

**RULES
OF
THE STATE BOARD OF EDUCATION

CHAPTER 0520-01-20
RESIDENTIAL MENTAL HEALTH FACILITIES**

0520-01-20-.02 DEFINITIONS.

- (1) "Active IEP" means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 34 CFR §§ 300.320 through 300.324 and was being implemented in the LEA at the time the student was admitted to the out-of-state Residential Mental Health Facility.
- (2) "Applicant" means an out-of-state Residential Mental Health Facility that seeks to receive LEA per pupil state and local funds on a prorated daily basis for the length of a Tennessee student's stay.
- ~~(3) "Basic Education Program" or "BEP" means the funding formula through which state education dollars are generated and distributed to Tennessee schools.~~
- ~~(4)~~(3) "Capacity" means a bed available in a Tennessee Residential Mental Health Facility to deliver the appropriate mental health treatment to the Student at the time the Student is admitted to the out-of-state Facility.
- ~~(5)~~(4) "Category 1-Special Purpose School" means a non-public school approved individually by the Tennessee Department of Education that addresses a student's education while receiving short term medical or transient care.
- ~~(6)~~(5) "Department" means Tennessee Department of Education.
- ~~(7)~~(6) "Duplicated Count" means a student is counted towards the annual total of students served by the facility each time the student is admitted to the facility.
- ~~(8)~~(7) "Facility" or "Residential Mental Health Facility" means a facility which provides twenty-four (24) hour residential treatment and habilitation. The focus of the program may be on short-term stabilization or longer-term treatment and habilitation. The program must provide or arrange for an education component in compliance with this Chapter.
- ~~(9)~~(8) "FAPE" means a free appropriate public education in compliance with the Individuals with Disabilities Act ("IDEA"), 20 U.S.C. § 1400 et seq.
- ~~(10)~~(9) "Individualized Education Program" or "IEP" means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 34 CFR §§ 300.320 through 300.324.
- ~~(11)~~(10) "IEP Team" means a group of individuals described in 34 CFR § 300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.
- ~~(12)~~(11) "LEA" means a Tennessee Local Education Agency and has the same meaning given in T.C.A. § 49-1-103(2).
- ~~(13)~~(12) "Physician Attestation Form" means a form signed and dated by the Qualified Physician that contains the patient's name and the dates of admission.

~~(14)~~(13) "Qualified Physician" means a person who is licensed under T.C.A. Title 63, Chapter 6 or T.C.A. Title 63, Chapter 9 or similar statute in another jurisdiction and who is the professional treating the student for the medical condition requiring admittance to a Residential Mental Health Facility.

~~(15)~~(14) "School Year" means July 1 to June 30 for the purposes of determining enrollment.

~~(16)~~(15) "Standard Initial Application Form" means a document whereby an out-of-state Facility may seek to receive approval by the Department to receive LEA per pupil state and local funds on a prorated daily basis for the length of a Tennessee student's stay.

~~(17)~~(16) "Standard Application Renewal Form" means a document whereby an approved out-of-state Facility may seek to receive continued approval by the Department to receive LEA per pupil state and local funds on a prorated daily basis for the length of a Tennessee student's stay.

~~(18)~~(17) "Student" means a child enrolled in a Tennessee public school, grades Kindergarten through grade twelve (K-12), and who is admitted to the Facility pursuant to this Chapter.

Authority: T.C.A. § 49-3-370. **Administrative History:** New rules filed February 23, 2022; effective May 24, 2022.

0520-01-20-.05 COMPLIANCE AND MONITORING.

- (1) The LEA and out-of-state Facility in which the Student enrolls shall establish a placement agreement outlining the responsibilities of the LEA and the responsibilities of the out-of-state Facility regarding the student's FAPE and special education and related services pursuant to the Student's IEP. At minimum, the placement agreement shall certify the Facility intends to meet the following requirements when providing services to an admitted Student:
 - (a) Provides a minimum of sixteen and one-half (16 ½) hours per week of educational instructional services to admitted Students, unless the Student's IEP provides otherwise;
 - (b) Implements the Student's IEP as written at the time of the medical placement decision, and as subsequently amended by the Student's IEP team during the Student's stay at the Facility; and
 - (c) Has a sufficient number of teachers with an endorsement in special education or a certification that the Department determines to be equivalent to an endorsement in special education in Tennessee to comply with the Student's IEP as written at the time of the medical placement decision, or as revised by the IEP team as appropriate per 34 CFR §§ 300.324(b). The out-of-state Facility shall have the capacity to implement all special education and related services by the endorsed service provider as stated and required in the Student's IEP and to offer FAPE.
- (2) The out-of-state Facility shall consult with the Student's LEA to determine how the Facility will best provide core instruction in, at a minimum, English Language Arts and Mathematics for the Student, as well as arranging for required Tennessee state assessments when applicable.
 - (a) The out-of-state Facility staff shall participate in the Student's IEP team meetings to inform the instructional programming needs of the Student.
- (3) The out-of-state Facility shall report the attendance of each admitted Student to the public school in the LEA in which the Student is enrolled.

