

**PROPOSED STATE RULES FOR SPECIAL EDUCATION FINANCE AND CENSUS-BASED FUNDING**

**1301 STATUTORY AUTHORITY**

**Federal Statutory Authority:**

Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400 et seq.)

**State Statutory Authority in accordance with 3 V.S.A. Chapter 25:**

16 V.S.A. §164(7)

16 V.S.A. Chapter 101

**1302 STATEMENT OF PURPOSE**

In 2018 the Vermont General Assembly enacted Act 173 with the intent to enhance the effectiveness, availability, and equity of services provided to all students who require additional support in Vermont’s school districts, and directed a shift to a census-based model of special education funding. The purposes of Act 173 are to: (1) enhance delivery of services, (2) shift the State from a reimbursement model to a census-based model, which will provide more flexibility in how the funding can be used, (3) align with the State’s policy priorities of serving students who require additional support across the general and special education service-delivery systems, (4) to facilitate exercise of entitlement to a free appropriate public education in the least restrictive environment appropriate for students eligible for an individual educational program under the IDEA and (5) to simplify administration.

These Rules are designed to:

- (a) guide implementation of a census-based model of funding for students who require additional support;
- (b) guide the provision of funds to supervisory unions and supervisory districts in a manner designed to enhance the effectiveness, availability, and equity of services provided to all students who require additional support, while ensuring the entitlement of eligible students with disabilities to a free appropriate public education in accordance with State and Federal law;
- (c) be implemented in a manner consistent with State and Federal statutes, regulations, and guidelines.

### **1303 DEFINITIONS**

Any terms used in these rules not defined below shall be consistent with the definitions found in State Board of Education (SBE) Rule 2361.1. For purposes of these rules, the following definitions apply:

Essential Early Education (EEE): as defined in 16 V.S.A. § 2956. EEE may also be referred to as Early Childhood Special Education (ECSE).

Extraordinary Expenditures: means an LEA's allowable special education expenditures that for any one student in a fiscal year exceed the extraordinary cost threshold as calculated under 16 V.S.A. § 2962(a)(2).

Individualized Education Program (IEP): means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with SBE Rule 2363.

Local Education Agency (LEA): as that term is defined in 20 U.S.C. § 7801(30), means the supervisory union or supervisory district.

Secretary: means the Secretary of the Vermont Agency of Education.

Special Education Services: means specially designed instruction, at no cost to the parent, to meet the unique needs of an eligible student with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions and in other settings and instruction in physical education. Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction to address the unique needs of the student that result from the student's disability and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the State that apply to all children. This definition is intended to be consistent with the term "Special Education Services" as used in SBE Rule 2360.2.12 and 34 C.F.R. 300.39.

State-placed Student: as defined in 16 V.S.A. § 11(a)(28).

Student: means a person age three through age twenty-one, inclusive.

For purposes of Rule Series 1300 only, "Child with a disability," "Student with a disability," and "Eligible student" shall refer to: a student who has been found eligible for special education and related services consistent with the process found in SBE Rules 2361 and 2362.

Student who requires additional support: as defined in 16 V.S.A. § 2942(8).

### **1304 USE OF IDEA PART B FUNDS:**

Per 2 C.F.R. 200, subpart E, uses of federal grant funds must be reasonable, allocable, and necessary. An LEA may use the funds received in the IDEA-B subgrant as indicated below.

#### **1304.1 General Rule (34 CFR § 300.202)**

- (a) Amounts provided to an LEA under IDEA Part B must be used only to pay the excess cost, as defined in 34 CFR § 300.16, of providing special education and related services to children with disabilities, consistent with 34 CFR § 300.202; and
- (b) Must be used to supplement State, local, and other Federal funds and not supplant those funds.
- (c) In order to assist LEAs in determining whether funds provided under IDEA Part B may be used for a specific activity, the Agency of Education shall maintain a Technical Manual for Use and Accounting of IDEA Part B Entitlement Grants. The Technical Manual shall list the common services that are deemed to be consistent with the excess cost rule in 34 CFR 300.16. The Technical Manual shall be based on and updated according to guidance from the United States Department of Education's Office of Special Education Programs (OSEP).
  - (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).

