

R277-752 received final approval by the Utah State Board of Education on January 6, 2021. R277-752 will be published in the February 1, 2021 Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of March 10, 2021.

## **R277. Education, Administration.**

### **R277-752. Special Education Intensive Services Fund.**

#### **R277-752-1. Authority and Purpose.**

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law

(2) The purpose of this rule is to establish:

(a) an application process for the special education intensive services fund; and

(b) a formula to distribute the funds.

#### **R277-752-2. Definitions.**

(1) "Base reimbursement level" means an LEA's eligible costs up to \$10,000.

([4]2) "Budget" means the total expenditures reported on an LEA's Annual Program Report, "APR."

([2]3)(a) "Cost of setting" means the average cost of a student's educational environment, including:

([a]i) for a preschool student, the cost of services provided in an early childhood setting;

([b]ii) for a general education student, the cost of services provided in a general education classroom by special education personnel;

([e]iii) for resource students, the cost of services provided in a special education classroom by pull-out from the general education classroom;

([e]iv) for a student in a special class, the cost of services provided in a special education classroom for all or most of the day; and

([e]v) for a student in a special school, the cost of services provided in a separate school where all students have disabilities.

R277-752 received final approval by the Utah State Board of Education on January 5, 2021. R277-752 will be published in the February 1, 2021 Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of March 10, 2021.

(b) "Cost of setting" is calculated by dividing the sum of costs for teachers and paraprofessionals in a given learning environment by the number of students in the same learning environment.

~~[ (3) "Highest impacted LEA cost ratio" means the quotient of, for a fiscal year:~~

~~— (a) an LEA's unreimbursed expenses remaining after allocations are made from the high cost student fund described in R277-752-3; and~~

~~— (b) an LEA's total state special education revenues from the prior fiscal year.]~~

(4) "Local education agency" or "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(5) "Small LEA" means an LEA with enrollment of less than 5,000 students as shown on the most recent October 1 count.

~~([5]6) "Special education intensive services fund" means funding available to offset the costs of students whose educational program exceeds three times the state average per pupil expenditures.~~

### **R277-752-3. Application Process - Distribution Formula.**

(1) Beginning in the 20-21 school year, [F]to receive an annual allocation from the special education intensive services fund, an LEA shall annually submit to the Superintendent an application by [March 1]June 30, on a form approved by the Superintendent.~~[claiming:~~

~~— (a) prior fiscal year expenses that:~~

~~— (i) are associated with providing direct special education and related services identified in a student's IEP; and~~

~~— (ii) exceed three times the state average per pupil expenditures using data from the most recently published State Superintendent's Annual Report; and~~

~~— (b) any reimbursements received for the expenses described in Subsection (1)(a)(i) from private insurance or Medicaid.]~~

(2)(a) Except as provided in Subsection (2)(b), if the carry forward balances of an LEA's state special education programs exceed 20% of the LEA's special education budget as of June 30 of the prior fiscal year as reported in the LEA's Annual Program

R277-752 received final approval by the Utah State Board of Education on January 5, 2021. R277-752 will be published in the February 1, 2021 Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of March 10, 2021.

Report, the LEA may not submit an application for an annual allocation or reimbursement under the intensive services fund.

(b) An LEA with prior fiscal year carry forward balances that exceed 20% as described in Subsection (2)(a) may submit an application for an annual allocation or reimbursement under the intensive services fund if the LEA:

(i) demonstrate the LEA's state special education carry forward balances do not exceed 20% of the LEA's special education current year budget as of December 31; and

(ii) submits a balance sheet, signed by the LEA's superintendent or charter school director certifying the LEA's state special education fund balances as of December 31 immediately prior to filing the application.

(3) From the special education intensive services fund, the Superintendent shall allocate up to the base reimbursement level to all qualifying LEAs. [:

~~\_\_\_\_\_ (a) 50% of the appropriation to the high cost student fund to be distributed to LEAs based on the highest cost students with disabilities in accordance with Subsection (4); and~~

~~\_\_\_\_\_ (b) 50% of the appropriation to the highly impacted LEA fund to be distributed to LEAs based on the highest impact to an LEA due to high cost students with disabilities in accordance with Subsection (5).]~~

(4)(a) Following the distribution described in Subsection (3), the Superintendent shall set aside funding for qualifying small LEAs proportional to the small LEAs' share of self-contained special education students.

(b) The Superintendent shall distribute the funds set aside in accordance with Subsection (4)(a) to small LEAs following the step down reimbursement formula described in Subsections (5)(a) through (d).

~~[(4)5][(a)]~~ Following the distribution described in Subsection (4), [F]the Superintendent shall distribute any remaining funds to LEAs[~~from the high cost student fund~~] using a step down reimbursement process as described in this Subsection ([4]5)[-]:

~~[(b)]a~~ The first step is to reimburse for the highest cost student equal to the difference between the highest cost student and the second highest cost student.

R277-752 received final approval by the Utah State Board of Education on January 5, 2021. R277-752 will be published in the February 1, 2021 Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of March 10, 2021.

([e]b) The second step is to reimburse for the highest cost student and second highest cost student equal to the difference between the second highest cost student and the third highest cost student.

([d]c) ~~[Except as provided in Subsection ([4]5)(e), t]~~The Superintendent shall continue the step down reimbursement process described in this subsection until funds are exhausted.

~~[(e) If funding is insufficient to fully reimburse the cost for all students in a step, the Superintendent shall reallocate the remaining funds to the highly impacted LEA fund.]~~

([f]d) In determining student cost under this Subsection ([4]5), the Superintendent shall sum expenses from an LEA's application described in Subsection (1)(a)(i) less:

(i) the state average per pupil expenditures using data from the most recently published State Superintendent's Annual Report; and

(ii) reimbursements from private insurance or Medicaid.

~~[(5)(a) The Superintendent shall distribute funds to LEAs from the highly impacted LEA fund by providing a reimbursement equal to the difference between:~~

~~[(i) an LEA's unreimbursed expenses remaining after allocations are made from the high cost student fund; and~~

~~[(ii) the product of:~~

~~[(A) an LEA's total federal and state special education funding from the prior fiscal year; and~~

~~[(B) the median of the highest impacted LEA cost ratios.~~

~~[(b) The Superintendent shall provide a reimbursement described in Subsection (5)(a) starting with the LEA with the highest impacted LEA cost ratio until funds are exhausted.]~~

(6)(a) The Superintendent shall maintain and publish a list of costs eligible for reimbursement under this rule along with the rate of reimbursement.

(b)(i) The Superintendent shall exclude cost of setting from reimbursement calculations.

(ii) Notwithstanding Subsection (6)(b)(ii), the Superintendent shall allow reimbursement of cost of setting to a small LEA.

R277-752 received final approval by the Utah State Board of Education on January 5, 2021. R277-752 will be published in the February 1, 2021 Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of March 10, 2021.

(7)(a) If an LEA's carry forward exceeds the LEA's special education budget by an amount greater than 20% of the special education budget, the Superintendent shall recoup funds in excess of the 20% carry forward and make the funds available for distribution in the next year's intensive services fund program.

(b) Notwithstanding the requirements of Subsection (7)(a), an LEA has three years to spend carry forward fund balances incurred prior to June 30, 2019.

**KEY: special education, intensive services fund**

**Date of Enactment or Last Substantive Amendment: September 25, 2020**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4)[; ~~53F-2-309~~]**