

OFFICE OF INSTRUCTIONAL ENHANCEMENT AND INTERNAL OPERATIONS
Summary of State Board of Education Agenda Items
January 16-17, 2014

OFFICE OF SPECIAL EDUCATION

12. Approval to begin the Administrative Procedures Act process: To revise State Board Policy 7201 – Educable Child Program

Executive Summary

This policy is being revised to include the provisions of State Board Policies 7211 and 7213 and address specific requirements for public agency placements in a private facility in order to participate in the Educable Child Program.

This policy is a complete revision and includes the Educable Child requirements for State and Federal funding sources. The revision further outlines the criteria for placement of children with disabilities in private facilities.

Private schools/facilities, parochial schools/facilities, speech, hearing and/or language clinics (referred to as private facilities) that participate in the Educable Child Program must be accredited by a State or regional accrediting agency or approved/licensed by the State Department of Education to meet educational standards in the State.

Recommendation: Approval

Back-up material attached

State Board Policy

DESCRIPTOR TERM: Educable Child Program

CODE: 7201

ADOPTION DATE:

REVISION: January 17, 2014

I. Educable Child

The Mississippi Department of Education (MDE), Office of Special Education (OSE) is directed to provide oversight through the Individuals with Disabilities Education Act (IDEA) and State Statute in the placement and funding of students with disabilities in private school/facilities. It is the policy of the MDE to ensure that Local Education Agencies (LEAs) meet the private school requirements in Mississippi Code Annotated, Sections 37-23-61 through 37-23-75 and IDEA 34 CFR §§300.130 through 300.148.

a) State Statute

The MDE shall have the authority to promulgate and enforce reasonable rules and regulations establishing standards for administration of the program contemplated by Mississippi Code Annotated, Sections 37-23-61 through 37-23-75, consistent with the maintenance of high quality programs for the benefit of the exceptional children served.

The MDE shall require that the programs for which children are eligible for financial assistance under Mississippi Code Annotated, Sections 37-23-61 through 37-23-75 be designed to provide individualized appropriate special education and related services that enable a child to reach his or her appropriate and uniquely designed goals for success. State funds will not be used for the payment of medical services or for room and board charges.

b) Individuals with Disabilities Education Act (IDEA)

The MDE has adopted State Policies Regarding Children with Disabilities under IDEA Amendments of 2004. A Free Appropriate Public Education (FAPE), as outlined in IDEA 34 CFR §300.101, ensures that each student ruled eligible by a public agency is protected under IDEA. Each eligible student under IDEA shall have available a FAPE that uniquely emphasizes their special education and related services needs.

The MDE shall require that each private facility/school adhere to the IDEA mandated requirements, which include the provision that IDEA funds may only be used for the excess cost to educate students with disabilities placed by a school district or DHS in a private facility/school. IDEA funds may not be used for the payment of medical services or for room and board charges. 34 CFR §300.704

II. Private Schools/Facilities

A private facility must gain approval from the MDE, OSE to provide appropriate special education and related services under the Educable Child Program. The school within the private facility must obtain an approval status from the MDE, OSE, and must be operated as

an integral part of the facility, which provides twenty-four (24) hours a day monitoring, treatment, and education. The private facility must also hold a current license from the Department of Health designating approval as an Intermediate Care Facilities for Intellectual Disabilities (ICF-ID) or Psychiatric Residential Treatment Facilities (PRTF) facility.

- a) All private schools/facilities, parochial schools/facilities, speech, hearing and/or language clinics (hereinafter referred to as private facilities) that participate in the Educable Child Program will be accredited by a state or regional accrediting agency or approved/licensed by the MDE to meet educational standards in the state.
- b) All Private ICF-ID or PRTF (hereinafter referred to as private facilities) shall be certified/licensed by the designated state authority for such facilities.
- c) Out-of-state private facilities must hold an approval status from their state educational agency or a current accreditation status from a nationally recognized educational accrediting entity such as the AdvanceEd.

III. Fiscal

a) Appropriations

State appropriated funds will be used to pay the educational cost as defined by the State Legislature and as State Funds are available for the required placement per child per school year if an approved private school operates as an integral part of the facility, which provides twenty-four (24) hours a day monitoring, treatment, and education utilizing the prescribed formula. Federal funds will be added to the appropriated State funds as available and/or needed to fund school district and DHS applicants. If state monies are not sufficient to fund school district and DHS applicants, there will be ratable reduction for all applicants (including parentally placed applicants) receiving state funds under the Educable Child Program.

b) Formula

Will be defined annually by MDE utilizing an approved formula methodology.

c) Transportation

If transportation costs (i.e. defined as travel to and from school) are incurred by a private facility for an Educable Child Applicant placed by a public school district and placed by the DHS, the transportation rate will be determined annually by the MDE, OSE.

d) Payments

Payments will be scheduled and published annually by MDE.

