

Payment of Special Education Personnel and Contracted Services During School Closure due to COVID-19

Background

The AOE received several requests from the field for guidance related to whether payment for personnel costs and other special education-related costs are eligible special education costs for reimbursement purposes.

Supervisory unions and supervisory districts (SU/SDs) are generally continuing to pay their special education personnel full salary, even though staff may not be working the same number of hours since the closure of schools due to the COVID-19 crisis and subsequent directives from the Governor. Due to the transition to remote learning, hours for professional and support staff have been reduced, with many support staff having their daily responsibilities changed.

The transition to remote learning has also impacted the delivery of contracted special education services. These impacts are highly fact-dependent, but generally involve the delivery of fewer services than contemplated in the provider's contract with the SU/SD.

Reimbursement for SU/SD Personnel Costs

State reimbursement for the salaries and benefits of special education staff are based on the time staff perform their special education responsibilities or related services required by an IEP or a settlement agreement. Time studies are required for all staff whose costs are reported as eligible for K-12 special education cost reimbursement.

Generally, the two required one-week time studies occur in September–October and January–February. An additional one-week period is required for staff working without regular schedules and for staff working as special education administration. Paraprofessionals and aides who have a significant change in schedule must also perform an additional one-week study any time a significant change occurs.

For SUs that have completed all their time studies, special education staff costs are considered allowable based on those studies. This means even if a staff member is not working a full day due to remote learning, the full cost can be used for special education reimbursement if the employee is being paid a full salary.

For SUs that have paraprofessionals that require a new time study due to significant job changes, the SUs can count those costs as eligible for reimbursement if the following conditions are met:

1. upon completion, time studies for staff with significant job changes are sent to AOE for review; and
2. staff costs would be eligible for reimbursement if school was in session and services were being provided under normal circumstances.

Contracted Services and Excess Costs Not Covered by Tuition

LEAs should be aware that federal CARES Act funds come with an obligation to “continue to pay employees and contractors to the greatest extent practicable based on the unique financial circumstances of the [LEA].” ([Section 18006](#), Division B, CARES Act) The AOE interprets this provision to mean that an LEA should continue to use and pay for those contracted services that were in place prior to the onset of the emergency, where feasible and where necessary to serve students. However, some services covered by existing contracts either cannot be delivered at all in the remote learning context, or cannot be delivered with the same frequency or duration. In these cases, unless a specific term in the contract provides otherwise, LEAs should refrain from paying for any services that the LEA knows were not delivered.

LEAs are required to continue tuition payment on behalf of students attending approved independent schools. Excess costs not covered by tuition should be paid according to the written agreement between the LEA and the independent school, in accordance with 16 VSA 826. Those costs are limited to “actual costs or actual proportionate costs attributable to the student.” As with contracted services, unless the written agreement between the LEA and the school provides otherwise, the LEA should refrain from paying for any services that the LEA knows were not delivered.

LEAs, contracted providers and approved independent schools should bear in mind that IEP teams may determine that it is appropriate to deliver some of these services to students at a later date, either as compensatory education services or extended school year services.