

CHAPTER 14

**EDUCATION PROGRAM APPROVAL
OF PUBLIC AND PRIVATE INSTITUTIONS RECEIVING STATE FUNDS
FOR THE EDUCATION COSTS OF STUDENTS PLACED BY A COURT
ORDER**

CHAPTER 14

Section 1. Authority.

These rules are promulgated pursuant to the ~~Wyoming Education Code of 1969 (as amended), Wyoming Statute 21-13-315 (as amended), and W.S. 21-13-336.~~

~~Section 2. — Applicability.~~

~~These rules pertain to the education program approval of all private residential treatment facilities and Board of Cooperative Educational Services (BOCES) facilities which receive state payments for education costs of students placed by the courts in these facilities.~~

~~Section 3. — Promulgation, Amendment, or Repeal of Rules.~~

~~Any amendments to these rules shall become effective as provided by the Wyoming Administrative Procedure Act (W.S. 16-3-101 through W.S. 16-3-115).~~

Section 4.2. Definitions.

~~(a) “Allowable education costs” are those for educational services provided directly to the court placed student as part of an organized educational curriculum designed to achieve educational objectives that are specific, identifiable, measurable. Those services are to be provided by appropriately certified staff in an educational setting during regularly scheduled hours.~~

(a) “Approved program” means an education program that ~~meets the standards established by~~ has been approved by the Wyoming Department of Education and by the Wyoming State Board of Education.

(b) “Board” means the Wyoming State Board of Education.

(c) “Board of Cooperative Educational Services” (BOCES) means

~~institutions established by the Wyoming Department of Education and accepted by the Wyoming State Board of Education. entities defined in W.S. 21-21-101 through 111.~~

~~(d) “Child” means a school-aged student. Department means the Wyoming Department of Education.~~

~~(e) “Children with disabilities” refers to students with one or more of the following Disabilities or other disability as defined by federal regulations and Wyoming Department of Education Chapter 7 governing services for children with disabilities.~~

~~(e) “Education program” means education services including, but not limited to, the course of study, curriculum, certified personnel, professional development policies, general supervision, compliance with law, and any other education-related practices.~~

~~(i) — Autistic disability.~~

~~(ii) — Deaf disability.~~

~~(iii) — Deaf-blind disability.~~

~~(iv) — Developmental disability.~~

~~(v) — Emotional disability.~~

~~(vi) — Health disability.~~

~~(vii) — Hearing disability.~~

~~(viii) — Learning disability.~~

~~(ix) — Mental disability.~~

~~(x) — Orthopedic disability.~~

~~(xi) — Speech/language disability.~~

~~(xii) — Traumatic brain injury.~~

~~(xiii) — Visual disability.~~

~~(f) “Compliance” means demonstrated effort to adhere to the intent of applicable education program standards.~~

(f) “Facility” means any Psychiatric Residential Treatment Facility (PRTF), Residential Treatment Center (RTC), or BOCES providing educational services to Wyoming youth.

(g) ~~“Court” means the juvenile and district court.~~

(g) “Group home” means facilities defined and licensed as a group home by the Wyoming Department of Family Services (DFS), Chapter 7, Administrative Rules for Certification of Providers of Substitute Care for Children.

(h) ~~“Department” means the Wyoming Department of Education.~~

(h) “Psychiatric Residential Treatment Facility” (PRTF) means a facility defined as a PRTF by the Wyoming Department of Health (WDH), Chapter 1, Wyoming Medicaid Rules.

(i) ~~“Education program” means the course of study and other educational opportunities provided to students court placed in care.~~

(i) “Resident School District” means, in order of priority, the school district designated as the student’s school district of residence by a court, the school district in which the student’s custodial parent or guardian resides at the time of the student’s placement in the facility, or the school district in which the student’s DFS caseworker’s field office is located if the student is in the state’s legal custody but not in foster care at the time of student’s placement.

