
MEMORANDUM

TO: Superintendents, Independent School Heads and Special Education Directors

FROM: Interim Secretary of Education, Zoie Saunders, M.Ed.

SUBJECT: Tuition Compliance

DATE: July 29, 2024

Purpose

In conjunction with the transition from a special education reimbursement model to the census-based funding model, the Agency of Education (AOE) has reviewed existing policies, procedures, and guidance for the field regarding allowable tuition reimbursement practices at independent schools approved to receive public funding.

As part of the Agency's on-going efforts to ensure alignment with statutory and State Board of Education requirements, it has identified past practices that are out of compliance with [Independent School Rule Series 2200](#), and with existing tuition requirements under [16 V.S.A §2973](#). These tuition concerns relate specifically to the practice of enrolling students with an Individual Education Plan (IEP) in an independent school approved to receive public funding. This memo will serve to clarify specific requirements for allowable tuition rate practices and excess costs agreements.

Background

Before implementation of the new Independent School Rule Series 2200, some of Vermont's historic academies, and approved independent schools, previously referred to as general education approved schools, were granted permission to apply for and receive special education specific tuition rates for IEP students only.

This practice was formerly implemented by the AOE in response to requests from tuition paying school districts seeking an appropriate level of services for students who receive special education in an approved independent school. The Agency is correcting its error by aligning tuition rate practices in compliance with statute and Rule Series 2200.



Tuition Requirements & Written Agreement Practices

Under the State Board of Education rules, effective July 1, 2023 (and again on July 1, 2024) and Act 173, an approved independent school will enroll a student with an IEP, and in collaboration with the student's LEA, provide special education services as indicated in the student's IEP. Starting in the 2024- 2025 school year independent schools that are approved to receive public funding must comply with tuition rate requirements under [Rule 2228.1](#), and 16 V.S.A. § 2973.

Only therapeutic approved independent schools are permitted to charge predetermined special education tuition rates. These rates are set by the Agency of Education and outlined in 16 V.S.A. § 2973(b)(2)(C):

“The Secretary of Education shall set. . . the maximum rates to be paid by the Agency and supervisory unions or school districts to independent schools that limit enrollment to students who are on an IEP or a plan under [Section 504].”

For all other approved independent schools, § 2973 only permits the school to bill the student's district of residence for excess costs incurred by the independent school for services actually provided to the particular student. There is no authority for the independent school to establish predetermined rates to be charged for any student receiving special education services. An independent school that incurs costs exceeding annual average announced tuition (AAT) for services to a student, may bill the district according to the written agreement negotiated between the student's district of residence and the independent school. To assist both LEAs and independent schools with excess cost contracting, an annual direct cost report will be posted to the Agency of Education's Independent School webpage, beginning with the 2025-2026 school year.

Beginning with the 2024-2025 school year, districts that pay tuition for students with an IEP/504 Plan in independent schools, approved to receive public funding, will pay the AAT rate published annually by the Agency of Education. The current report may be accessed at: [AATP FY25](#). Any additional costs required to ensure an IEP student's access to free appropriate public education must be negotiated between the independent school and the enrolling school district through excess cost contracting pursuant to 16 V.S.A §2973 and Independent School Rules [2231.1](#) (instructional costs) and [2231.2](#) (non-instructional costs).

Official special education tuition rate letters previously issued by the AOE for the 2024–2025 school year, to independent schools approved to receive public money, are no longer authorized for use during enrollment contracting with a tuition district, pursuant to statutory and State Board Rule Series 2200.

Additional legal authority regarding written agreements for IEP students at an Independent School approved to receive public funding are listed on page three of this

document. Please contact J. Deborah Ormsbee with questions or concerns regarding tuition rate requirements at deborah.ormsbee@vermont.gov or 802-828-1226.

Excess Cost Agreement Requirements

Effective July 1, 2024:

2228.1 Tuition for Independent Schools in Vermont

...Tuition shall not be paid from public funds to any independent elementary or secondary school in Vermont unless the school satisfies the requirements in SBE Rule 2226 (Application), SBE Rule 2227 (Approval), and SBE Rule 2229 (Approval to Receive Public Tuition, Special Education Tuition) ...

2231.1 Agreement as to Costs (Written Agreements)

...(c) An approved independent school that enrolls a student with an IEP pursuant to Rule 2229.1 may bill the responsible LEA for the excess special education costs beyond those covered by general tuition. Reimbursement of the excess costs shall be based on the direct-cost rates approved by the Secretary for services actually provided to the student consistent with the Agency of Education Technical Manual for special education cost accounting...

2231.2 Agreement as to Non-Instructional Services.

In order to obtain approval to receive public tuition, an independent school shall assure the Board that, within thirty days of enrolling a child with an IEP, the school will enter into a written agreement with the sending LEA or other responsible agency as to the division of responsibility for performance of non-instructional services, including compliance with special education procedural requirements.