

Rate-Setting Working Group: Consensus Strike-All Amendment for Rule 2232

Note: The State Board voted provisional approval of set of [amendments to Rule 2200 on March 17, 2021](#). The following text is proposed to replace one section of those proposed amendments, Rule 2232 (current Rule 2228.8), in its entirety.

2232 Rate Approval for Therapeutic Approved Independent Schools

1. The Secretary shall set, after consultation with independent schools, the maximum tuition rate to be paid by the Agency and supervisory unions or school districts to therapeutic independent schools. The rate for each therapeutic independent school shall be no more than the costs that are reasonably related to the level of services provided by the school.
2. If a therapeutic independent school does not submit an application for rate approval by November 15, the most recent approved rate will be in effect for the following school year. The Secretary may review an approved rate at any time. An approved rate may be reviewed at any time on request of the school based on extraordinary circumstances. Therapeutic schools will supply information as requested by the Secretary.
3. A therapeutic school's most recently approved rate shall be adjusted annually by the Agency according to the National Income and Product Accounts (NIPA) Implicit Price Deflator for State and Local Government Consumption Expenditures and Gross Investment as reported by the U.S. Department of Commerce, Bureau of Economic Analysis. The Agency shall announce the inflation rate to allow for sufficient time for submission of an application for approval of a new rate under subsection (4) in the event the therapeutic school determines such an application is needed. The annually inflated rate shall become the most recently approved rate.
4. A therapeutic school requesting a new rate shall submit an application for approval of a new rate to the Agency by November 15 for tuition, related services and room and board based upon the actual or anticipated costs that are reasonably related to providing educational services. Schools that also receive rates from the Agency of Human Services shall submit an application for approval of a new rate to the Agency by May 1. Reported costs shall be only those that are net of other available restricted revenue sources. To demonstrate that the rate requested by the therapeutic school meets this standard, the therapeutic school shall submit to the Agency the following:
 - a. Costs for each of the following categories, reported at the general ledger account description level, submitted in accordance with the *Generally Accepted Accounting Principles* published by the Financial Accounting Standards Board:
 - i. Salaries for all employees and full-time equivalents as applicable
 - ii. Program-related Contractual Services
 - iii. Operations-related Contractual Services
 - iv. General Operating

- v. Program
 - vi. Travel/Transportation
 - vii. Building – Direct
 - viii. Building – Allocated
 - ix. Admin I – Allocated
 - x. Admin II – Allocated
 - xi. Fringe – Allocated
 - b. The school’s proposed operational capacity, which shall be supported by a narrative that describes how the proposal reflects relevant circumstances including three-year historic enrollment, student acuity or changes in student acuity, availability of faculty and staff, physical space, anticipated demand for placements or change in anticipated demand for placements, and other considerations.
5. A therapeutic school submitting an application for rate approval for the first time may submit the application at any time pursuant to this subsection.
6. If the Secretary determines an application for new rate approval submitted under subsection (4) to be incomplete, the therapeutic school shall have 10 working days to complete the application following notice that its application is incomplete.
7. The Secretary shall evaluate each element of the application for new rate approval submitted pursuant to subsection (4) and determine whether the school has demonstrated that the cost associated with each element is reasonably related to the level of services provided by the school. In determining whether a cost is reasonably related to the level of services, the Secretary will consider the following: direct-cost rates approved by the Secretary pursuant to 16 V.S.A. 2973(b), costs approved for other therapeutic schools, regional differences in costs, demonstrated difficulty filling certified or licensed positions, tenure of faculty and staff, student acuity, educational model, students’ need for stability in educational placement, and other aspects of program and student need documented in the application. Prior to conducting cost comparisons with applicant data, the Secretary shall:
 - a. establish standards for developing and applying a database of comparable information to be utilized in rate determinations;
 - b. annually update the database of comparable information; and
 - c. implement a procedure to document and retain the process and basis for each determination, including the comparable data applied. The Secretary shall publish on the Agency's web site the standards and procedures required in subsection (a).
8. The Secretary shall determine the rate on a per-student basis. The total costs determined in subsection (7) shall be divided by the school’s approved operational capacity, which shall be determined by the Secretary from the information provided in subsection (4)(b).
9. The Secretary shall notify a therapeutic school that has submitted an application for new rate approval pursuant to subsection (3) of the final rate approval by January 15.

10. After the Secretary approves a rate for a therapeutic school, the school shall not exceed that rate until such time as a new tuition rate is approved by the Secretary. In the case of a service required by a student's IEP that is not included within the school's approved rate, the LEA shall decide whether to contract for the service with the therapeutic school. The LEA shall provide notice of its decision to the Secretary within 5 days.

11. A therapeutic school that is not satisfied with the final rate may request reconsideration by the Secretary. Requests for reconsideration may be made in writing to the Secretary within 30 days of the final rate approval. Upon receiving the Secretary's answer regarding reconsideration, if the therapeutic school is not satisfied, it may file an appeal with the State Board of Education in accordance with the requirements of Rule 1230 et seq. Alternatively, a therapeutic school may appeal to the State Board pursuant to Rule 1230 et seq. without first seeking reconsideration by the Secretary. The State Board's determination of the appeal shall be final.