

MEMORANDUM

EXHIBIT

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TO: Business Managers
Special Education Directors

FROM: Brad James

SUBJECT: The Mill School and additional billing for 2019-2020 school year

DATE: October 27, 2020

The Mill School in Winooski appealed their rate for the 2019-2020 school year. A settlement was reached between the Mill School and AOE in September 2020 to increase the rate. The Mill School has subsequently billed school districts for the difference between the original rate and the newer increased rate.

A number of school districts that had students at the Mill School for the 2019-2020 school year have asked the following question:

If the district was to pay the additional money the Mill School claims they are owed for services provided *in* the 2019-2020 school year, would those costs be eligible for special education reimbursement?

The answer is, no, those costs would not be eligible for special education reimbursement.

The contracts in question with the Mill School were for a school year and expired on June 30, 2020. There was no contract in place to cover the 2019-2020 school year at the time the rate change was decided. Both the State Board of Education rules and the Technical Guide for Special Education Cost Documentation require a contract to be in place for costs to be considered eligible costs for reimbursement. Key statements from both are underlined and highlighted in red font. State Board rules:

State of Vermont Special Education Rules, Adopted June 1, 2013

2366 State Funding for Special Education

2366.2.1 Instructional Services

Except as provided under (1) and (2) in (a) below, expenditures for instructional services shall be allowable if required by a student's IEP. The allowable special education costs include:

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- (c) Contracted services to provide special education instruction to students with disabilities;

2366.2.5 Costs of Placement in Approved Independent Schools

- (b) Costs approved by the State Board of Education at an independent school are only allowable if

covered by a written agreement pursuant to Rule 2228.4.1 and at a rate approved under Rule 2228.8 or for an out of state placement, the rates approved under that state's approval system.

Section 2228 Special Education Approval of Independent Schools.

2228.4 Written Agreements Required

2228.4.1 Agreement as to Costs

In order to obtain special education approval, an independent school shall assure the State Board of Education that prior to enrolling a publicly-placed child who is served pursuant to an TEP, it will enter into a written agreement with the sending responsible agency that outlines tuition, room, board and other costs associated with the child's attendance. For children on an IEP who are placed by a state agency or a designated community mental health agency, or any other agency defined by the Commissioner, in accordance with 16 V.S.A. §2948, the agreement shall be with the Commissioner of Education. In the instance of an emergency placement, such provisions may be agreed upon within thirty days of the child's enrollment.

Technical Guide for Special Education Cost Documentation:

Technical Guide for Special Education Cost Documentation, November 2014

II. Invoices

B. Contracted Services Expenditure Documentation

For contracted services, the documentation is a contract and the invoices submitted by the contractor. The contract is critical in clearly stating what service will be provided and how the payment for the service will be calculated. It is very important that school districts develop a contract that provides them with the documentation needed for payment at a reasonable rate. School districts must consider whether a contract specifically states what service will be provided, including the qualifications of the service provider, before accepting a proposed contract. Fixed price service contracts must be reviewed very carefully to ensure that detailed documentation of the services performed under the contract are provided to document what portion of the costs can legitimately be claimed as K-12 eligible *cost*.

Vermont Agency of Education

Technical Guide for Special Education Cost Documentation (November, 2014) - pages 27 & 28

Please let me know if you have questions.