and treatment, including psychiatric treatment, unless:
  - A. The ~~Department~~ DESE authorizes public payment for educational costs based on a determination that the educational program and facilities are appropriate for the juvenile and the ~~Department~~ DESE 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~~ DESE, 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~~ DESE, a public school district, or an open-enrollment charter school for the educational costs or other related costs shall be limited to the reimbursement rate established by the ~~Department~~ DESE 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~~ DESE 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~~ DESE.
  - 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~~ rules shall be followed.

18.05.3 Procedures for educational management.

18.05.3.1 When a student with a disability 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~~ DESE approval of the residential treatment facility's special education program.

Procedures for children who transfer from public agencies in the same state as outlined in §8.03.3 of

these ~~regulations~~ rules should be followed.

18.05.4 Assignment of costs.

- 18.05.4.1 The ~~State Department of Education~~ DESE, 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 in-state residential or inpatient facility for any care and treatment, including psychiatric treatment, unless:
- A. The ~~Department~~ DESE authorizes public payment for educational costs based on a determination that the educational program and facilities are appropriate for the juvenile and the ~~Department~~ DESE 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~~ DESE, 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.
- 18.05.4.2 The liability of the ~~Department~~ DESE for the educational costs or other related costs for a student placed by a parent or agent other than the school district shall be limited to the reimbursement rate established by the ~~Department~~ DESE for a juvenile placed in a residential or inpatient facility.
- 18.05.4.3 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.
- 18.05.4.4 All other costs will be borne by either DHS, Medicaid, private insurance, the parent, or by any combination thereof.

- 18.05.5 Funding.
  - 18.05.5.1 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~~ DESE Special Education Unit.
  - 18.05.5.2 When the requests for reimbursement exceed the amount of funds available, the reimbursement will be prorated.
- 18.05.6 Extended School Year Services (ESY).
  - 18.05.6.1 Not all students with disabilities receiving educational services in residential placement will be eligible for or in need of ESY services.
  - 18.05.6.2 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~~ rules.

## **18.06 RESIDENTIAL PLACEMENT OUT-OF-STATE - STUDENTS 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~~ 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~~ rules shall be followed.

18.06.3 Assignment of costs.

18.06.3.1 The ~~Department of Education~~ DESE, 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~~ DESE has approved the facility's education program; and

C. Each program authorization precedes the placement.

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~~ DESE, 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~~ DESE for the educational costs or other related costs for a student placed in a residential facility by a parent or agent other than the school district shall be limited to the lesser of -

- A. The reimbursement rate established by the ~~Department~~ DESE 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~~ DESE.

#### 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 rules.

## **18.07 RESIDENTIAL PLACEMENT OUT-OF-STATE - STUDENTS WITHOUT DISABILITIES**

### 18.07.1 Assignment of responsibility.

- 18.07.1.1 When a nondisabled student is placed in an out-of-state residential treatment facility for educational purposes by a school district, the placing school district remains responsible for educating the student.
- 18.07.1.2 When a nondisabled student is placed in an out-of-state residential treatment facility for non-educational reasons and the juvenile's physician determines that the out-of-state placement is medically necessary and is the most appropriate placement available, the student's resident district, as determined by Ark. Code Ann. § 6-18-202, is responsible for educating the student.
- 18.07.1.3 When a nondisabled student who is a ward of the State is placed in an out-of-state residential treatment facility and the juvenile's physician determines that the out-of-state placement is medically necessary and is the most appropriate placement available, the ADE is responsible for educating the student.
- 18.07.1.4 When a nondisabled student is placed in an out-of-state 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.

### 18.07.2 Procedures for educational management.

- 18.07.2.1 Each school district must designate an individual who will be responsible for ensuring compliance with these rules. This may be the district superintendent or a designee.
- 18.07.2.2 When a nondisabled student is placed in an out-of-state 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 reimbursement funding.

18.07.2.3 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 in person or through technology.

18.07.2.4 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.

18.07.2.5 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.

18.07.2.6 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 DESE Special Education rules.

18.07.2.7 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.

18.07.2.8 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.

