

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
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Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH
THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT _____
BOARD/COMMISSION _____
BOARD/COMMISSION DIRECTOR _____
CONTACT PERSON _____
ADDRESS _____
PHONE NO. _____ EMAIL _____
NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING _____
PRESENTER EMAIL(S) _____

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

1. What is the official title of this rule?

[Section 18.00-Residential Placement](#)

2. What is the subject of the proposed rule? _____
[costs for juveniles placed in juvenile detention facilities or residential facilities.](#)

3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes No

4. Is this rule being filed for permanent promulgation? Yes No

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, what was the effective date of the emergency rule? _____

On what date does the emergency rule expire? _____

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes No

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes No

If yes, please provide the state statute and/or rule citation.

Arkansas Code §§ 6-20-104 and 6-20-107.

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes No

If yes, please list the rules being repealed.

If no, please explain.

8. Is this a new rule? Yes No

Does this repeal an existing rule? Yes No

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes No

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes No

If yes, please provide the year of the act(s) and act number(s).

11. What is the reason for this proposed rule? Why is it necessary?

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

13. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

Please be sure to advise Bureau Staff if this information changes for any reason.

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. _____

15. What is the proposed effective date for this rule? _____

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

19. Is the rule expected to be controversial? Yes No

If yes, please explain.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT _____
BOARD/COMMISSION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ **EMAIL** _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE _____

[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 no, please explain:

(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 reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

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?

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

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

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

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

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

6. What is the total estimated cost by fiscal year to a state, county, or 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

\$ _____

Next Fiscal Year

\$ _____

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.



Division of Elementary and Secondary Education

Transforming Arkansas to lead the nation in student-focused education

Jacob Oliva
Secretary

July 25, 2024

Stacy Smith
Deputy
Commissioner

Proposed Amendments to Rules Governing Special Education and Related Services **Section 18:00-Residential Placement**

**State Board of
Education**

PURPOSE

The Division of Elementary and Secondary Education is seeking the Governor's review of proposed amendments to Rules Governing Special Education and Related Services; Section 18:00-Residential Placement.

Dr. Sarah Moore
Stuttgart
Chair

BACKGROUND

The Division is charged with promulgating rules regarding the responsibility of providing and paying for educational and related services of juveniles in juvenile detention and residential facilities. This is codified at Arkansas Code §§ 6-20-104 and 6-20-107.

Kathy Rollins
Springdale
Vice-Chair

KEY POINTS

- Adds requirements that must be met to pay for educational and related costs for disabled juveniles placed in an out-of-state residential or inpatient facility.
- Specifies that no payment of any educational or related services will be made for any juvenile placed in an out-of-state residential or inpatient facility prior to April 7, 2005.
- Adds requirements for juvenile detention facilities to:
 - Notify the juvenile's resident school district upon disposition of the juvenile court that the juvenile shall be placed in the juvenile detention facility.
 - Certify the juvenile's detention dates to the resident school district within five (5) days of the juvenile being released.
- Makes formatting changes in advance of the Code of Arkansas Rules.

Adrienne Woods
Rogers

Randy Henderson
Blytheville

Lisa Hunter
White Hall

Jeff Wood
Little Rock

DISCUSSION

Arkansas Code §6-20-107(b)(1) sets out the requirements that must be met in order for the Division of Elementary and Secondary Education, a public school district, or an open-enrollment charter school to be liable for educational or related costs for a juvenile placed in an out-of-state residential or inpatient facility. This amendment adds those requirements to the section of the rule related to disabled juveniles placed out-of-state. It also adds to the rule the specification from subsection (f) of the aforementioned statute that the division, a school district, or open-enrollment charter school shall not be liable for costs associated with an out-of-state residential or inpatient facility prior to April 7, 2005

Ken Bragg
Sheridan

Leigh Keener
Little Rock

Arkansas Code § 6-20-104(b)(1) requires juvenile detention facilities to notify a student's resident school district upon disposition by the court that the juvenile will be residing there and also requires facilities to certify the juvenile's detention dates to the resident school district within five days of the juvenile's release. This amendment adds this requirement to the rule.

RECOMMENDATION

The Division of Elementary and Secondary Education recommends Governor's Office approval of these rule amendments.