#### **1304.2 Coordinated Early Intervening Services (CEIS) (34 CFR § 300.226)**

- (a) An LEA may elect to use up to 15 percent of its total IDEA Part B allocation in any fiscal year to implement Coordinated Early Intervening Services (CEIS) to provide early intervening services for those students not yet identified as needing special education or related services, but who may need additional academic and behavioral supports to meet grade-level indicators. More specifically, these services should be targeted to PreKindergarten-12 (with a focus on PreKindergarten-3) students.
- (b) An LEA may be required to use 15 percent of its total IDEA Part B allocation in any fiscal year to implement CEIS if the LEA is found to have significant disproportionality based on ethnicity or race with respect to identification, placement, and disciplinary removals.

**1304.3 Schoolwide Programs Under Title I of the Elementary and Secondary Education Act (ESEA) (34 CFR § 300.206)**

An LEA may use funds received under IDEA Part B for any fiscal year to carry out a schoolwide program under section 1114 of the ESEA, in accordance with 34 CFR § 300.206.

**1305 USE OF STATE FUNDS**

**1305.1 Census Block Grant**

- (a) If an LEA is able to meet its ongoing service requirements under IDEA Part B and Vermont law, census-block funds may be invested in system structures or programs for students with and without disabilities requiring additional supports.
- (b) Notwithstanding subdivision (a) of this section, an LEA is responsible for complying with the maintenance of effort provisions in section 1306.

**1305.2 State-placed Reimbursement**

Pursuant to 16 V.S.A. 2950(a) the Secretary may approve any costs incurred in educating a State-placed student who is not eligible for special education that are incurred due to the special needs of the student.

**1305.3 Essential Early Education (EEE/ECSE)**

- (a) Essential Early Education (EEE/ECSE) grant funds shall be used to provide a free appropriate public education to all students three through five years of age within the LEA who are eligible for special education services.
- (b) Once an LEA has fulfilled its obligations under subsection (a) of this rule, EEE/ECSE grant funds may be used to provide:
  - (1) Child Find activities as specified to determine eligibility of a child who is younger than three years of age; or
  - (2) Services to students who are three through five years of age who have been identified as being at risk of school failure.
- (c) An LEA, at its discretion, may use EEE grant funds to support resident students enrolled in a public or private, prequalified, PreKindergarten education program located outside the LEA's

jurisdiction.

## **1306 MAINTENANCE OF EFFORT (MOE) (34 C.F.R. § 300.203)**

### **1306.1 Eligibility Standard**

(a) For purposes of establishing the LEA's eligibility for a federal award under IDEA Part B for a particular fiscal year, the Secretary must determine that the LEA budgets, for the education of students with disabilities, at least the same amount, from at least one of the following sources, as the LEA spent for that purpose from the same source for the most recent fiscal year for which information is available:

- (1) Local funds only;
- (2) The combination of State and local funds;
- (3) Local funds only on a per capita basis; or
- (4) The combination of State and local funds on a per capita basis.

(b) When determining the amount of funds that the LEA must budget to meet the requirement in paragraph (a) of this section, the LEA may take into consideration, to the extent the information is available, the exceptions and adjustment provided in 34 C.F.R. §§ 300.204 and 300.205 that the LEA:

- (1) Took in the intervening year or years between the most recent fiscal year for which information is available and the fiscal year for which the LEA is budgeting; and
- (2) Reasonably expects to take in the fiscal year for which the LEA is budgeting.

### **1306.2 Compliance Standard**

(a) Except as provided in 34 C.F.R. §§ 300.204 and 300.205, funds provided to an LEA under IDEA Part B must not be used to reduce the level of expenditures for the education of students with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year. An LEA meets this standard if it does not reduce the level of expenditures for the education of students with disabilities made by the LEA from at least one (1) of the following sources below the level of those expenditures from the same source for the preceding fiscal year, except as provided in 34 C.F.R. §§ 300.204 and 300.205:

- (1) Local funds only;
- (2) The combination of State and local funds;
- (3) Local funds only on a per capita basis; or
- (4) The combination of State and local funds on a per capita basis.

- (b) Expenditures made from funds provided by the Federal government for which the Secretary is required to account to the Federal government or for which the LEA is required to account to the Federal government directly or through the Secretary may not be considered in determining whether an LEA meets the standard in paragraph (a) this subsection.