(j) ~~“External education program” means an education program operated by a local public school that provides equal access to students in private residential treatment facilities, group homes or BOCES.~~

(j) “Residential Treatment Center” (RTC) means a facility defined and licensed as a RTC by DFS, Chapter 10, Administrative Rules for Certification of Providers of Substitute Care Services for Children.

(k) ~~“External educational service” means the services provided by a public school or private agency apart from private residential treatment facilities or BOCES.~~

(l) ~~“Individual Education Plan” (IEP) means a written plan for a child with a disability(ies) that has been developed in accordance with federal and state laws and related rules and regulations. The IEP states the necessary special education and related~~

~~services within an approved education program including, but not limited to, the frequency of service, the minutes per week of service, and the duration of service.~~

~~(m) “On grounds education program” means an educational program operated by a private residential treatment facility or BOCES.~~

~~(n) “Private residential treatment facility” means any nonpublic facility licensed or approved under appropriate state law to provide residential care for students.~~

~~(o) “Related services” means transportation, and such developmental, corrective, and other supportive services as may be required to assist a child with a disability to benefit from special education. (This does not include a medical device that is surgically implanted, or the replacement of such device.) Services include, but are not limited to:~~

- ~~(i) — Assistive technology services;~~
- ~~(ii) — Counseling services, including rehabilitation counseling;~~
- ~~(iii) — Early identification and assessment of disabling conditions of students;~~
- ~~(iv) — Interpreting services;~~
- ~~(v) — Medical services for diagnostic and evaluation purposes only;~~
- ~~(vi) — Orientation and mobility services;~~
- ~~(vii) — Parent counseling and training;~~
- ~~(viii) — Physical and occupational therapy;~~
- ~~(ix) — Psychological services;~~
- ~~(x) — Recreation, including therapeutic recreation;~~
- ~~(xi) — School nurse services as described in the student’s individual education plan;~~
- ~~(xii) — Social work services;~~
- ~~(xiii) — Speech language pathology and audiology services; and,~~

~~(xiv) Transition services.~~

~~(p) "School district of residence" means the public school district designated as the student's school district of residence by the court as provided for in W.S. 21-13-315(h).~~

~~(q) "School aged" means a court placed student who is at least six (6) years of age but under eighteen (18) years of age as prescribed in W.S. 21-13-315(k) unless the student is a child with a disability(ies) and under the age of twenty one (21) as prescribed in W.S. 21-4-301.~~

~~(r) "Structure" means buildings in which an education program is provided.~~

~~(s) "Student" means a school aged student with a Wyoming school district of residence.~~

~~(t) "Transition services" means a coordinated set of activities for a student that:~~

~~(i) — Is designed to be within a results oriented process, that is focused on improving the academic and functional achievement of a student to facilitate the student's movement from school to a residential treatment facility and back to the school or other court ordered placement;~~

~~(ii) — Is based on the individual student's needs taking into account the student's strengths, preferences, and interests; and~~

~~(iii) — Includes instruction, related services, community experiences, the development of employment and other post school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.~~

Section 5.3. General Requirements. Initial Education Program Approval Requirements. To obtain initial Department approval for education programs, facilities shall comply with the following requirements:

To qualify for payment by the Department for education costs of school aged students court placed in care, private residential treatment facilities and BOCES which provide education programs shall:

~~(a) Be licensed or accredited as a private residential treatment facility by the appropriate state authority.~~

- (a) Be licensed by authorities as necessary to operate as a PRTF, RTC, BOCES, or group home in the jurisdiction in which the facility is located;
- ~~(b) Ensure that all structures used for the purposes of the education program meet all state and local requirements for health and safety.~~
- (b) Obtain educational accreditation through the education accreditation process for facility schools in the jurisdiction where the facility is located;
- ~~(e) Maintain a written statement that identifies the types of educational services provided and the characteristics of the students to be serviced by the education program of the facility.~~
- (c) Be available to schedule and discuss details for an on-site initial or continuing review by the Department;
- ~~(d) Maintain a current written description of its pupil population, including ages and identified disabilities.~~
- (d) Provide the following documents or materials to the Department:
 - (i) Current copies of licenses and accreditations granted by national and state organizations or agencies responsible for health, safety, and education oversight;
 - (ii) Wyoming Medicaid enrollment number;
 - (iii) Verification that all structures used for the education program meet all state and local requirements for health and safety; and
 - (iv) Any further materials requested by the Department to support its recommendation for approval.
- ~~(e) Maintain current written description of the education program including, but not limited to, a daily instructional schedule, the number of instructional hours per day and the number of instructional days per year.~~
- (e) Make facility and education personnel available for an interview to determine logistical details during the on-site review.
- ~~(f) Maintain accurate records about each student in the education program,~~

