

**RULES
OF
THE STATE BOARD OF EDUCATION**

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

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0520-01-20-.01 PURPOSE.

The purpose of this Chapter is to establish procedures for approving educational programs or instructional services provided by residential mental health facilities and for the allocation of funding to residential mental health facilities as required by T.C.A. § 49-3-370.

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

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) “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.
- (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.
- (5) “Department” means Tennessee Department of Education.
- (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.
- (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.
- (8) “FAPE” means a free appropriate public education in compliance with the Individuals with Disabilities Act (“IDEA”), 20 U.S.C. § 1400 et seq.

(Rule 0520-01-20-.02, continued)

- (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.
- (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.
- (11) "LEA" means a Tennessee Local Education Agency and has the same meaning given in T.C.A. § 49-1-103(2).
- (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.
- (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.
- (14) "School Year" means July 1 to June 30 for the purposes of determining enrollment.
- (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.
- (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.
- (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. Amendments filed August 24, 2023; effective November 22, 2023.

0520-01-20-.03 APPROVAL OF OUT-OF-STATE FACILITIES.

- (1) The Department shall administer an application process for out-of-state Facilities to be eligible to receive LEA per pupil state and local funds prorated for the length of an admitted Student's stay.
- (2) An Applicant shall complete and submit the Standard Initial Application Form in accordance with the Department's application process. Applicants may apply for initial approval throughout the calendar year.
 - (a) The Department shall make a determination and notify the Applicant of initial approval or denial within thirty (30) business days of receipt of a completed Standard Initial Application Form.
- (3) Applicants shall submit documentation to support that the Facility meets the following requirements:
 - (a) Operates in Alabama, Arkansas, Georgia, Kentucky, Mississippi, Missouri, North Carolina, or Virginia;
 - (b) Complies with all applicable health and safety laws, regulations, and codes of the state and locality in which the Facility is located;

(Rule 0520-01-20-.03, continued)

- (c) Serves at least fifteen (15) Tennessee students per School Year. The number of Tennessee students served shall be based on student enrollment from the School Year immediately preceding the School Year in which the Applicant seeks to receive approval. The number of Tennessee students served shall be determined using a Duplicated Count;
- (d) All teachers at the Facility are licensed by the educator licensing authority of the state in which the Facility is located;
- (e) Has at least one (1) teacher with an endorsement in special education or a certification that the Department determines equivalent to an endorsement in special education in Tennessee based on similar training and experience requirements to provide special education and related services to admitted Students;
- (f) Provides a minimum of sixteen and one-half (16½) hours per week of educational instructional services to Students, unless the Student's IEP provides otherwise; and
- (g) The Applicant's educational programs or instructional services meet the same requirements as a Category I-Special Purpose School, as applicable, pursuant to State Board of Education Rules Chapter 0520-07-02.
 - 1. The Department may request additional documentation from the Applicant to make a determination whether or not the Applicant's educational programs or instructional services meet the same requirements as a Category I-Special Purpose School, as applicable. Additional documentation includes, but is not limited to, documentation of teacher licensure and evaluations, employee background checks, parent and teacher handbooks, school calendar, examples of teacher and student daily schedules, and documentation of curriculum used.
- (4) An approved out-of-state Facility shall reapply annually to the Department for continued approval in order to remain eligible to receive LEA funds for the length of an admitted Student's stay. To reapply, a Facility shall complete and submit the Standard Renewal Application Form in accordance with the Department's procedures no later than one (1) calendar year from the date of initial or last renewal approval.
 - (a) The Department shall make a determination and notification to the Applicant of approval or denial within thirty (30) business days of receipt of the completed Standard Renewal Application Form.

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

0520-01-20-.04 STUDENT ADMISSION.

- (1) An LEA shall only allocate per pupil state and local funds on a prorated daily basis to an approved out-of-state Facility for the length of the Student's stay under the following conditions:
 - (a) The Student is admitted to the out-of-state Facility under a signed, written order of a Qualified Physician, the order being based upon both medical necessity and the most appropriate medical services for the Student;
 - (b) There were no facilities in Tennessee with the Capacity to deliver the appropriate mental health treatment to the Student at the time the Student is admitted to the out-of-state Facility;

(Rule 0520-01-20-.04, continued)

- (c) The Student was enrolled in and attended a public school in Tennessee for the one (1) full School Year immediately preceding the Student's admission to the out-of-state Facility;
 - (d) The Student is enrolled in a public school in Tennessee at the time of admission to the out-of-state Facility; and
 - (e) The Student has an Active IEP from an LEA at the time of the medical placement decision.
- (2) An LEA may require a Physician Attestation Form to be submitted to the LEA prior to the disbursement of funds to the out-of-state Facility.

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 (16½) 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

(Rule 0520-01-20-.05, continued)

- (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 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. Amendments filed August 24, 2023; effective November 22, 2023.

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 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 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;

(Rule 0520-01-20-.06, continued)

- (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. Amendments filed August 24, 2023; effective November 22, 2023.