



STATE OF TENNESSEE  
**DEPARTMENT OF EDUCATION**  
6<sup>th</sup> FLOOR, ANDREW JOHNSON TOWER  
710 JAMES ROBERTSON PARKWAY  
NASHVILLE, TN 37243-0375

**BILL HASLAM**  
GOVERNOR

**KEVIN HUFFMAN**  
COMMISSIONER

**POLICY MEMORANDUM**

TO: Directors of Schools   
FROM: Christy Ballard, General Counsel  
DATE: November 9, 2011  
RE: Funding Students Educated in Residential Mental Health Facilities Pursuant to Chapter 426 of the Public Acts of 2011.

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Pursuant to Chapter 426 of the Public Acts of 2011(PC 426), effective July 1, 2011, local education agencies (LEA) are required to allocate funding in an amount equal to the per pupil state and local funds received by the LEA to state licensed residential mental health facilities on a prorated daily basis for the student's length of stay. PC 426 requires the State Board of Education to promulgate rules and regulations that provide for the determination of the allocation of funding required under PC 426. State Board of Education Rule 0520-01-02-.13(1)(a) directs the commissioner of education to prescribe a system of school fiscal accounting for all school systems which ensures that the expenditure of funds is properly accounted for and safeguarded in accordance with current law and State Board of Education rules, regulations, and minimum standards. Pursuant to the authority granted to the Department of Education in this State Board of Education rule, this memorandum hereby establishes the policy of the Department of Education regarding PC 426 and supersedes all prior guidance issued by the Department of Education or any division thereof.

PC 426 provides:

- (a) A local board of education shall allocate funding in an amount equal to the per pupil state and local funds received by the LEA to state licensed residential mental health facilities on a prorated daily basis for the student's length of stay, provided all of the following criteria have been met:
  - (1) The residential mental health facility operates as a Category I special purpose school pursuant to State Board of Education rules and regulations;
  - (2) The student admitted to the residential mental health facility is enrolled in the LEA; and
  - (3) The student is admitted to the residential mental health facility under a licensed physician's written order and such order is based on medical necessity.
- (b) The funding specified in subsection (a) shall be in addition to funds allocated pursuant to federal law and regulation, including, but not limited to, Title I and ESEA funds.

**COURT ORDERS**

The provisions of PC 426 apply to court orders wherein a student is ordered to complete an inpatient mental health treatment program pursuant to Tenn. Code Ann. §37-1-131(a) (2) (K), or otherwise, provided the treatment facility operates as a Category I special purpose school and the facility provides the LEA with a copy of a licensed physician's written order basing the admission on medical necessity.

## **STUDENTS IN STATE CUSTODY**

The provisions of PC 426 do not apply to students in state custody. Pursuant to Tenn. Code Ann. §49-3-363, educational services for students in state custody are provided by the Department of Children's Services.

## **STUDENTS WITH DISABILITIES**

Admission to a facility pursuant to PC 426 is neither a change of educational placement determined by an Individualized Education Program (IEP) Team, nor is it a unilateral parental placement pursuant to the Individuals with Disabilities Education Act (IDEA). Admission is based on medical necessity, not educational necessity. Treatment at a facility should not be included as a related service in an IEP. If an initial evaluation for eligibility is requested during a student's stay, the LEA must conduct the initial evaluation pursuant to Tenn. Rules & Regs. Chapter 0520-01-09-.10.

Special instruction and related services must be provided at the facility for the length of the student's stay and the LEA remains responsible for the provision of a free appropriate public education. Special instruction and related services may be provided by qualified staff at the facility. The IDEA requires regular education and special education teachers to be "teachers of the child" and those positions on the IEP Team may be filled by qualified regular education and special education teachers at the facility. An LEA may contract for related services during the student's stay. However, because the student remains enrolled in the LEA, the LEA representative must continue to fulfill his or her responsibilities on the IEP Team.

Stays by students with disabilities at residential mental health facilities must not be entirely funded with local, state or federal special education funds. Although an allocation of state funds pursuant to P.C. 426 is based on average daily membership, LEAs must administer federal IDEA funds based on reimbursement of expenditures for appropriately budgeted and educationally relevant services.

## **CREDIT FOR COURSEWORK**

Credit for coursework completed during the student's stay will be determined by the LEA pursuant to the State Board of Education rule regarding student transfers at Tenn. Rules & Regs. Chapter 0520-01-03-.03(11)(a) and (b).

## **FINANCE**

PC 426 establishes the rate to be charged by the facility as the amount of local and state funding received by the LEA, prorated on a per student, daily basis. Only days the student is served during the school year shall meet the requirements for funding eligibility. Providers shall bill based on the LEA's calendar and submit invoices to the LEA within 30 days of the close of each month.

The Office of Local Finance will calculate the daily rate for each school system as follows:

- Local funds received in the prior fiscal year (from State MOE test on eReporting)
- + State funds received in the prior fiscal year (from the AFR on eReporting)
- Career Ladder payments received in the prior fiscal year (from the AFR on eReporting)
- BEP funding for Transportation (from BEP Final calculation for FY11)
- = Total local and state funds received

The total is divided by the ADM from the prior fiscal year to establish the annual per pupil state and local funding. The per pupil amount is then divided by 180 to establish the daily funding amount.

The attached daily rates for this year have been established by the Office of Local Finance. These daily rates will be reviewed annually and distributed to LEA's.

### **CODING**

A new code has been created for students educated in residential mental health facilities pursuant to PC 426. Students admitted to these facilities must continue to be enrolled and scheduled and must be coded with the new student classification code of "K".

Please contact me at 615.741.2921 if you have questions regarding the application of this law.