**ARKANSAS DIVISION OF ELEMENTARY AND SECONDARY EDUCATION
RULES GOVERNING SPECIAL EDUCATION AND RELATED SERVICES
SEC. 18.00 - RESIDENTIAL PLACEMENT
Effective January 21, 2021**

18.01 REGULATORY AUTHORITY

- 18.01.1 These rules are enacted pursuant to the State Board of Education's authority under ~~Ark. Code Ann.~~ Arkansas Code §§ 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 rules to allocate public school funds for the education of residentially placed students.
- 18.02.2 It is further the purpose of these 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 rules, the following definitions apply specifically to this Section 18.00.

- 18.03.2 "Juvenile" ~~-means~~ a person who is eighteen (18) years old or younger.

- 18.03.3 "Juvenile Detention Facility (JDF) — Any detention facility" means any facility operated by a political subdivision of the ~~State~~ 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.

- 18.03.3.1 Under ~~Ark. Code Ann.~~ Arkansas Code § 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 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 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~~ 18.03.4 “Residential placement in state” — ~~For purposes of these rules, residential placement in state means—~~

~~18.03.6.1 — One (1) of the following licensed facilities that has a special education component approved by the Special Education Unit of the Division of Elementary and Secondary Education on an annual basis—:~~

~~A-18.03.4.1~~ Inpatient psychiatric treatment facilities licensed by the Arkansas Department of Human Services (~~DHS~~);

~~B-18.03.4.2~~ Alcohol and drug treatment facilities licensed by the Arkansas Department of Human Services;

~~C-18.03.4.3~~ ~~Easter Seals of~~ Easterseals Arkansas;

~~D-18.03.4.4~~ Arkansas State Hospital;

~~E-18.03.4.5~~ Facilities licensed as Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) by the Arkansas Department of Human Services;

~~F-18.03.4.6~~ Residential facilities licensed as sexual rehabilitation programs for children by the Arkansas Department of Human Services; and

~~G-18.03.4.7~~ Psychiatric hospitals licensed by the Arkansas Department of Health.

~~18.03.6.2~~ 18.03.4.8 That has a special education component approved by the Division of Elementary and Secondary Education (~~DESE~~) Special Education Unit, on an annual basis. Such placement does not include the;

18.03.4.8.a Arkansas School for the Blind;:

18.03.4.8.b ~~the~~ Arkansas School for the Deaf;: or

18.03.4.8.c ~~the~~ Arkansas School for Mathematics, Sciences, and the Arts.

~~18.03.7~~18.03.5 ~~“Residential Placement Out of State—For purposes of these rules, an out of state residential or inpatient facility placement out of state”~~
means:

~~18.03.7.1~~18.03.5.1 For a student with disabilities, a facility outside the State of Arkansas, that has a special education component approved by the ~~DESE~~ Special Education Unit of the Division of Elementary and Secondary Education, on an annual basis; that is operating under the appropriate licensure of the state in which it is located; and

~~18.03.7.2~~18.03.5.2 For a student without disabilities, a facility in a state that borders Arkansas that is:

18.03.5.2.a ~~operating~~Operating under the appropriate licensure of the state in which it is located; and

18.03.5.2.b ~~approved~~Approved by the ~~DESE~~ Special Education Unit of the Division of Elementary and Secondary Education.

~~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.~~

18.03.6 “Student with disabilities” means a student age three (3) to twenty-one (21) who qualifies as disabled under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., and Arkansas Code § 6-41-202 et seq.

18.03.7 “Student without disabilities” means 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., and Arkansas Code § 6-41-202 et seq., including any student not previously enrolled in an Arkansas public school but who meets the residency requirements of Arkansas Code § 6-18-202 upon entering the residential facility and enrolls in the resident district.

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/noneducational reasons in a residential treatment facility for treatment, the district where the residential treatment facility is located is the student’s resident district.

- 18.04.1.1.a This district is responsible for educating the student.
- 18.04.1.2 When a nondisabled student who is a ward of the ~~State~~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 rules.
- 18.04.2.1.a 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.
- 18.04.2.2.a Failure of the facility to notify the responsible district in a timely fashion may result in loss of 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.
- 18.04.2.3.a This conference may be conducted 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.
- 18.04.2.4.a A ~~DHS~~Department of Human Services representative shall also be invited if the student is receiving services from one (1) or

more ~~DHS Divisions~~ Department of Human Services 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 §Section 4.00 of State the DESE Division of Elementary and Secondary Education Special Education 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~~ nonespecialized 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.

18.04.2.8.a 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~~ nonespecialized and are not reimbursable under these rules.

18.04.3.2.a Such other costs will be borne by:

18.04.3.2.a.i ~~DHS, The Department of~~ Human Services;

18.04.3.2.a.ii Medicaid;:

18.04.3.2.a.iii ~~private~~ Private insurance;:

18.04.3.2.a.iv ~~the~~ The parent; or

18.04.3.2.v ~~by any~~ 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.