IV. Applications

a) School District Placed Students

The school district will pay an amount to be established annually in the OSE Ed Child Procedures for any Educable Child Application made by the district. The remainder of the total amount will be paid by the Educable Child Program, provided funds are available from State or federal sources (as allowed by IDEA) and the State Level Review Board has approved the Educable Child Applicant for financial assistance. The State Level Review Board's Decision does not change the Individual Educational Program

(IEP) placement decision or continuum of services; rather it determines the Educable Child Program's financial involvement regarding the placement.

b) Department of Human Services (DHS) Placed Students

The Educable Child Program will pay the educational costs of an Educable Child Applicant placed by and in the custody of the DHS provided funds are available from State or federal sources (as allowed by IDEA) and the State Level Review Board has approved the placement for financial assistance. The State Level Review Board's Decision does not change the IEP placement decision or continuum of services; rather it determines the Educable Child Program's financial involvement regarding the placement.

c) Parentally Placed Students

Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school or secondary school. State Educable Child Funds may be used only. IDEA funds are not allowed as parentally placed students are not covered under IDEA. 34 CFR §300.130

(1) **With Medicaid Available Funding:** The Educable Child Program will provide financial assistance for the educational costs to an Educable Child Applicant placed in an approved private facility when the student is determined to be eligible for Medicaid services. Funding will be based on the entitlement authorized by the State Legislature, through the annual appropriations bill, provided funds are available from State sources and the State Level Review Board has approved the Educable Child Applicant for financial assistance.

(2) **Without Medicaid Available Funding:** The Educable Child Program will provide funds as outlined in Mississippi Code Annotated, Section 37-23-69(a) for the educational costs for an Educable Child Applicant who is placed in an approved private school and the State Level Review Board has approved the Educable Child Applicant for financial assistance.

V. Hearing Procedures

In the event of disapproval by the State Level Review Board of an application for financial assistance under the Educable Child Program, the MDE will give notice to the Educable Child Applicant and notify the applicant of the right to request a hearing.

State Board Policy

DESCRIPTOR TERM: Educable Child Program

CODE: 7201

ADOPTION DATE:

REVISION: March 18, 1988

Facility Approval

~~All private schools/facilities, parochial schools/facilities, speech, hearing and/or language clinics (hereinafter referred to as private facilities) that participate in the Educable Child Program will be accredited by a state or regional accrediting agency or approved/licensed by the State Department of Education to meet educational standards in the state~~

~~All Private Intermediate Care Facilities for the mentally retarded or Psychiatric Residential Treatment Facilities (hereinafter referred to as private facilities) shall be certified/licensed by the designated state authority for such facilities.~~

~~Out of state private facilities must hold an approval status from their state educational agency or a current accreditation status from a nationally recognized educational accrediting entity such as the Southern Association of Colleges and Schools.~~

State Level Review Board for Financial Assistance Approval

~~A State Level Review Board appointed by Mississippi Department of Education will, after review of the Educable Child Applicant's (student with a disability under IDEIA 2004) case, decide whether or not the Educable Child Program will provide financial assistance to the student being placed in a private facility. The State Level Review Board's decision does not change the IEP (individual educational plan) placement decision, rather determines the Educable Child Program's financial involvement regarding the placement. The State Level Review Board will act within five (5) working days of receipt of the student application for assistance.~~

Financial

General

- ~~1. Funds provided under the Educable Child Program will be used for educational costs only.~~
- ~~2. The Mississippi Department of Education will not provide Educable Child funds for the payment of medical services.~~
- ~~3. Room and Board charges for Department of Human Services Educable Child Applicants will not be provided under the Educable Child Program.~~
- ~~4. Public school districts shall be reimbursed for the educational costs of students with disabilities as outlined in item 8 and under the section entitled "School District Payment."~~

5. ~~Payments by the Mississippi Department of Education and/or public school districts to private facilities for the educational services of an Educable Child Applicant placed by the Department of Human Services or public school districts shall not exceed the maximum daily rate as outlined in item 8.~~
6. ~~If transportation costs (i.e. defined as travel to and from school) are incurred by a private facility for an Educable Child Applicant placed by a public school district, payment for such costs will be reasonable and negotiated between the private facility and the public school district. In the event that transportation costs are incurred by a private facility for students with disabilities placed by the Department of Human Service, payment will be negotiated between the Mississippi Department of Education and the private facility.~~
7. ~~The Mississippi Department of Education has established the Educable Child Student Weight as a multiple of 4.9 times the base student cost of the Mississippi Adequate Education Program.~~
8. ~~The maximum daily rate payable to private facilities for the educational costs of an Educable Child Applicant placed by public school districts and the Department of Human Services for the 2006-2007 school year and future school years shall be based on the following formula:~~

$$\frac{(\text{MAEP Base Student Cost} * \text{EC Student Weight}) + \text{MAEP Base Student Cost}}{\text{Number of Days in EC School Year}} = \text{Maximum EC Daily Rate}$$

