

R277-752 received final approval by the Utah State Board of Education on October 1, 2020. R277-752 will be published in the November 1, 2020 Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of December 8, 2020.

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; ~~and~~

~~— (c) Section 53F-2-309, which requires the Board to make rules establishing a distribution formula to allocate money appropriated to the board for the special education intensive services fund.]~~

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

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

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

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

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

(d) 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

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

(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) "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) 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 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 [~~prior year~~]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 Report, the LEA may not submit an application for an annual allocation or reimbursement under the intensive services fund.

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(b) An LEA with prior fiscal year carry forward balances that exceed 20% as described in Subsection (2)(a) may ~~that~~ submit[s] an application for an annual allocation or reimbursement under the intensive services fund ~~shall~~ 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, ~~letter~~ 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 ~~March 1 of the year of application~~.

(3) From the special education intensive services fund, the Superintendent shall allocate:

(a) 50% of the appropriation to the high cost student fund to be distributed to LEAs based on the highest cost students with disabilities[:

~~——(i) as described in Section 53F-2-309; and~~

~~——(ii)] 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[:

~~——(i) as described in Section 53F-2-309; and~~

~~——(ii)] in accordance with Subsection (5).~~

(4)(a) The Superintendent shall distribute funds to LEAs from the high cost student fund using a step down reimbursement process as described in this Subsection (4).

(b) 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.

(c) 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) Except as provided in Subsection (4)(e), 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.

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(f) In determining student cost under this Subsection (4), the Superintendent shall sum expenses 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) The Superintendent shall exclude cost of setting from reimbursement calculations.

(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)(~~b~~)(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

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