

This document is submitted upon request of the State Board on behalf of the Census-Based Funding Advisory Group. This summary is meant to capture the Advisory Group’s commentary on AOE proposed Rule Series 1300, inclusive of discussion held at the February 3rd Advisory Group Meeting. Please consider this as the formal adopted input of the Group.

Submitted by Meagan Roy, Ed.D., Chair

Rule Number	AOE Draft	AG Suggestion (As presented to SBE in December, 2019)	AOE Response	Advisory Group Commentary (As adopted at 2/3/20 meeting)
Advisory Group Proposals re Rule Series 1300				
1303 (Definitions, Local Education Agency (LEA))	“Local Education Agency (LEA): as that term is defined in 20 U.S.C. § 7801(26), means the supervisory union or supervisory district.”	Correct the citation to U.S. Code by replacing “(26)” with “(30).”	Agree.	N/A
1303 (Definitions, Special Education Services)	“Special Education Services: means. . . This definition is intended to be consistent with the term “Special Education Services” as used in SBE Rule 2360.2.12.”	Add citation to Code of Federal Regulations by adding “ <u>and 34 C.F.R. 300.39.</u> ”	Agree.	N/A
1303 (Definitions, Student)	“Student: means a person age three through age twenty-one.”	None.	In response to comments from Vermont Legal Aid, AOE is suggesting a further clarification that students are entitled to services through the end of their twenty-	The Advisory Group agrees with this Agency counterproposal because it uses the language

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			<p>first year, or in other words, until their twenty-second birthday. Accordingly, “Student: means a person age three through age twenty-one, <u>inclusive.</u>”</p>	<p>included in the Federal regulation</p>
<p>1304.1 (Use of IDEA Part B, General Rule) <i>and</i> 1307 (Documenting Maintenance of Effort) <i>*Agency commentary and AG proposal are the same for these items; this table merges the commentary for these two items</i></p>	<p>AOE draft directs the Agency to maintain “a Technical Manual for Use and Accounting of IDEA Part-B Entitlement Grants.” It is required to “list the common services that are deemed to be consistent with the excess cost rule in 34 CFR 300.16.” It must be consistent with and updated according to OSEP guidance.</p>	<p>New section: “(d) <u>The AOE shall seek input from and consult with stakeholders, including school districts, and the member organizations of the CBFAG, prior to adopting the guidance referred to in (c) above, including posting proposed guidance on its website, and providing the public with an opportunity for comment before the guidance is finalized. The AOE shall make meaningful efforts to address the public comments in its final draft.</u>”</p>	<p>The AOE will continue the practice of conferring with knowledgeable stakeholders on draft guidance, whether this language is adopted or not.</p> <p>The AG-proposed language has two problems, which the AOE-proposed language, below, addresses, while keeping the intent of mandating public comment on draft guidance. The Agency is happy to have the assistance of stakeholder comment on draft guidance.</p> <p>The first issue raised in the AG proposal is with whom the AOE will consult on draft guidance. The AG-proposed language requires AOE to seek input from all organizations represented on the AG. The Agency has general concerns with codifying the rights of interest and lobbying groups to influence Agency operations. These organizations have the independent means to advocate for their desired outcomes. The Agency</p>	<p>The Advisory Group discussed the Agency’s comments and proposed language at length. The Group continues to believe it is essential that stakeholders have an opportunity to comment on guidance. The Agency provided examples of how various stakeholders could be notified that guidance is being developed, in addition to posting on their website as described in this language: could include, but is not limited to: submission in the Weekly Field Memo; direct email to targeted organizations; submitted to the educational organizations for discussion at their meetings.</p> <p>The Advisory Group recommends extending the time for comment from 15 to 30 days, and the Agency agreed to this</p>

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			<p>is interested in preserving the right of school districts, supervisory unions and the public to be heard as well.</p> <p>Next, given the highly operational-directed nature of this particular guidance on the use and accounting of IDEA-B funds, not all member organizations will have expertise or experience to offer. Finally, most organizations on the AG are not familiar with and do not interact with the accounting procedures that will make up the content of the Technical Manual for Use and Accounting of IDEA Part-B Entitlement Grants. Typically, the Agency would consult with business managers, superintendents and special education administrators on this Technical Manual.</p> <p>The second issue is that the last sentence in the proposed paragraph is subjective (“The AOE shall make meaningful efforts to address the public comments in its final draft.”) The Agency desires clear, objective standards by which the public can hold us accountable.</p>	<p>recommendation. Therefore, the joint proposed language is:</p> <p><u>“(c)(1) Before publishing the technical manual required by subsection (c), the Agency shall post a draft manual on the Agency website for 30 days and allow public comment. Before the Technical Manual becomes effective, the Agency shall publish all public comment received and the Agency’s written response(s).”</u></p>