18.04.3.3.a The request must be submitted to the school district by the deadline established by the ~~DESE~~ Division of Elementary and Secondary Education in order for the district to seek reimbursement from the ~~DESE~~ Special Education Unit of the Division of Elementary and Secondary Education.

18.04.3.4 The ~~DESE~~ Division of Elementary and Secondary 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 in-state residential or inpatient facility for any care and treatment, including psychiatric treatment, unless:

~~A.~~ 18.04.3.4.a The ~~DESE~~ Division of Elementary and Secondary Education authorizes public payment for educational costs based on a determination that the educational program and facilities are appropriate for the juvenile and the ~~DESE~~ Division of Elementary and Secondary Education has approved the facility's education program; and

~~B.~~ 18.04.3.4.b Each program authorization precedes the placement.

~~C.~~ 18.04.3.4.c If the program is not authorized prior to the placement, the ~~DESE~~ Division of Elementary and Secondary Education, 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 ~~DESE~~Division of Elementary and Secondary Education, 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 ~~DESE~~Division of Elementary and Secondary Education 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 ~~DESE~~ Special Education Unit of the Division of Elementary and Secondary Education 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 ~~DESE~~ Division of Elementary and Secondary Education.
- 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~~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.
- 18.04.5.1.a This applies to nondisabled students in residential placements, as well as their nondisabled peers who attend the local public school.
- 18.04.5.1.b 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~~ 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~~ noneducational reasons in a residential treatment facility for treatment, the district where the facility is located is the student's resident district.
- 18.05.1.2.a 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 §Section 9.00 of these rules, governing due process, 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.

18.05.3.2 Failure of the facility to notify the responsible district in a timely fashion may result in loss of ~~DESE~~Division of Elementary and Secondary Education approval of the residential treatment facility's special education program.

18.05.3.3 Procedures for children who transfer from public agencies in the same state as outlined in §Section 8.03.3 of these rules, governing IEPs, should be followed.

18.05.4 Assignment of costs.

18.05.4.1 The ~~DESE~~division, 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.~~18.05.4.1.a The ~~DESE~~division authorizes public payment for educational costs based on a determination that the educational program and facilities are appropriate for the juvenile and the ~~DESE~~division has approved the facility's education program; and

~~B.~~18.05.4.1.b Each program authorization precedes the placement.

~~C.~~18.05.4.1.c If the program is not authorized prior to the placement, the ~~DESE~~division, 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 ~~DESE~~division 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 ~~DESE~~division 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 IDEAIndividuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., will be borne by the district

responsible for provision of procedural safeguards and FAPE.

18.05.4.3.a ~~For students in state-operated Human Development Centers~~ human development centers, the facility assumes those costs.

18.05.4.4 All other costs will be borne by either:

18.05.4.4.a ~~DHS,~~ The Department of Human Services;

18.05.4.4.b ~~Medicaid;~~

18.05.4.4.c ~~private~~ Private insurance;

18.05.4.4.d ~~the~~ The parent; or

18.05.4.4.e ~~by any~~ 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 ~~DESE~~ Special Education Unit of the Division of Elementary and Secondary Education.

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~~ 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 rules governing ESY in §Section 19.00 of these 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 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~~Department of Education is responsible for procedural safeguards and FAPE.

18.06.2 Procedural safeguards.

18.06.2.1 The procedural safeguards specified in §Section 9.00 of these rules, governing due process, shall be followed.

18.06.3 Assignment of costs.

18.06.3.1 The ~~DESE~~Division of Elementary and Secondary 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-18.06.3.1.a~~ At the time of placement:

~~1-18.06.3.1.a.i~~ The juvenile qualifies as disabled under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.; ~~and~~

~~2-18.06.3.1.a.ii~~ Payment is required under the Individuals with Disabilities Education Act; ~~and~~

18.06.3.1.a.iii The juvenile's physician determines that the out-of-state placement is medically

necessary and is the most appropriate placement available;

~~B-18.06.3.1.b~~ The Department of Education authorizes public payment for educational costs based on a determination that the educational program and facilities are appropriate for the juvenile and the ~~DESE~~ division has approved the facility's education program; ~~and~~

~~C-18.06.3.1.c~~ Each program authorization precedes the placement; and

18.06.3.1.c.i 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.

18.06.3.1.d The out-of-state residential or inpatient facility is located within a state that borders Arkansas.