including, but not limited to the following:

(i) ~~— A case record for each student to include, but not limited to: date of admission, source of referral, order of the court as provided for under W.S. 21-13-315 (as amended), date of discharge should the student leave, documentation of the current custody and legal guardianship and student's birth date, gender and social security number.~~

(ii) ~~— Record of the student's actual attendance at the education program.~~

(iii) ~~— Reports relating to a student's education program.~~

(iv) ~~— Records necessary to comply with the provisions of P.L. 101-476 (as amended) and applicable state laws and rules and regulations for children with disabilities.~~

(g) ~~Employ a teacher or teachers who are properly certified and endorsed by the Wyoming Professional Teaching Standards Board or appropriate state authority.~~

(h) ~~Ensure that each student court placed in care is provided with all required related services including, but not limited to, the transportation necessary to access the education program provided that student and the transition services necessary to facilitate the student's movement to and from the facility, the school district of residence, and other court ordered placement.~~

(i) ~~Comply with the provisions of 20 U.S.C. 1400 *et seq.* and its applicable state laws and rules and regulations governing education programs for children with disabilities.~~

(j) ~~Provide for equal access for children with disabilities as required by applicable federal and state laws and related rules and regulations.~~

(k) ~~Guarantee equal opportunities to all education programs for students court placed in care of the facility under W.S. 21-13-315 (as amended) regardless of the student's race, color, national origin, sex, or disability.~~

Section 6.4. In-State Ongoing Education Program Approval Requirements.

~~To qualify for payment by the Department for education costs of school aged students court placed in care, private residential treatment facilities and BOECES shall ensure that every school aged student attends either an external or an on grounds~~

~~educational program evaluated and accredited by the Wyoming State Board of Education pursuant to W.S. w1-2-304(a)(ii).~~

~~(a) External education programs shall, prior to placement:~~

~~(a) Facilities shall provide the Department the following by September 1 of each school year:~~

~~(i) Determine through collaboration with the student's school district or residence the appropriateness of the placement.~~

~~(i) The next school year's calendar;~~

~~(ii) Endure that external educational service or program providers are licensed or accredited by the appropriate national, regional or state licensing or accrediting authority.~~

~~(ii) Documents or policies that have been revised since the previous school year regarding the facility's procedures on admission or discharge of youth;~~

~~(iii) Establish a detailed written contract with an external educational service or program provider of a student in the service or program. The contract shall outline the obligation(s) of the external service or program provider relative to the needs of the student court placed in care.~~

~~(iii) Current licenses and accreditations granted by national and state organizations or agencies responsible for health, safety, and education oversight;~~

~~(iv) Current safety and health inspection reports by the local or state offices where the facility is located; and~~

~~(v) A current financial statement audited by a certified public accountant.~~

~~(b) On-Grounds Education Program. Prior to placement of a student in an on-grounds education program private residential treatment facilities or BOCES shall determine through collaboration with the student's school district of residence the appropriateness of placement.~~

~~(b) The facility shall send compliance documentation electronically unless it~~

does not have equipment to transmit electronic files. If this is the case, the facility shall mail physical copies to the Department.

Section 7.5. Out-of-State Education Program Requirements. Fiscal Management and Payment of Education Costs.