18.07.3 Assignment of costs.

- 18.07.3.1 For nondisabled students, “educational costs” are limited to only those costs incurred for direct educational instruction of the student.
- 18.07.3.2 All other services provided for the student are considered non-educational and are not reimbursable under these rules. Such other costs will be borne by DHS, Medicaid, private insurance, the parent or by any combination thereof.
- 18.07.3.3 Residential treatment facilities must submit a written request to the responsible school district identifying the costs of education and services provided. The request must be submitted to the school district by the deadline established by the DESE Special Education Unit in order for the district to seek reimbursement.
- 18.07.3.4 The DESE Special Education Unit, 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, the juvenile’s physician determines that the out-of-state placement is medically necessary and is the most appropriate placement available;
  - B. The DESE Special Education Unit authorizes public payment for educational costs based on a determination that the educational program and facilities are appropriate for the juvenile and the DESE Special Education Unit has approved the facility's education program; and
  - C. Each educational program authorization precedes the placement; and
  - D. The out-of-state residential or inpatient facility is located within a state that borders Arkansas.
- 18.07.3.5 If the program is not authorized prior to the placement, the DESE, 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.

18.07.3.6 The liability of the DESE, a public school district, or an open-enrollment charter school for the educational costs or other related costs, shall be limited to the lesser of the reimbursement rate established by the DESE for a juvenile placed in a residential or inpatient facility or 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 determined by DESE.

18.07.3.7 Reimbursement for students without disabilities in an out-of-state facility shall be limited to twenty (20) students at any one (1) time during a calendar year.

#### 18.07.4 Funding.

18.07.4.1 The responsible school district may request reimbursement from the DESE Special Education Unit for the educational costs of nondisabled students placed in residential treatment facilities.

18.07.4.2 The 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 DESE.

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

#### 18.07.5 Extended School Year Services (ESY).

18.07.5.1 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.

18.07.5.2 Residential treatment facilities cannot bill school districts for educational services provided to

nondisabled students during the summer months.

## **18.078 JUVENILE DETENTION FACILITIES**

### **18.078.1 General**

- 18.078.1.1 For the purposes of these regulations, juvenile detention facilities are designated as approved residential treatment facilities.
- 18.078.1.2 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.
- 18.078.1.3 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.

18.078.1.4 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.

18.078.1.5 Juvenile detention facilities must meet all standards required by the Arkansas Department of Finance and Administration in addition to these regulations.

18.078.2 Educational services for nondisabled students.

18.078.2.1 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, Division of Elementary and Secondary 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.

- 18.078.2.2 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.

### 18.078.3 Educational services for disabled students.

- 18.078.3.1 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 hold a valid teaching license as a special education teacher.
  - C. The procedural safeguards specified in these regulations shall be followed for those students identified as disabled and for those suspected of being disabled.

### 18.078.4 Funding for students in juvenile detention facilities.

- 18.078.4.1 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.

- 18.078.4.2 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.
- 18.078.4.3 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.
- 18.078.4.4 The juvenile detention facility and the local school district in which the juvenile detention facility is located shall jointly complete an application for funding based on the approved student capacity of the facility and shall submit the application to the ~~Department~~ DESE.
- The application for funding shall include an itemized statement of educational costs incurred.
- 18.078.4.5 The local school district in which the juvenile detention facility is located must reimburse the juvenile detention facility for the amount approved by the ~~Department~~ DESE for educational costs incurred up to an amount not to exceed the Formula Foundation Aid, times the approved student capacity of the facility.
- 18.078.4.6 If the juvenile detention facility and the local school district cannot agree on an amount for

reimbursement, either entity may appeal to the ~~ADE~~ DESE for a final decision.

- 18.078.4.7 The ~~ADE~~ DESE 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 §18.078.4.45 by four (4).
  - B. Should costs decrease, the local school district in which the facility is located must notify the ~~ADE~~ DESE Special Education Unit within thirty (30) days of revised costs.
  - C. Any adjustments to reimbursements will be made in the fourth (4th) quarter.
- 18.078.4.8 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.
- 18.078.4.9 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.

