

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(a) and 604(b) (14 Del.C. §§122(a) and 604(b))
14 DE Admin. Code 737

PROPOSED

PUBLIC NOTICE

Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)

737 Tuition Billing for Special Schools and Programs

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§122(a) and 604(b), the Secretary of Education intends to amend 14 DE Admin. Code 737 Tuition Billing for Special Schools and Programs. This amendment is needed to update language pertaining to tuition eligibility and processing of tuition billing and payments per 14 Del. Code Chapter 6.

The Department of Education published the proposed amendments in the *Register of Regulations* on November 1, 2023, and published a General Notice in the December 1, 2023 *Register of Regulations* extending the public comment period through January 31, 2024 to ensure all parties were able to provide public comment.

The Department of Education received several written comments, some of which were in support of the amended regulation and some which suggested changes such as the following:

Issue: In Section 2.0, the definition of a "Sending School District" be amended to "mean any reorganized school district, eligible to issue tuition tax under Title 14 Chapter 6, which sends a resident student to a receiving school district or charter school. This change would clarify that vocational-technical districts cannot be billed as they are not eligible to issue tuition tax.

Response: The Department of Education amended the definition of reorganized school district to clarify that the term does not include vocational-technical or charter schools.

Issue: Kendall Massett, Executive Director of the Delaware Charter Schools Network submitted comments on behalf of charter schools in Delaware and Shawn Larrimore, Ed.D., President of the Delaware Chief School Officers Association submitted comments on behalf of Delaware Reorganized School Districts requesting extensive revisions be made to the proposed regulation.

Response: After review and consultation with stakeholders, the Department of Education amended the proposed regulation in its entirety to reflect a formulaic approach to alleviate concerns regarding consistency and uncertainty.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department of Education's online submission form at <https://education.delaware.gov/community/governance/regulations-code/post-a-comment/> by the close of business (4:30 p.m. EST) on or before May 2, 2024. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department of Education at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? This regulation will provide additional funding to charter schools which could potentially improve achievement.
2. Will the amended regulation help ensure that all students receive an equitable education? This regulation will provide additional funding to charter schools which could potentially improve the equitable education of students.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation will help to ensure that all students' health and safety are adequately protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation does not address the legal rights of students.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board

and school level? This regulation will preserve the necessary authority and flexibility of decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? This regulation does not create unnecessary reporting requirements.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? This regulation does not address decision making authority and accountability for addressing the subject to be regulated be placed in the same entity.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? This regulation will not impede the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for this purpose.

10. What is the cost to the State and to the local school boards of compliance with the regulation? This regulation does not result an additional cost to the State.

737 Tuition Billing for Special Schools and Programs

4.0 Purpose

The purpose of this regulation is to outline the process for the tuition billing and payments between local school districts and tuition generating Special Schools and Special Programs.

2.0 Definitions

In this regulation, the following terms shall have the meanings indicated below:

~~"Direct Services"~~ means the provision of instructional and educational services by the authorized Special School or Special Program that are readily identifiable to that program.

~~"Educational Related Expenses"~~ means those expenses that are necessary to operate the Special School or Special Program to meet the criteria for which it was established and includes, but is not limited to, Direct Services and Indirect Costs as those terms are defined herein.

~~"Indirect Costs"~~ means those costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective (e.g. award, project or activity) and cannot be readily and specifically identified with a particular final cost objective without efforts disproportionate to the results achieved. If an authorized Special School or Special Program elects to apply an indirect cost rate it shall not apply a rate that exceeds the Restricted Rate approved by the Department of Education in the fiscal year.

~~"Inter-district student"~~ means a student who is attending a Special School or Special Program operated by any school district other than the school district in which the student's parents, Relative Caregiver or legal guardian resides.

~~"Intra-district student"~~ means a student who is attending a Special School or Special Program operated by the school district in which the student's parents, Relative Caregiver or legal guardian resides.

~~"Local School District"~~ means a reorganized school district or vocational technical school district established pursuant to Chapter 10 of Title 14 of the ~~Delaware Code~~.

~~"Special Program"~~ means a program established pursuant to 14 ~~Del.C.~~ §203 or that has been approved as a Special Program by the Department of Education with the consent of the State Board of Education.

~~"Special School"~~ means a school established pursuant to 14 ~~Del.C.~~ §203 or that has been approved as a Special School by the Department of Education with the consent of the State Board of Education.

~~"Time and Effort Log"~~ means the record of actual time worked in the Special School or Special Program by a local school district employee.

~~"Tuition Billing form"~~ means the standardized template developed and approved by the Department of Education, and based on current state law, to determine the tuition costs allowable per pupil attending a Special School or Special Program.

3.0 Process for Determining Tuition Eligibility

3.1 A local school district may charge tuition for an intra- or inter- district student enrolled in a Special School or Special Program based on the following criteria:

3.1.1 The student shall be enrolled and attending the Special School or Special Program as of September 30th of the current school year; and

~~3.1.2 The charges attributed to the Special School or Special Program shall be limited to Educational Related Expenses or those expenses that have been approved by the Department of Education.~~

~~3.2 A local school district operating a tuition-eligible Special School or Special Program may not reallocate state units earned for the Special School or Special Program, if such reallocation requires an increase in the tuition tax rate or tuition billing amount. If a reallocation of state units earned will not require such an increase, districts may reallocate positions as necessary to ensure the most efficient delivery of services, except for those instances currently prohibited by state law, including but is not limited to, 14 Del.C., §1703(o).~~

4.0 Process for Tuition Billing

~~4.1 A local school district shall calculate the tuition charges by using the most current Tuition Billing forms and instructions developed and approved by the Department of Education.~~