~~W.S. 21-13-315 (as amended) requires the Department to approve the education program of out-of-state facilities prior to the payment for education costs. These facilities shall:~~

- ~~(a) Meet the health and fire regulations for purposes of occupancy in its state.~~
- (a) When appropriate by law, the Department shall pay a daily tuition rate to each facility for allowable education costs. Education daily rates for facilities in Wyoming are calculated by the Department and based in part on audited financial statements and annual cost report surveys from each facility. The Department shall issue an approved daily rate on an annual basis to each facility on or before July 1.
- ~~(b) Provide an education program approved by its state agency governing the education of school-aged students.~~
- (b) To receive the approved daily rate from the Department, the facility shall submit to the Department:
 - (i) A completed “Monthly Billing for Actual Cost of Educational Services” form that serves as the monthly invoice the Department uses to pay for education costs; and
 - (ii) A signed court order for each court ordered student.
- ~~(c) Provide the Department an annual written report detailing the following information:~~
- (c) All claims must be submitted for payment within one year of services provided.
 - ~~(i) The needs, problems, situations or patterns best addressed by the facility’s education program.~~
 - (ii) Policies and procedures related to the admission of students.
 - ~~(iii) Criteria for discharge from the facility.~~

~~(iv) — Criteria for denial of admission to the facility.~~

~~(v) — A statement of the facility's policies and procedures for providing an education program to children with disabilities in need of special education and related services.~~

Section 8.6. Fiscal Management and Payment of Allowable Education Costs. Rate Setting Process.

~~(a) Private residential treatment facilities and BOCES shall:~~

~~(a) When appropriate under law, the Department shall pay a daily tuition rate to each provider facility to reimburse allowable education costs. The education daily tuition rates are calculated in part on the audited and reported annual financial statement and cost report survey from each facility.~~

~~(i) — Be eligible for payment for the education cost for each school-aged student court placed in the facility under the provisions of W.S. 21-13-315 (as amended) and/or W.S. 25-5-110© including the specific costs of education and related services.~~

~~(ii) — Meet the minimum standards for an approved education program and hold an approved status to be eligible for payment.~~

~~(iii) — Provide the Department annually with a written schedule of fees charged for the education program provided each student including the identification of the fee for each education related service the student receives. Only those fees approved by the Department shall be paid from public funds.~~

~~(iv) — Bill the Department for the allowable education costs for each school-aged student court placed in the facility under the provisions of W.S. 21-13-315 (as amended). Billing shall be submitted per student per month on a prescribed form. The billing shall identify each education or education related cost. Only those costs authorized by the Department shall be paid from public funds.~~

~~(a) A public school providing education programs and services to students residing in private residential treatment facilities, group homes and BOCES may count the student among its average daily membership.~~

~~(b) The Department shall establish audit procedures to verify the accuracy of bills submitted for payment and to ensure there are no payments of public funds made for costs not authorized by these rules.~~

(b) The Department shall calculate in-state education daily tuition rate of existing facilities using the following components:

(i) Each facility submits annual audited financial statement and cost report survey;

(ii) The data is normalized for each facility's cost report survey to adjust for differences in fiscal year vs. calendar year reporting;

(iii) Administrative costs are analyzed and a median allowable value is determined for each facility peer group;

(iv) Administrative costs exceeding the median are excluded;

(v) Allowable education costs will be divided by the actual reported educational days for each facility

(vi) The base tuition rate is adjusted for inflation to determine allowable daily tuition rate for each facility;

(vii) The Department, after reviewing and accepting the calculated allowable daily tuition rates, will notify facilities of their approved rates on or before July 1 of each school year.

(c) New in-state facilities commencing operations after the annual rate setting period ends will have a temporary rate set that is equal to the average of the respective Wyoming in-state peer group. This rate shall be recalculated after the facility participates for the first time in the annual rate setting process outlined in Section 6(a) of these rules.

(d) Out-of-state education daily tuition rates for both new and existing out-of-state facilities are determined as follows:

(i) If the state's governing education body sets a provider rate, the Department will pay that rate. It is the provider's responsibility to notify the Department of its state's rate and any changes to it; or

(ii) The facility rate will be the average of its Wyoming peer group rate. It will follow the procedure for determining in-state rates set forth in Section 6(a) of these rules.

