



**State of Arkansas**  
**Bureau of**  
**Legislative Research**

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**Memorandum**

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**TO:** Members, ALC – Executive Subcommittee

**FROM:** Rebecca Miller-Rice, Legislative Attorney, Administrative Rules Review Section, Legal Services Division

**CC:** Marty Garrity, Director, Bureau of Legislative Research;  
Jessica Sutton, Administrator, Administrative Rules Review Section, Legal Services Division

**DATE:** June 12, 2017

**SUBJECT:** Analysis of Legal Authorization of Arkansas Department of Education Special Education Procedural Requirements and Program Standards, Sec. 18.00 Residential Placement

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The Department’s proposed change simply amends rules already in place by including within the definition of “residential placement in state” both (1) residential facilities licensed as sexual rehabilitation programs for children by the Arkansas Department of Human Services (“DHS”) and (2) psychiatric hospitals licensed by the Arkansas Department of Health.<sup>1</sup> Arkansas Code Annotated § 6-20-107 allows the Department, a public school district, or an open-enrollment public charter school to 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, but only if (1) 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

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<sup>1</sup>The current definition includes the following facilities: (1) inpatient psychiatric treatment facilities licensed by DHS; (2) alcohol and drug treatment facilities licensed by DHS; (3) Easter Seals of Arkansas; (4) the Arkansas State Hospital; and (5) facilities licensed as Intermediate Care Facilities for the Mentally Retarded by DHS.

educational program; and (2) each educational program authorization precedes the placement. *See Ark. Code Ann. § 6-20-107(c)*. If the educational program is not authorized prior to the placement, the Department, public school districts, or open-enrollment public charter schools shall not be responsible for education or other related costs, nor subject to any order to pay such costs. *See Ark. Code Ann. § 6-20-107(c)(2)(B)*. As described by the Department, the instant rules govern the program approval and funding process for the education of students in such residential facilities. The State Board of Education shall take such action as it may deem necessary to promote the physical welfare of school children. *See Ark. Code Ann. § 6-11-105(a)(8)(A)*. It shall further perform all other functions delegated to it by law. *See Ark. Code Ann. § 6-11-105(a)(9)(A)*.



# Arkansas Department of Education

*Transforming Arkansas to lead the nation in student-focused education*

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Johnny Key  
*Commissioner*

June 9, 2017

State Board  
of Education

Mireya Reith  
*Fayetteville*  
Chair

Ms. Donna Davis  
Rules Administrator  
Bureau of Legislative Research  
One Capitol Mall, 5th Floor  
Little Rock, Arkansas 72201

**Re: Proposed Emergency Rules**

Dr. Jay Barth  
*Little Rock*  
Vice Chair

Dear Ms. Davis:

Joe Black  
*Newport*

Please find attached two (2) copies of the Arkansas Department of Education's Proposed Emergency Rules Governing Special Education Procedural Requirements and Program Standards, Section 18.00 Residential Placement.

Susan Chambers  
*Bella Vista*

On June 8, 2017, the State Board of Education approved these rules. The Governor's Office has approved these rules and I have sent a copy electronically to Ms. Garrity.

Charisse Denn  
*Little Rock*

Thank you for your assistance with this matter. Please do not hesitate to contact me at (501) 682-4752 should you have any questions or require additional information.

Dr. Fitz Hill  
*Little Rock*

Respectfully,

Ouida Newton  
*Poyen*

R. Brett Williamson  
*El Dorado*

Courtney Salas-Ford  
Deputy General Counsel

Diane Zook  
*Melbourne*

Enclosures

Four Capitol Mall  
Little Rock, AR  
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**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS  
WITH THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT/AGENCY Arkansas Department of Education  
DIVISION Legal Services  
DIVISION DIRECTOR Lori Freno  
CONTACT PERSON Courtney Salas-Ford  
ADDRESS Four Capitol Mall, Room 301-A, Little Rock, AR 72201  
PHONE NO. 501-682-4752 FAX NO. 501-682-4249 E-MAIL Courtney.Salas-Ford@arkansas.gov  
NAME OF PRESENTER AT COMMITTEE MEETING Courtney Salas-Ford  
PRESENTER E-MAIL Courtney.Salas-Ford@arkansas.gov