### **1306.3 Subsequent Years Rule**

If an LEA fails to meet the requirements of MOE, the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required in the absence of that failure, not the LEA's reduced level of expenditures.

### **1306.4 Consequence of Failure to Maintain Effort**

If an LEA fails to maintain its level of expenditures for the education of student with disabilities in accordance with Rule 1306.2, the Agency of Education is liable in a recovery action under section 452 of the General Education Provisions Act (20 U.S.C. 1234a) to return to the Department of Education, using non-Federal funds, an amount equal to the amount by which the LEA failed to maintain its level of expenditures in that fiscal year, or the amount of the LEA's Part B subgrant in that fiscal year, whichever is lower.

### **1306.5 Exceptions to Maintenance of Effort (34 CFR § 300.204)**

Allowance may be made for the difference between the level of effort in the current fiscal year and the amount required to maintain effort for the following reasons:

- (a) The voluntary departure, by retirement or otherwise, or departure by just cause, of special education or related services personnel;
- (b) A decrease in the enrollment of students with disabilities;
- (c) The termination of the obligation of the LEA, consistent with this part, to provide a program of special education to a particular student with a disability that is an exceptionally costly program, as determined by the Secretary, because the student has left the jurisdiction of the LEA, has reached the age at which the obligation of the LEA to provide FAPE to the student has terminated, or no longer needs the program of special education;
- (d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities; and

- (e) The assumption of cost by the high cost fund operated by the Secretary under 34 C.F.R. 300.704(c).

### **1307 DOCUMENTING MAINTENANCE OF EFFORT**

When calculating the eligibility test of maintenance of effort, an LEA may include budgeted expenses that are attributable to the education of children with disabilities. When calculating the compliance test of maintenance of effort, an LEA may include actual expenses that are attributable to the education of children with disabilities. 34 C.F.R. § 300.203.

For purposes of calculating maintenance of effort, a budgeted or actual expense is attributable to the education of children with disabilities if it is the result of:

- (a) Providing special education or related services and/or supplementary aids and services that are articulated in a student's IEP; or
- (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
- (c) 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, tuition associated with that placement shall be considered eligible and may count toward maintenance of effort.
- (d) Non-student-specific expenditures reasonably related to the provision of special education services.
  - (1) 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.
  - (2) Before publishing the technical manual required by subsection (c)(1), 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).

- (i) 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.

## **1308 ADMINISTRATION OF GRANTS AND REIBURSEMENTS**

### **1308.1 Census Block**

#### **1308.1.1 Calculation**

- (a) The census grant shall be calculated in accordance with 16 V.S.A. § 2961.
- (b) On or before December 15<sup>th</sup>, the Secretary shall publish an estimate of the census block grant, payable to each LEA for the ensuing fiscal year.

#### **1308.1.2 Payment**

On or before August 15, December 15, and April 15 of each school year, each LEA shall receive one-third of the census grant under section 2961 for that fiscal year.

### **1308.2 Extraordinary Special Education Expenditure Reimbursement**

#### **1308.2.1 Submission**

Consistent with 16 V.S.A. § 2969(a)(2), LEAs shall submit a financial report to the Secretary containing details of all extraordinary expenditures during the reporting period. Reports shall be submitted on or before November 15, January 15, April 15, and August 1. LEAs shall use a reporting format specified by the Secretary. Extraordinary expenditure reporting shall include, but is not limited to, student name; student date of birth; student's town of residence; student's responsible LEA; disability category[ies]; placement; residential placement; special education tuition; and non-tuition costs broken out by the State's Uniform Chart of Accounts.



### **1308.2.2 Review**

The Secretary will review the extraordinary expenditure report in accordance Rules 1304 and 1305 and Rule 2200 (Independent Schools).

### **1308.2.3 Payment**

- (a) On or before December 15, February 15, May 15, and September 15 of each school year, each LEA shall receive the amount of extraordinary reimbursement incurred by it under V.S.A. §2962 that is unreimbursed and determined by the Secretary to be payable to the LEA.
- (b) The Secretary may determine certain expenditures to be non-reimbursable if they fail to meet the requirements of Rule 1308.2.2. Total payments made for extraordinary expenditures will be the total amount submitted in the extraordinary expenditure report less any expenditures determined to be non-reimbursable.