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			<p>The Agency anticipates, based on more than a year of experience working with the AG on the funding rules, that the member organizations of the AG will frequently disagree. In the event of disagreement, the AOE will be unable to address competing concerns within the guidance, but will have to choose the best approach. On this issue, the AOE language is preferable, because it is objective and clear.</p> <p>The Agency also suggests organizing the language as section (c) subsection (1) for reader assistance.</p> <p>Accordingly, the AOE proposes a new section to read:</p> <p><u>“(c)(1) Before publishing the technical manual required by subsection (c), the Agency shall post a draft manual on the Agency website for 15 days and allow public comment. Before the Technical Manual becomes effective, the Agency shall publish all public comment received and the Agency’s written response(s).”</u></p>	

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1307 (Documenting Maintenance of Effort)	“(b) Instructional behavioral, and other academic/non-academic supports that are provided to students with and without disabilities, so long as the services provided are articulated in an eligible student’s IEP; or”	“(b) Instructional, behavioral, and other academic/non-academic supports that are provided to students with and without disabilities, <u>provided in a regular class or other education-related setting</u> , so long as the services provided <u>to the eligible and non-eligible students</u> are articulated in an eligible student’s IEP; or”	This language is surplus and does not add clarity. The terms “regular class” and “other education-related setting” are not defined terms in our regulations. Their use is an unnecessary ambiguity. The original language is service-specific, not location-specific. Adding in reference to location complicates the issue.	The Advisory Group acknowledged that this language was originally proposed in order to ensure there would be flexibility to provide services across settings and in groups with other, non-eligible students. Upon further discussion, the Advisory Group believes the Agency’s original language is sufficient: “(b) Instructional behavioral, and other academic/non-academic supports that are provided to students with and without disabilities, so long as the services provided are articulated in an eligible student’s IEP; or”
1307 (Documenting Maintenance of Effort)	“(c) Non-student-specific expenditures reasonably related to the provision of special education services. Non-student-specific expenditures include but are not limited to	“Non-student-specific expenditures reasonably related to the provision of special education services. Non-student-specific expenditures include but are not limited to	These proposed changes represent a misunderstanding of the difference between rules for the use of funds and rules for documenting an LEA’s maintenance of effort (MOE). The cited regulation at 34 C.F.R. 208 dictates several permissive uses of funds beyond the excess cost rule (34 C.F.R. 300.16). Those permissive uses are covered in	The Advisory Group is comfortable with the Agency’s original language: “(c) Non-student-specific expenditures reasonably related to the provision of special education services.

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	<p>child find, special education administration costs, and costs of software used to maintain special education files. The Agency of Education shall maintain a Technical Manual for Documenting Maintenance of Effort under 34 C.F.R. § 300.203. The Technical Manual shall list the common services that are deemed to be reasonably related to the provision of special education services under (c), above. An expenditure not included in the Technical Manual may be allowed on a case-by-case basis if written prior approval is granted by the Agency.”</p>	<p>child find, special education administration costs, <u>including administrative case management</u>, and costs of software used to maintain special education files. The Agency of Education shall maintain a Technical Manual for Documenting Maintenance of Effort under 34 C.F.R. § 300.203 and 300.208. The Technical Manual shall list the common services that are deemed to be reasonably related to the provision of special education services under (c), above. An expenditure not included in the Technical Manual may be allowed on a case-</p>	<p>Rule 1304 (use of IDEA funds). MOE, on the other hand, does not dictate how an LEA expends state or federal funds, but is merely an accounting, for compliance purposes, of how funds are budgeted to be expended and of how they actually are expended.</p> <p>The ability to use the federal funds for this purpose will be explained in the Technical Manual on Use and Accounting of IDEA Part-B Entitlement Grants. The manner in which an LEA should include funds spent on administrative case management will be explained in the Technical Manual for Documenting Maintenance of Effort.</p>	<p>Non-student-specific expenditures include but are not limited to child find, special education administration costs, and costs of software used to maintain special education files. The Agency of Education shall maintain a Technical Manual for Documenting Maintenance of Effort under 34 C.F.R. § 300.203. The Technical Manual shall list the common services that are deemed to be reasonably related to the provision of special education services under (c), above. An expenditure not included in the Technical Manual may be allowed on a case-by-case basis if written prior approval is granted by the Agency.”</p>

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		by-case basis if written prior approval is granted by the Agency.”		
1307 (Documenting Maintenance of Effort)	See above regarding technical guidance on documenting MOE.	New section: “(d) The AOE shall seek input from and consult with stakeholders, including school districts, and the member organizations of the CBFAG, prior to adopting the guidance referred to in (c) above, including posting proposed guidance on its website, and providing the public with an opportunity for comment before the guidance is finalized. The AOE shall make meaningful efforts to address the public comments in its final draft. “ _	See commentary above regarding stakeholder input	See commentary above: The Advisory Group recommends extending the time for comment from 15 to 30 days, and the Agency agreed to this recommendation. Therefore, the joint proposed language is: <u>“(c)(1) Before publishing the technical manual required by subsection (c), the Agency shall post a draft manual on the Agency website for 30 days and allow public comment. Before the Technical Manual becomes effective, the Agency shall publish all public comment received and the Agency’s written response(s).”</u>