- (4) If an LEA allocates funds to an out-of-state Facility pursuant to this Chapter, then the LEA shall report any non-compliance of the Facility to the Department, including, but not limited to:
- (a) The Facility failed to implement the Student's IEP including all applicable state and federal laws related to special education services; or
 - (b) The Facility failed to report daily attendance to the public school in the LEA in which the Student is enrolled.
- (5) Additionally, if the Department determines the out-of-state Facility has failed to comply with the requirements of T.C.A. § 49-3-370(b), this Chapter, or all other applicable state and federal laws then the LEA shall cease the allocation of funding as provided in this Chapter.
- (a) The Department shall notify the out-of-state Facility of noncompliance within five (5) business days of discovery of noncompliance. The notification shall state reasons for noncompliance and that the Facility is no longer approved and not eligible to receive LEA per pupil state and local ~~BEP~~ funds until the noncompliance is corrected.
 - (b) A Facility that has been notified by the Department of noncompliance shall lose its approval from the Department until the noncompliance is corrected.
- (6) If the out-of-state Facility loses its approval from the Department due to noncompliance, the Facility may file an appeal to the Department. Appeals shall be filed pursuant to the following two (2) step appeal process:
- (a) Step one (1): The appeal shall be on the form provided by the Department and shall be submitted to the Department within ten (10) business days of receipt of the notice of loss of approval. Notice shall be provided electronically and is deemed received at the time the Department sends the email notification. The appeal shall be reviewed by the Commissioner of Education, or the Commissioner's designee, and a decision shall be issued within forty-five (45) calendar days of receipt of the completed appeal form by the Department. The Applicant shall be notified of the Commissioner's decision in the step one (1) appeal electronically. Such notice shall be deemed received at the time the Department sends the email to the Applicant.
 - (b) Step two (2): An appeal of the Commissioner's or the Commissioner's designee's decision in step one (1) shall be filed with the Department by the Applicant within thirty (30) calendar days of notice of the step one (1) decision. Step two (2) appeals shall be heard before an administrative law judge via an administrative contested case hearing governed by the Uniform Administrative Procedures Act (T.C.A. Title 4, Chapter 5).
 - (c) A party who is aggrieved by a final decision in a Step two (2) contested case hearing is entitled to judicial review pursuant to T.C.A. § 4-5-322.

Authority: T.C.A. § 49-3-370. **Administrative History:** New rules filed February 23, 2022; effective May 24, 2022.

0520-01-20-.06 CALCULATION OF FUNDS.

- (1) The LEA shall allocate funding to the out-of-state Facility in an amount equal to the per pupil state and local ~~BEP~~ funds received by the LEA on a prorated daily basis for the Student's length of stay, provided that the Facility and Student meets the requirements of this Chapter.
- (2) The daily rates shall be calculated by the Department each School Year.
- (3) The Department shall calculate the daily rate of funds to be transferred from the LEA to the Facility as follows:
 - (a) Per pupil state and local funds generated through the state's K-12 education funding formula and additional local funds ~~Applicable state and local funds~~ received by the LEA in the prior fiscal year divided by the average daily membership (ADM) from the prior fiscal year to equal the per pupil state and local funding;
 - (b) The per pupil state and local funding is then divided by the one hundred eighty (180) days to equal the total daily rate.
- (4) An approved Facility shall receive funds only for the days during which the Student is served during the regular one hundred eighty (180)-day school year.
- (5) The funding specified in this chapter shall be in addition to funds allocated pursuant to federal law and regulation, including, but not limited to, Title I and Elementary and Secondary Education Act (ESEA) funds.
- (6) The calculation of funds as specified in this rule also applies to funding for Students admitted to a Tennessee state-licensed Residential Mental Health Facility pursuant to T.C.A. § 49-3-370(a).

Authority: T.C.A. § 49-3-370. **Administrative History:** New rules filed February 23, 2022; effective May 24, 2022.