EC = Educable Child

~~The rate payable to private facilities shall be the lesser of the maximum daily rate as calculated by the MDE per the above formula or the actual daily rate charged by the provider. Private facilities charging less than the proposed maximum proposed daily rate as of the date of approval of this policy will be reimbursed at current (2005-2006 school year) daily rates with allowances for future increases. Future increases will be limited to the percentage increase in the maximum daily rate as calculated by the MDE per the above formula.~~

School District Placement

~~The school district will pay the first \$8,000 for any Educable Child Applicant made by the district. The remainder will be paid by the Educable Child Program, providing funds are available from state and federal sources and the State Level Review Board has approved the Educable Child Applicant for financial assistance.~~

Department of Human Services Placement

~~The Educable Child Program will pay the educational costs of an Educable Child Applicant placed by and in the custody of the Mississippi Department of Human Services, provided funds~~

are available from state and federal sources and the State Level Review Board has approved the placement for financial assistance.

Parent Medicaid Placement

The Educable Child Program will provide up to \$5,000 in financial assistance to an Educable Child Applicant placed in an approved private facility when the student is determined to be eligible for Medicaid services.

Parent Placement

The Educable Child Program will provide the first \$600 in educational costs for an Educable Child Applicant who is placed in an approved private facility. If the child is under 6 years of age, and no program appropriate for the child exists in the public schools of his domicile, financial assistance shall be \$600 and fifty percent of the next \$800.00 or up to \$1,000.

If state and federal funding is not sufficient to fund all applicants, there will be a ratable reduction for all recipients receiving state funds under the Educable Child Program.

Hearing Procedures

- In the event of disapproval by the State Level Review Board of an application for financial assistance under the Educable Child Program (Mississippi Code Annotated, Section 37-23-69), the Mississippi Department of Education will give notice to the Educable Child Applicant (hereinafter referred to as applicant) by certified mail and notify the applicant of the right to request a hearing.
- Within ten (10) working days after the receipt of the notice, the applicant may apply in writing to the Mississippi Department of Education for a hearing before a hearing officer designated by the Mississippi State Board of Education pursuant to Mississippi Code Annotated, Section 37-1-5.
- The hearing officer shall notify the applicant of the time, place, and date of the hearing. The date shall be not less than ten (10) working days and not more than 30 calendar days after the receipt of the request for a hearing unless otherwise agreed by the parties.
- It shall be the responsibility of each party to secure the attendance of its witnesses, if any, and any expenses attendant thereto shall be borne by the party calling that witness. Two copies of any written evidence will be submitted: one copy for the hearing officer and one for the opposing party. Evidence submitted by the applicant will be labeled P-1, P-2, etc. Evidence submitted by

the department will be labeled D-1, D-2, etc. Evidence may be stipulated and entered as S-1, S-2, etc.

• ~~The hearing officer shall require that all witnesses be sworn before offering testimony. The hearing officer shall not be bound by the Common Law or statutory rules of evidence or by formal or technical rules of procedure and may conduct reasonable questioning of any witnesses. The hearing officer may limit the examination or cross-examination of any witnesses to keep the hearing focused on the issue of withholding of funds and may recess/reconvene the hearing if necessary.~~

• ~~The Department of Education shall make a record of the proceedings to include all documents introduced into evidence which shall be available for cost upon the written request of the applicant.~~

• ~~Within fifteen (15) working days of the conclusion of the hearing, the hearing officer shall make a recommendation in the following format: (1) purpose of the hearing, (2) summary of evidence presented, and (3) conclusions and recommendations, a copy of which shall be sent to the parties by certified mail.~~

• ~~The completed record along with the hearing officer's recommendation shall be certified to the State Board of Education which shall at its next regularly scheduled meeting consider only the record and shall not consider any evidence or material not included within the record in reaching its final determination.~~

• ~~If the State Board of Education shall affirm the Department's actions of disapproval of the application for financial assistance, the State Board of Education shall make its written findings and issue its order and notice shall be given the applicant by certified mail. The decision of the State board of Education is final.~~

• ~~Any applicant aggrieved by the decision of the State Board of education may within ten (10) calendar days after receipt of such notice file a petition in Chancery Court of the county in which the applicant resides pursuant to the provisions of Mississippi Code Ann. Section 37-23-73.~~