18.06.3.2 Nothing in this section shall be construed to require payment by the ~~DESE~~ division, 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~~ Individuals with Disabilities Education Act 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;

18.06.3.4.a ~~DHS,~~ The Department of Human Services;

18.06.3.4.b ~~Medicaid~~;

18.06.3.4.c ~~private~~ Private insurance;

18.06.3.4.d ~~the~~ The parent; or

18.06.3.4.e ~~by any~~ Any combination thereof.

18.06.3.5 The liability of the ~~DESE~~ division 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 the:-

~~A.~~ 18.06.3.5.a ~~The reimbursement~~ Reimbursement rate established by the ~~DESE~~ division for a juvenile placed in a residential or inpatient facility; or,

~~B.~~ 18.06.3.5.b ~~The normal~~ 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 ~~DESE~~ division.

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.

18.06.4.1.a 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~~ 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~~ district or

agency based on the rules governing ESY in §Section 19.00 of these 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/noneducational 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.~~Arkansas Code § 6-18-202, is responsible for educating the student.

18.07.1.3 When a nondisabled student who is a ward of the ~~State~~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~~Department of Education 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.

18.07.2.1.a 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.

- 18.07.2.2.a 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.
- 18.07.2.3.a 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.
- 18.07.2.4.a A ~~DHS~~Department of Human Services representative shall also be invited if the student is receiving services from one (1) or more ~~DHS Divisions~~Department of Human Services divisions.
- 18.07.2.5 The review team shall:
- 18.07.2.5.a ~~review~~Review information available on the student; and
- 18.07.2.5.b ~~determine~~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 §Section 4.00 of the DESE Division of Elementary and Secondary Education Special Education rules, governing referrals.
- 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~~noneducational 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.

18.07.2.8.a 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~~ noneducational and are not reimbursable under these rules.

18.07.3.2.a Such other costs will be borne by:

18.07.3.2.a.i ~~DHS,~~ The Department of Human Services;

18.07.3.2.a.ii Medicaid;:

18.07.3.2.a.iii ~~private~~ Private insurance;:

18.07.3.2.a.iv ~~the~~ The parent; or

18.07.3.2.a.v ~~by any~~ 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.

18.07.3.3.a The request must be submitted to the school district by the deadline established by the ~~DESE~~ Special Education Unit of the Division of Elementary and Secondary Education 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-18.07.3.4.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-18.07.3.4.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-18.07.3.4.c~~ Each educational program authorization precedes the placement; and

~~D-18.07.3.4.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~~ Division of Elementary and Secondary Education, 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~~ Division of Elementary and Secondary Education, 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~~ Division of Elementary and Secondary Education 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~~ the Division of Elementary and Secondary Education.

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.

18.07.3.8 Nothing in this section shall be construed to require payment by the Division of Elementary and Secondary Education, 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.

18.07.4 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~~ Division of Elementary and Secondary Education.

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~~ 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.

18.07.5.1.a This applies to nondisabled students in residential placements, as well as their nondisabled peers who attend the local public school.

18.07.5.1.b 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.

18.08 JUVENILE DETENTION FACILITIES

18.08.1 General

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

18.08.1.2 Upon disposition by the juvenile court that an adjudicated juvenile shall stay in a juvenile detention facility for any period of time, the facility shall notify the juvenile's resident school district of his or her whereabouts.

18.08.1.3 The juvenile detention facility shall certify the detention dates to the juvenile's resident school district within five (5) days after the juvenile is released.

~~18.08.1.2~~ 18.08.1.4 Students detained in a juvenile detention facility for nine (9) days or less.

~~A-18.08.1.4.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-18.08.1.4.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-18.08.1.4.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-18.08.1.4.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.

~~18.08.1.3~~ 18.08.1.5 Students detained in a juvenile detention facility for ten (10) days or more.

~~A-18.08.1.5.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-18.08.1.5.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-18.08.1.5.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.

~~18.08.1.4~~ 18.08.1.6 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.

~~18.08.1.5~~ 18.08.1.7 Juvenile detention facilities must meet all standards required by the ~~Arkansas~~ Department of Finance and Administration in addition to these rules.

18.08.2 Educational services for nondisabled students.

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

~~A-8.08.2.1.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-8.08.2.1.b~~ The maximum teacher/student caseload must be ~~1 to 15~~^{1:15} without a paraprofessional and ~~1 to 24~~^{1:24} with a ~~full time~~^{full-time} paraprofessional.