#### **18.089 JUVENILE TREATMENT CENTERS (FORMERLY KNOWN AS SERIOUS OFFENDER PROGRAMS)**

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

State of Arkansas  
92nd General Assembly  
Regular Session, 2019

# A Bill

SENATE BILL 384

By: Senator J. English

## For An Act To Be Entitled

AN ACT CONCERNING THE REIMBURSEMENT OF EDUCATIONAL  
COSTS; TO PROVIDE FOR CONSISTENCY IN THE  
REIMBURSEMENT OF EDUCATIONAL COSTS FOR STUDENTS WHO  
ARE PLACED IN A RESIDENTIAL OR INPATIENT FACILITY  
THAT IS LOCATED IN A BORDERING STATE; AND FOR OTHER  
PURPOSES.

## Subtitle

TO PROVIDE FOR CONSISTENCY IN THE  
REIMBURSEMENT OF EDUCATIONAL COSTS FOR  
STUDENTS WHO ARE PLACED IN A RESIDENTIAL  
OR INPATIENT FACILITY THAT IS LOCATED IN  
A BORDERING STATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Legislative findings.

The General Assembly finds that:

(1) Under Arkansas Code § 6-20-107, students who live and attend  
school in Arkansas are entitled to an education during a stay for care and  
treatment in a residential or inpatient facility;

(2) For many students and their families, placement in an out-  
of-state residential or inpatient facility is appropriate and promotes family  
participation in the student's care and treatment because the out-of-state  
facility is closer to the student's home than the nearest in-state facility;

(3) The General Assembly has historically recognized that many  
individuals and institutions in Arkansas routinely do business with



individuals and institutions in bordering states and has enacted laws that ensure consistency of interaction with in-state and out-of-state individuals, institutions, and services such as airport services, the controlling of illegal drug trafficking, the depositing of Arkansas local school district funds, intergovernmental cooperation agreements, Medicaid reimbursement, municipal water and sewer operations, taxation, and the venue for adoption proceedings;

(4) Arkansas students and their families should have the ability to seek care and treatment at the closest and most appropriate residential or inpatient facility; and

(5) Arkansas should cover the educational costs of a student in an out-of-state residential or inpatient facility, subject to physician certification that the placement is medically necessary and the most appropriate placement available, in the same manner that the state covers the educational costs of a student in an in-state residential or inpatient facility.

SECTION 2. Arkansas Code § 6-20-107(b), concerning the conditions under which the Department of Education, a public school district, or an open-enrollment public charter school district may be liable for educational costs, is amended to read as follows:

(b)(1) The Department of Education, a public school district, or an open-enrollment public 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:

~~(1)(A)~~ At the time of placement, the juvenile's physician determines that the out-of-state placement is medically necessary and is the most appropriate placement available;

~~(A) The juvenile qualifies as disabled under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.; and~~

~~(B) Payment is required under the Individuals with Disabilities Education Act;~~

~~(2)(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

1 facility's educational program; and

2 ~~(3)(A)(C)(i)~~ Each educational program authorization precedes the  
3 placement.

4 ~~(B)(ii)~~ If the educational program is not authorized  
5 before placement, the department, public school districts, or open-enrollment  
6 public charter schools shall not be responsible for ~~education~~ educational or  
7 other related costs, nor shall they be subject to any order to pay for  
8 educational or other related costs; and

9 (D) The out-of-state residential or inpatient facility is  
10 located within a state that borders Arkansas.

11 (2) Payment under this subsection (b) shall be:

12 (A) Limited to twenty (20) students at any one (1) time  
13 during a calendar year unless:

14 (i) The juvenile under subdivision (b)(1) of this  
15 section qualifies as disabled under the Individuals with Disabilities  
16 Education Act, 20 U.S.C. § 1400 et seq.; and

17 (ii) Payment is required under the Individuals with  
18 Disabilities Education Act, 20 U.S.C. § 1400 et seq; and

19 (B) Subject to the availability of department funding.  
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22 **APPROVED: 3/20/19**  
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