

MEMORANDUM

TO: Superintendents, Special Education Directors, Business Managers and Principals
FROM: Special Education Finance
SUBJECT: Excess Costs and Contracted Services
DATE: June 7, 2019

As we prepare to transition special education funding from reimbursement to census-based funding, AOE has been developing policies, procedures and guidance for the field regarding allowable expenditures for special education.

1. As part of this process development, AOE has been scrutinizing costs which have previously been allowed, but are not consistent with State law and regulation. In the past, the AOE has reimbursed LEAs that use contractors to provide special education services to students. SBE Rule 2366.2 Instructional Services include “Contracted services to provide special education instruction to students with disabilities” if required by a student’s IEP is an allowable expenditure. However, using contracted services where a student’s whole education program is located off-site at a non-approved entity is not an allowable expenditure for special education.
2. An appropriate education provided to a student is provided by the LEA in-house or off-site and under Vermont law that can only be paid for if the off-site location is a public school, approved independent school, tutorial approved by the State Board or an approved education program. Tuition may not be paid to an entity that is not approved by the State Board of Education to accept tuition.
3. One area of concern going forward with Act 173 for both the AOE and the field is excess costs.
4. A review of current LEA requests for reimbursement submitted on Worksheet B and survey results¹ revealed a significant deviation from State law and regulation. AOE has discovered the following:
 - i. Students being educated at a non-approved private business/entity (off-site) for full school days which is not an allowable special education cost;
 - ii. Transportation costs to non-approved private business/entity (off-site) where they receive their educational program is not a reimbursable special education cost;
 - iii. Using contracted services in lieu of paying tuition to a public or approved independent school, State Board approved tutorial or approved education program is not a reimbursable special education cost;
5. Private business/non-approved entities are not regulated by the State Board or supervised by the LEA directly and there is no mechanism or process for assuring compliance with general education requirements, occupancy, health, safety and

¹ Special Education Finance Team’s out-of-district placement survey with 39 of 53 SU/SD (73%) responding.

- fire, or minimum standards for equity and educational quality (non-discrimination, HHB, Rule 4500, Section 504, discipline and due process).
6. LEAs have been using contracted services in lieu of paying tuition to a public school, approved independent school or approved tutorial to provide a student's whole education program off-site which is an inappropriate use of public funds in lieu of tuition.
 7. Beginning with the 2019-2020 school year, AOE will no longer reimburse LEAs for contracted services in lieu of payment of tuition to a legally-permissible entity if the student's education will be located off-site.
 8. AOE acknowledges there may be situations where contracted services may be necessary for students including behavioral consultation, observation, support, etc. However, the intent of this change in practice is to align procedures with State law prohibiting the payment of tuition from public funds to a location that is not a public school, approved independent school or a State Board approved tutorial.
 9. LEAs may continue to use contracted services on-site (bringing the contractor to the LEA) unless exceptional circumstances are present and the LEA obtains prior approval from AOE.
 10. Exceptional circumstances could include but is not limited to:
 - i. a student who requires 2:1 or greater support for aggression (extreme violence) or physical limitation or medical fragility and is determined by the IEP team to unsafe around other students, faculty and staff and requires the most restrictive environment other than hospitalization or residential facility;
 - ii. the LEA has exhausted all other placement and location options for the student;
 - iii. the LEA has received a student recently discharged from hospitalization or residential facility and is undergoing review of program options (short-term use of contracted services);
 - iv. the LEA has sought technical assistance from AOE on a case-by-case basis;
 11. Private businesses are not approved to provide general education or special education to students with disabilities and an LEA may not substitute a contracted service provider when the student's placement requires an alternative school environment. The student must be placed in an approved location (public school, approved independent school, tutorial, residential or therapeutic program approved by the Vermont State Board or state (other than Vermont) where school is located.)
 12. LEAs may submit a request for waiver of this memo's restrictions to the Secretary of Education.
 13. For general questions, please contact, Clare O'Shaughnessy, Staff Attorney; Alena Berube, Special Education Finance Manager; or State Director of Special Education, Jacqui Kelleher; for residential and state-placed students, Alicia Hanrahan, Education Programs Manager/Interagency Coordinator.

Applicable Law

1. 16 VSA §828 Tuition to approved schools provides:

A school district shall not pay the tuition of a student except to a public school, approved independent school, an independent school meeting education quality standards, a tutorial program approved by the State Board, an approved education program, or an independent school in another state or country approved under the laws of that state or country...

2. State Board Special Education Rule 2224.2 Tuition for Independent Schools provides:

Tuition shall not be paid from public funds to any independent elementary or secondary school in Vermont for any Vermont student who has been determined eligible for special education unless: (a) the school is approved for special education purposes pursuant to Rule 2228; (b) there is an order from a court or from a due process hearing pursuant to Rule 2365.1.6 or (c) the Secretary has approved an exception for a placement in an independent school pursuant to Rule 2228.2(2).

3. By law, 16 VSA 826(c) Excess special education costs incurred by a supervisory union in providing special education services to a student beyond those covered by tuition may be charged to the student's supervisory union for the district of residence. However, only actual costs or actual proportionate costs attributable to the student may be charged.
4. By Rule, Excess Costs are limited to allowable special education costs for services not covered by general education tuition or special education tuition. SBE Rule 2366.6.4.