~~C-8.08.2.1.c~~ The juvenile detention facility must provide instruction that addresses the ~~State's Curriculum Standards~~^{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-18.08.2.1.d~~ The juvenile detention facility must provide appropriate instructional and supplemental materials and media as are needed to enhance student instruction.

8.08.2.1.d.i Such materials include, but are not limited to;

1. ~~reference~~^{Reference} materials;

2. ~~_____~~^{_____} dictionaries;^{Di}
ctionaries;

3. ~~maps~~^{Maps};

4. ~~reading~~^{Reading} materials; and

5. ~~computer~~^{Computer} enhanced instructional software; ~~and/or~~

6. ~~internet~~^{Internet} access.

18.08.2.2 A school district ~~which~~^{that} 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.

18.08.3 Educational services for disabled students.

18.08.3.1 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-18.08.3.1.a~~ FAPE consistent with the student's IEP.

~~B-18.08.3.1.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-18.08.3.1.c~~ The procedural safeguards specified in these rules shall be followed for those students:

~~18.08.3.1.c.i identified~~ Identified as disabled; and

~~18.08.3.1.c.ii for those suspected~~ Suspected of being disabled.

18.08.4 Funding for students in juvenile detention facilities.

18.08.4.1 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.

18.08.4.2 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-18.08.4.2.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-18.08.4.2.b~~ For students with disabilities under the IDEA Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., educational costs include all costs incurred in the provision of FAPE.
- ~~C-18.08.4.2.c~~ For students suspected of having disabilities as defined by the IDEA Individuals with Disabilities Education Act, educational costs shall include costs incurred in the evaluation process.
- 18.08.4.3 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.
- 18.08.4.4 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 DESE division.
- 18.08.4.4.a The application for funding shall include an itemized statement of educational costs incurred.
- 18.08.4.5 The local school district in which the juvenile detention facility is located must reimburse the juvenile detention facility for the amount approved by the DESE division for educational costs incurred up to an amount not to exceed the Formula Foundation Aid times the approved student capacity of the facility.
- 18.08.4.6 If the juvenile detention facility and the local school district cannot agree on an amount for reimbursement, an appeal shall be made by either entity, or both, may appeal to the DESE division for a final decision.
- 18.08.4.7 The DESE division must reimburse local school districts ~~which that~~ have juvenile detention facilities on a quarterly basis based upon the district requesting such reimbursements.
- ~~A-18.08.4.7.a~~ The quarterly reimbursement amount will be

determined by dividing the amount identified in ~~§18.08.4.45~~ Section 18.08.4.5 by four (4).

~~B-18.08.4.7.b~~ Should costs decrease, the local school district in which the facility is located must notify the ~~DESE~~ Special Education Unit of the Division of Elementary and Secondary Education within thirty (30) days of revised costs.

~~C-18.08.4.7.c~~ Any adjustments to reimbursements will be made in the fourth ~~(4th)~~ quarter.

18.08.4.8 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.

18.08.4.9 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.

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

18.09.1 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~~ the Division of Youth Services.

18.09.2 ~~DYS~~ The Division of Youth Services will provide the quarterly attendance information to the ~~DESE~~ Division of Elementary and Secondary Education.

18.09.3 Funding will be disbursed to ~~DYS~~ the Division of Youth Services in support of education services within ~~DYS~~ Division of Youth Services juvenile treatment centers based upon a legislative appropriation for this purpose.

Notice of Rulemaking

Pursuant to Arkansas Code Annotated § 25-15-201 et seq., notice is hereby given that the Division of Elementary and Secondary Education is considering the following new administrative rules or amendments to the following administrative rules: DESE Rules Governing Distance and Digital Learning; DESE Rules Governing Grading and Course Credit; DESE Rules Governing Special Education and Related Services, Sec. 18.00 – Residential Placement; and DESE Rules Governing EFA Payment Processing.

Public comment hearings will be held for the forgoing rules on January 14, 2025 at 10:00am at the Arkansas Department of Education, Arch Ford Building, Four Capitol Mall, Little Rock, AR, 72201 in the ADE Auditorium. The public comment period for these rules ends on January 27, 2025. Written comments regarding these proposed rules may be mailed to ADE Legal Services, Four Capitol Mall, Room 302A, Little Rock, AR, 72201. Comments also may be emailed to ADE.RulesComments@ade.arkansas.gov. A copy of the proposed rules can be found on the Division of Elementary and Secondary Education's website at: <https://dese.ade.arkansas.gov/Offices/legal/rules/pending>. Copies also may be obtained by contacting ADE's Office of Legal Services at the above address or via phone at (501) 683-1390.