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<p>1307 (Documenting Maintenance of Effort)</p>		<p>New section. <u>“(e) An IEP team decision to place an eligible special education student in an approved independent school that limits enrollment to students who are on an individualized education program, or a plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to a written agreement between the local education agency and the school. In such a case, all costs associated with that placement shall be considered allowable and may count toward maintenance of effort.”</u></p>	<p>First, this proposed language represents a misunderstanding between the concepts of MOE and allowability of costs. The language states “all costs associated with that placement shall be considered allowable and may count toward maintenance of effort.” The proposed rules do not use the general concept of “allowable costs,” which is a concept in our current funding rules that is being struck.</p> <p>Second, the services described in the proposed language are already covered by section (a) (“Providing special education or related services and/or supplementary aids and services that are articulated in a student’s IEP;”</p> <p>Third, the language seeks to re-settle an old score. In June memos that have since been withdrawn, the AOE sought to enforce a current special education rule that was not being followed by many SUs. The current rule that is motivating the inclusion of this language is already being struck by the proposed Series 1300. (See, SBE Rule 2366.2.1(g) on page 172 of Rule Series 2360).</p>	<p>The Advisory Group had its most substantive discussion regarding this issue. The SBE will recall that the Advisory Group proposed its language to ensure that tuition costs associated with an IEP placement would be both eligible to be counted under MOE <u>and</u> eligible for extraordinary cost reimbursement. It is the opinion of the Group that if LEAs have reason to believe that the full cost of tuition may not be eligible for extraordinary costs and/or MOE, then it may limit an IEP team’s decision making regarding placement. This concern was originally prompted by the Agency’s June Memos, which were the Agency’s attempt to provide clarity regarding existing Rule.</p> <p>The Agency believes that because the Rule the AOE was attempting to implement with the memos has been removed by the new rules, there is no need for what</p>

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			<p>The AOE does not support including surplus language that does not add clarity or accomplish a discrete purpose within the rules. Including such language invites confusion in the future, when contexts are changed and the original purpose behind the language is not widely known or remembered.</p> <p>Finally, the proposed language was not considered during the deliberations among AG members and AOE representatives that bore good progress as a result of the FEG report. It is worth recalling that the better part of those deliberations work was grounded in the logic that we should adhere more closely to federal regulations. However, this concept is not found in federal rules or guidance on MOE. The Agency views this as an independent school issue that should be addressed in the independent school rules instead.</p>	<p>they describe as “surplus language” – the tuition for a placement referenced in the IEP would already be documentable for MOE and extraordinary costs.</p> <p>The Advisory Group believes the overall issue of rate setting is one that will need to be addressed as part of the development of Series 2200 Rules. However, it was also acknowledged that because these Rules govern what costs an LEA can attribute to MOE, the language may be appropriately placed here in the 2360 series as well. There was discussion by the Group as to whether the recommendation would be to:</p> <ol style="list-style-type: none"> 1. Concur with the Agency’s recommendation to strike (e), knowing that it will be addressed in the 2200 series 2. Keep the Advisory Group’s original recommendation in the initial rules initiated, knowing that the language could be amended or removed later in the process

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				<p>after further clarification is sought</p> <p>3. Amend the Advisory Group’s proposed language to reference “tuition” rather than “all costs associated with placement”</p> <p>The Group did not come to consensus regarding the options described above, and several members were undecided about adopting any option.</p> <p>Because there was not consensus, the Group believes it would be prudent for the SBE to <u>keep</u> the Group’s original language. The Group believes that there is room to modify the language and would like additional time to consult with the Federal Education Group regarding the language. The Group would like to return to the SBE during the public comment period with more specific language recommendations and/or with a recommendation to concur with</p>

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				the Agency’s proposal and strike (e).
Rule 1310.2 (Collaborative Program Accounting)	“The accounting for each collaborative program shall be in accordance with the Handbook for Financial Accounting of Vermont School Systems and: (a) An enterprise fund as defined in the Handbook shall be established to account for the funds for each collaborative program;”	None.	This language refers to an existing document that will be replaced by both the Technical Manual for Use and Accounting of IDEA Part-B Entitlement Grants and the Technical Manual for Documenting Maintenance of Effort. The AOE proposes the following change: “The accounting for each collaborative program shall be in accordance with the Handbook for Financial Accounting of Vermont School Systems <u>technical guidance issued by the Agency</u> and: (a) An enterprise fund as defined in the Handbook <u>technical guidance</u> shall be established to account for the funds for each collaborative program;”	The Advisory Group did not have commentary on the original language and therefore does not have additional commentary here.
1310.3 (Non-collaborative tuition)	“(a) An LEA may charge tuition under 16 V.S.A. § 826(b) for providing special education services. However, any such bill for tuition shall itemize the amount of the bill	None.	To reflect the AOE’s withdrawal of the requirement that tuition must be separated between general education charges and special education charges (June memos), the reference here to such a division should be deleted. “(a) An LEA may charge tuition under 16 V.S.A. § 826(b) for providing special	The Advisory Group did not have commentary on the original language and therefore does not have additional commentary here.

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	<p>attributed to general education, special education tuition, and excess costs . . .”</p>		<p>education services. However, any such bill for tuition shall itemize the amount of the bill attributed to general education, special education tuition, and excess costs.”</p>	