### **13086.2.4 Special Education Administration Costs**

Special Education administration costs shall not be included as a cost of an individual student when reporting and calculating extraordinary special education expenditures.

## **13086.3 Essential Early Education**

### **1308.3.1 Calculation**

Essential Early Education (EEE) grants shall be calculated according to the estimated number of students from three through five years of age in the LEA. The estimated number of students who are three through five years of age shall be based on the last verified average daily membership of all students enrolled within the LEA in grades one through three. The Secretary shall announce the estimated number of students three through five years of age in each LEA and the proposed grant allocation amounts by December 15th.

### **1308.3.2 Payment**

- (a) All LEAs shall receive an EEE grant each year. Grant payments will be made on August 15 and December 15 of each year and one-half of the annual amount will be forwarded on each date.
- (b) LEAs shall make reasonable efforts to coordinate services with local public and private agencies that provide services to students of three through five years of age.

## **13086.4 State-placed Special Education Expenditure Reimbursement**

The Secretary shall reimburse an LEA 100 percent of allowable special education costs for a state-placed student as defined in 16 V.S.A. § 11(a)(28).

#### **1308.4.1 Submission**

Consistent with 16 V.S.A. § 2969(a)(2), LEAs shall submit a financial report to the Secretary containing details of all state-placed student expenditures during the reporting period. Reports shall be submitted on or before November 15, January 15, April 15, and August 1. LEAs shall use a reporting format specified by the Secretary.

#### **1308.4.2 Review**

The Secretary will review the state-placed student expenditure report in accordance with Rules 1304 and 1305.

#### **1308.4.3 Payment**

- (a) On or before December 15, February 15, May 15, and September 15 of each school year, each LEA shall receive the amount of state-placed reimbursement incurred by the LEA under section 2950(a) that is unreimbursed and determined by the Secretary to be payable to the LEA.
- (b) The Secretary may determine certain expenditures to be non-reimbursable if they fail to meet the requirements of Rules 1304 and 1305. Total payments made for state-placed expenditures will be the total amount submitted in the state-placed expenditure report less any expenditures determined to be non-reimbursable.

#### **1308.4.4 Payments for State-Placed Students in Residential Placements and Out-of-State Public Schools**

Payments for state placed students in residential placements and out-of-state public schools shall be in accordance with 16 V.S.A. § 2950(a) and (b).

### **1309 FISCAL MONITORING AND REPORTING**

- (a) The Secretary shall periodically monitor all LEAs for compliance with Vermont statutes and Rules, and Federal requirements under the Individuals with Disabilities Education Act (IDEA) and Uniform Guidance. The monitoring process shall include, but not be limited to, review of LEA special education budgets, expenditures, and supporting documentation.
- (b) The monitoring procedures may include, but are not limited to:
  - (1) Risk analysis;

- (2) Sampling and review of documentation;
  - (3) Corrective action plan development and review.
- (c) After the monitoring process is completed, a report shall be written and sent to the LEA. If the report indicates noncompliance, an LEA shall develop a corrective action plan in response to the findings of noncompliance and submit the plan to the Secretary for approval. The Secretary shall review the corrective action plan and notify the LEA if it is acceptable.
- (d) A corrective action plan shall include, but not be limited to, the following:
- (1) Objectives and strategies for correcting each noncompliance item cited, including resources needed; and
  - (2) The dates by which noncompliance will be corrected.
- (e) When a corrective action plan is not submitted, found unacceptable or not implemented, the Secretary shall notify the LEA of the actions the Secretary intends to take. These actions may include, but are not limited to:
- (1) Further monitoring;
  - (2) Mandatory technical assistance or professional development;
  - (3) Withholding or directing of funding.
- (f) An LEA shall provide documentation necessary for the Secretary to fulfill its reporting obligations pursuant to federal regulations. Documentation shall be provided in accordance with the timeline and format specified by the Secretary.
- (g) If documentation is not submitted consistent with subsection (f) of this Rule, the Secretary shall notify the LEA of the actions the Secretary intends to take.