**INSTRUCTIONS**

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis  
Administrative Rules Review Section  
Arkansas Legislative Council  
Bureau of Legislative Research  
One Capitol Mall, 5<sup>th</sup> Floor  
Little Rock, AR 72201

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- ADE Special Education Procedural Requirements and Program  
Standards, Sec. 18.00 Residential Placement
1. What is the short title of this rule? Standards, Sec. 18.00 Residential Placement
2. What is the subject of the proposed rule? Funding for students educated in residential facilities
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes  No   
If yes, please provide the federal rule, regulation, and/or statute citation. \_\_\_\_\_
4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes  No

If yes, what is the effective date of the emergency rule? August 2017

When does the emergency rule expire? 120 days or permanent promulgation

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes  No

5. Is this a new rule? Yes  No   
If yes, please provide a brief summary explaining the regulation. \_\_\_\_\_

Does this repeal an existing rule? Yes  No   
If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. \_\_\_\_\_

Is this an amendment to an existing rule? Yes  No   
If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Ark. Code Ann. §§ 6-11-105, 6-20-107, and 25-15-201 et seq.

7. What is the purpose of this proposed rule? Why is it necessary? The proposed rules expand the definition of residential facilities for purposes of receiving state appropriated funds to provided education to students placed in those facilities.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). <http://www.arkansased.gov/divisions/legal/rules/pending>

9. Will a public hearing be held on this proposed rule? Yes  No   
If yes, please complete the following:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: \_\_\_\_\_

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)  
\_\_\_\_\_

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

August 1, 2017

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. See attached included in package

13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e). See attached included in package

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known. \_\_\_\_\_

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Arkansas Department of Education

**DIVISION** Legal Services

**PERSON COMPLETING THIS STATEMENT** Courtney Salas-Ford

**TELEPHONE** 501-682-4752      **FAX** 501-682-4249      **EMAIL:** Courtney.Salas-Ford@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

**SHORT TITLE OF THIS RULE** ADE Special Education Procedural Requirements and Program Standards, Sec. 18.00 Residential Placement

- 1. Does this proposed, amended, or repealed rule have a financial impact?      Yes       No
- 2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?      Yes       No
- 3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered?      Yes       No

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;  
\_\_\_\_\_
- (b) The reason for adoption of the more costly rule;  
\_\_\_\_\_
- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;  
\_\_\_\_\_
- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.  
\_\_\_\_\_

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

- (a) What is the cost to implement the federal rule or regulation?

<u>Current Fiscal Year</u>		<u>Next Fiscal Year</u>	
General Revenue	_____	General Revenue	_____
Federal Funds	_____	Federal Funds	_____
Cash Funds	_____	Cash Funds	_____
Special Revenue	_____	Special Revenue	_____
Other (Identify)	_____	Other (Identify)	_____
Total	_____	Total	_____

(b) What is the additional cost of the state rule?

**Current Fiscal Year**

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>
Total	<u>0</u>

**Next Fiscal Year**

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>
Total	<u>0</u>

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

**Current Fiscal Year**

\$ 0

**Next Fiscal Year**

\$ 0

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

**Current Fiscal Year**

\$ 0

**Next Fiscal Year**

\$ 0

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes  No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
  - (a) justifies the agency's need for the proposed rule; and
  - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
  - (a) the rule is achieving the statutory objectives;
  - (b) the benefits of the rule continue to justify its costs; and
  - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.



**SUMMARY OF RULES: ARKANSAS DEPARTMENT OF EDUCATION RULES  
GOVERNING SPECIAL EDUCATION PROCEDURAL REQUIREMENTS AND  
PROGRAM STANDARDS, SEC. 18.00 RESIDENTIAL PLACEMENT**

These rules govern the program approval and funding process for the education of students in residential facilities. The proposed amendment will add sexual rehabilitation programs for children to the list of eligible facilities.

ARKANSAS DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND RELATED SERVICES  
18.00 REGULATIONS GOVERNING RESIDENTIAL PLACEMENT  
~~2014~~2017

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.

## 18.00 REGULATIONS GOVERNING RESIDENTIAL PLACEMENT



- 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.