

Item O Part 1. This is a working draft of the Rate Setting Rule Working Group. Language that is not associated with a comment in the margin is provisionally agreed to. Areas of disagreement are explained with a position from each side in a comment bubble. See also – side by side document “Item O Part 2” which details the elements that are agreed in concept/provisionally (green) and not agreed to (orange).

2232 Rate Approval

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 (Designated Agency organizations and CERT program) shall submit an application for approval of a new rate to the Agency by May 1. 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, submitted in accordance with the *Generally Accepted Accounting Principles* published by the Financial Accounting Standards Board and the Vermont Education Finance Handbook:
 - i. Salaries for all employees, and full-time equivalents as applicable
 - ii. Clinical Contractual, broken down by service type
 - iii. Contractual Services, broken down on a contract-by-contract basis
 - iv. General Operating (needs definition)
 - v. Program (needs definition)
 - vi. Travel/transport, broken down by expense
 - vii. Building-Direct, broken down by expense

Commented [SE1]: Therapeutic Schools Stakeholders:
Regulatory Role

The Agency’s rate-approval authority exists in tension with requirements on all independent schools to maintain robust internal governance programs and plans. Rate approval must be sufficient to assure a fair costs-to-services balance while not allowing regulators’ opinions to override schools’ internal management responsibilities.

Commented [SE2]: AOE:
Regulatory Role

The statute requires AOE to review therapeutic schools’ costs and ensure that they do not exceed those costs that are reasonably related to the level of services provided to publicly placed students. AOE has a duty to LEAs and taxpayers to ensure that costs within a rate are only approved if they meet this standard. All costs approved by AOE are paid in full by LEAs who place students in therapeutic schools. The rate setting function prevents unreasonable costs from being passed on to taxpayers.

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- viii. Other non-operating (needs definition)
 - ix. Transportation (Allocated) (needs definition)
 - x. Building (Indirect Allocated) (needs definition)
 - xi. Program Support (Allocated) (needs definition)
 - xii. Admin I (Allocated) (needs definition)
 - xiii. Admin II (Allocated) (needs definition)
 - xiv. Fringe (Allocated), broken down by expense
- b. Projected enrollment.
 - c. Capacity, based on the school’s State Board of Education approval, as applicable.
 - d. Therapeutic schools shall not be required to provide to the Agency, nor shall the Agency consider, information related to funds received from sources other than special education funds.
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 (3) to be incomplete, the therapeutic school shall have 10 days to complete the application following notice that its application is incomplete.
 7. The Secretary shall evaluate the application for new rate approval submitted pursuant to subsection (4) and determine whether the requested rate is supported by actual or anticipated costs that are 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 compare the elements of the rate application to the direct-cost rates approved by the Secretary pursuant to 16 V.S.A. 2973(b). The Secretary may permit variations from the direct-cost rates in the case of demonstrated regional differences in costs or demonstrated difficulty filling certified or licensed positions.
 8. The Secretary shall determine the rate on a per-student basis. The total costs determined in subsection (7) shall be divided by 90% of the school’s capacity.
 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.
 - a. In the case of a service required by a student’s IEP that is not included within the school’s approved rate, the LEA may apply to the Secretary for a waiver of this provision. If the waiver is granted, the therapeutic school and the LEA may contract for the additional service to be provided to the student.

Commented [SE3]: Therapeutic Schools Stakeholders:
Cost Analysis

To enable the Agency to determine whether costs are reasonable, we propose therapeutic schools report their eligible costs in a standard audit format. This format allocates costs in a thirteen-category model including salaries, contracted services and clinical services.

Commented [SE4]: AOE:

Cost Analysis

The Agency needs a level of description for cost items that will confirm 1) the nature of the cost relative to educational services and 2) no duplication of reported costs. The costs of items not related to education should not be passed on to taxpayers. Example: the purchase of a personal car for an administrator that is not used to transport students.

Commented [SE5]: Therapeutic School Stakeholders:

Rate Basis

The statute speaks of costs matched to “the level of services,” meaning an actual level, not a maximum possible level. We propose a school’s projected enrollment is the most accurate value for the period of the rate application. Rates based on maximum capacity cause inequitable underfunding of schools experiencing periods of below-capacity enrollment, a not-infrequent situation.

Commented [SE6]: AOE:

Rate Basis

We propose that the total approved costs for the school should be divided by 90% of capacity, to generate a per-student cost that is then paid by each sending LEA on behalf of its student(s). Enrollment is not appropriate because it causes the costs of operating excess capacity within a school to be passed on to the taxpayers. An under-enrolled school should respond to a substantial change in need by downsizing. AOE proposes to use 90% of capacity in order to give schools a cushion, recognizing that a need for an additional placement might arise unexpectedly. The school also benefits from additional...

Commented [SE7]: AOE:

School Income

AOE objects to this provision. We need to ensure that costs included in a rate application are not also supported by revenue that is unknown to AOE. Example: Costs for upgrades to a library would be allowed, unless the school had received a private donation that paid for 100% of the...

Commented [SE8]: Therapeutic Schools Stakeholders:

School Income

The relevant statute (16 V.S.A. § 2973) speaks only of costs, not of revenue. It does not authorize the agency to review a therapeutic school’s non-public revenue such as donations or other privately-earned income. We propose a rule requiring schools to apply for a rate based only on costs net of other available revenue. Counting non-public funds in t...

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