## **1310 COLLABORATIVE PROGRAMS**

### **1310.1 Collaborative Program Definition; Tuition**

A “collaborative program” is a program created pursuant to an agreement between two or more LEAs in accordance with 16 V.S.A. §267, for the purpose of cooperatively providing special education services. A collaborative program may offer one or more component programs (e.g. multi-disabilities, emotionally disturbed, diversified occupations). A collaborative program may charge a tuition pursuant to 16 V.S.A. §826(b).

### **1310.2 Collaborative Program Accounting**

The accounting for each collaborative program shall be in accordance with the technical guidance issued by the Agency and:

- (a) An enterprise fund as defined in technical guidance shall be established to account for the funds for each collaborative program;
- (b) Notice of tuition shall be provided by the collaborative program to the appropriate school board(s) as set forth in 16 V.S.A. §826(a);
- (c) Such tuition notice shall include a description of services to be provided, and the amount of the tuition for each component program;
- (d) Tuition shall be proportionately calculated for students who are part-time; and
- (e) Final tuition charged shall be calculated based on the actual cost of the program.

### **1310.3 Non-collaborative Tuition**

- (a) An LEA may charge tuition under 16 V.S.A. § 826(b) for providing special education services. Both special education tuition and excess costs must reflect allowable special education expenditures. In the case of a supervisory district, special education tuition shall not be charged for a student whose district of residence is the school district. In the case of a supervisory union, special education tuition shall not be charged for a student from within the supervisory union unless otherwise agreed pursuant to 16 V.S.A. §301.
- (b) All the provisions of Rule 1309.2 apply to tuition under subsection (a) above, except that:
  - (1) It is permissible but not required that an enterprise fund be established; and
  - (2) The notice of tuition establishes the maximum tuition which can be charged.

### **1310.4 Excess Costs Procedure**

Excess costs which may be charged under 16 V.S.A. § 826(c) and 16 V.S.A. § 2962(e) are limited to allowable special education costs for services not covered by a general education tuition or a special education tuition. Allowable special education costs for this purpose are defined in Rules 1304 and 1305. The following procedures shall apply to excess costs:

- (a) Excess cost shall be calculated based on the actual costs attributable to the student as required in their IEP.
- (b) District of residence or agency responsible shall be given prior notice by the billing supervisory union, supervisory district, or approved independent school as per 16 V.S.A. § 2962(e), that an excess cost will be charged;

- (c) Notice shall indicate the student's name, type, frequency of service to be provided, fee for services to be provided, and proposed billing schedule; and
- (d) No excess costs will be allowable in the absence of a fully executed contract. Such contract must meet minimum criteria of Uniform Guidance and state procurement guidelines or be in a form approved for this purpose by the Secretary.

### **1310.5 Allowable Costs Reporting**

For financial and statistical reporting to the Secretary, the cost reported by an LEA for all allowable special education services shall be the actual cost of services provided minus the revenue received or due for excess costs.

### **1310.6 Allocation of Attorney's Fees**

All awards, costs and fees associated with a legal proceeding in which a collaborative program is a party shall be borne by the LEA of the student's residence unless otherwise agreed upon by the collaborative's members. However, the foregoing shall not be construed to mean that a collaborative or LEA shall be responsible for the legal fees of a parent unless ordered by a court or agreed to in mediation.

## **1311 LOCAL EDUCATION AGENCY PLAN (34 C.F.R § 300.200)**

Each LEA that receives IDEA B federal funds shall submit a local education agency plan providing assurances as required by the Vermont Agency of Education.

## **1312 ACT 173 EVALUATION**

- (a) The Secretary shall integrate existing monitoring and reporting practices to inform an evaluation process designed to assess the following goals of Act 173 as they relate to services LEAs provide to all students who require additional support.
  - (1) effectiveness of services;
  - (2) availability of services;
  - (3) equity of services, and
  - (4) that supervisory unions are complying with the IDEA and State law.

- (b) This evaluation process shall be available for implementation concurrent with full implementation of the census-based funding model pursuant to 16 V.S.A. § 2961.
- (c) The results of any evaluation conducted pursuant to this Rule shall be provided to the Legislature, the LEAs and the general public.

**Effective Date:**

**These rules will take effect on July 1, 2021.**