(e) Related and supplemental services rates are paid at the current Medicaid

rates or at rates determined by the Department using the Bureau of Labor Statistics market data.

(f) The mileage rate for transportation reimbursement is that authorized by the Wyoming Governor.

(g) All claims must be submitted for payment within one (1) year of services provided.

Section 9.7. ~~Annual Verification. Failure to Comply.~~

~~Each year approved private residential treatment facilities and BOCES shall:~~

~~(a) Provide to the Department an annual report on a prescribed form as verification of compliance with these rules.~~

(a) The Department may withhold payment under the following circumstances:

(i) Failure to comply with this chapter;

(ii) Failure to provide documented communication and correspondence between the PRTF and placed student's resident school district within 72 hours of the student's admission; or

(iii) Failure to provide annual compliance documentation from the facility for two (2) consecutive years;

(b) The Department may resume withheld payments after receiving proof of compliance within ten (10) business days.

~~(e) Provide the Department a current financial statement audited by a certified public accountant to verify the facility is operating in accordance with generally accepted accounting principles.~~

(c) The Department may deny payment under the following circumstances:

(i) The facility loses its approval status from the DFS;

(ii) The facility loses its approval status from the WDH-Medicaid; or

(iii) The facility loses its approval status from the local or state

authorities where the facility is located.

~~(d) Be available for an annual on-site visit of its education program by a representative of the Department in order to verify the approved status of the facility and information submitted for review.~~

(d) If the Department denies payment, the facility may request a review of the denial, including a corrective action plan, within twenty (20) business days of denial;

(e) The Department shall review the facility's request and corrective action plan and:

(i) Approve the facility's request and action plan;

(ii) Conditionally approve the facility's request pending submission of a revised corrective action plan and any other documents the Department deems necessary; or

(iii) Disapprove the facility's request and corrective action plan.

(f) As part of its review, the Department may conduct an on-site visit of the facility.

(g) Department payments shall retroactively resume once the facility's request and its corrective action plan have been approved.

(h) Removal of approved facility status shall occur under the following circumstances:

(i) Following the Department's facility review finding concerns or deficiencies associated with the educational services provided to Wyoming placed students;

(ii) Loss of approved status from DFS and WDH-Medicaid;

(iii) Collected evidence of misconduct;

(iv) As a result of Section 7(a) or 7(c), the Department recommends revoking approved facility status; or

(v) The Department approves the program manager's

recommendation.

(vi) The Department shall send written notice of revocation to the facility within fifteen (15) business days of issuing the decision.

(vii) Within thirty (30) business days of the Department's revocation, the facility shall submit to the Department a written plan for terminating its program and transferring its residents to other approved facilities.

(i) Removing approved status or denying any payments shall constitute final agency action subject to judicial review.

~~Section 10. Evaluation Status.~~

~~(a) — Request for Review. Any private residential treatment facility or BOCES may request the Department review and analyze its education program for approval at any time but not to exceed one (1) review per year.~~

~~(b) Finding of Fact. The Department must review, and document, findings of fact and make recommendations to the Board concerning the compliance by private residential treatment facilities or BOCES with these rules.~~

~~(c) Conclusions by the Board. The Board shall draw conclusions based on the recommendations of the Department and classify private residential treatment facilities or BOCES subject to these rules into the following categories:~~

~~(i) — Approved. Indicates the education program is in compliance with these rules.~~

~~(ii) — Non-Approved. Indicates that a specific aspect(s) of the education program is not in compliance with these rules.~~

~~(d) Final Reports. The final report of the Department shall be made available to:~~

~~(i) — The private residential treatment facility or BOCES at issue.~~

~~(ii) — Judges involved in the placement process.~~

~~(iii) — The Wyoming Department of Family Services.~~

~~(iv) — Other appropriate agencies as determined by the Department.~~