~~4.2 The local school district shall submit tuition bills to the Department of Education for certification no later than November 15th of each year.~~

~~4.3 The Department of Education shall certify that the billing is true and correct no later than twenty (20) working days after receipt. No bill for tuition charges shall be paid until it has been certified by the Secretary of Education.~~

~~4.4 Upon certification, the local school district shall provide a copy of the certified tuition bill to the district(s) whose students are being served by the Special School or Special Program.~~

~~4.4.1 A district may bill for its students being served by a Special School or Special Program that it operates. All stipulations within this regulation shall be followed for intra-district students.~~

~~4.5 Any local school district that has received a tuition bill from another local school district shall pay the tuition charges no later than January 1st of the current school year.~~

~~4.6 All billing disputes shall be documented through written explanation and provided to the finance officer of the local school district operating the Special School or Special Program.~~

~~4.6.1 Only charges in dispute may be held; the undisputed remainder of the tuition bill shall be paid as described in 4.5.~~

~~4.6.2 Billing disputes shall be resolved and charges paid before the end of the current school year.~~

~~4.7 If any tuition bill is adjusted within the current school year after already being certified by the Department, and if the adjustments alter the Special School or Special Program's cost, individual enrollment, total enrollment or tuition rate per pupil from what was already certified, the district shall resubmit the tuition bill to the Department for approval and include reasons for change(s).~~

~~4.8 Tuition billings for a Special School or Special Program serving out-of-state students shall be submitted to the Department of Education on a form entitled "Establishment of Tuition Costs for Out-of-State/Country Students with Disabilities." The Department of Education shall certify the tuition bill in accordance with 14 Del.C., Chapter 6 and other sections of this regulation.~~

5.0 Tuition Billing Form and Reconciliation

~~5.1 For all estimated and actual tuition rate data, the sum of the sending district enrollments shall be equal to the exact number of students in the total program enrollment.~~

~~5.2 Tuition bills shall be prepared and submitted in accordance with this regulation for intra-district students served by an approved Special School or Special Program.~~

~~5.3 Tuition billings that yield an increase or decrease of 10% or more per pupil over the prior year estimate shall include a detailed explanation for the rate change.~~

6.0 Waivers

~~Tuition charges may be waived in accordance with 14 Del.C., Chapter 6.~~

7.0 Audit and Record Retention Requirements

~~The local school district shall follow the requirements for audit and record retention as prescribed by the Office of the Auditor of Accounts and Department of State — Delaware Public Archives.~~

1.0 Purpose

The purpose of this regulation is to outline tuition eligibility and the process for tuition billing and payments, per 14 Del.C. Ch. 6.

2.0 Definitions

The following words and terms, when used in this regulation, have the following meaning:

"Educational related expenses" means those expenses that are necessary to operate a special school or special program to meet the criteria for which it was established and includes direct services and indirect costs as defined herein. Direct services mean the provision of instructional and educational services by the authorized special school or special program that are readily identifiable to that program. Indirect costs mean costs incurred for common or joint purposes. Indirect costs benefit more than one cost objective (e.g. award, project or activity) and cannot be readily and specifically identified with a particular final cost objective without efforts disproportionate to the results achieved. If an authorized special school or special program elects to apply an indirect cost rate, it shall not apply a rate that exceeds the restricted rate approved by the Department of Education in the fiscal year.

"Receiving district" means any reorganized school district which enrolls in its schools any pupil who is not a resident of such receiving district pursuant to 14 **Del.C.** §601(1).

"Reorganized school district" means the same as defined in 14 **Del.C.** §1002(3) and does not include vocational-technical or charter schools.

"Sending district" means any reorganized school district which sends to the schools of a receiving district any pupil who is not a resident of such receiving district pursuant to 14 **Del.C.** §601(3).

"Special program" means a program established pursuant to 14 **Del.C.** §203, or that has been approved as a special program by the Department of Education with the consent of the State Board of Education.

"Special school" means a standalone school, operating with a separate budget unit within the State's accounting system.

3.0 Process for Determining Tuition Eligibility

3.1 A local reorganized school district may bill tuition for students enrolled in a special school or special program and those students classified as pre-kindergarten, intensive or complex based on the following criteria:

3.1.1 The student shall be enrolled and attending as of September 30th of the current school year; and

3.1.2 The charges shall be limited to educational related expenses.

3.2 A local reorganized school district operating a tuition-eligible special school or special program may not reallocate state units earned for the special school or special program, if such reallocation requires an increase in the tuition tax rate or tuition billing amount. If a reallocation of state units earned will not require such an increase, districts may reallocate positions as necessary to ensure the most efficient delivery of services, except for those instances currently prohibited by state law, including 14 **Del.C.** §1703(o).

3.3 Pursuant to 14 **Del.C.** §509(f), a charter schools will receive tuition funding for students classified as intensive and complex.

3.3.1 The student shall be enrolled and attending the charter school as of September 30th of the current school year.

3.3.2 Funding received by a charter school for this purpose shall be placed in a unique appropriation identified by the Department of Education and shall only be used for educational related expenses directly tied to intensive and complex students.

4.0 Process for Local Reorganized School District Tuition Billing

4.1 A receiving district shall calculate tuition bills by using the most current tuition billing forms and instructions for any tuition expenditures for tuition-eligible students, excluding private placements approved through the Interagency Collaborative Team as authorized by 14 **Del.C.** §3124. A tuition billing form means the standardized templates developed and approved by the Department of Education.

4.2 A receiving district shall submit tuition bills to the Department of Education for certification no later than November 15th of each year.

4.2.1 This timeline is critical to ensuring timely payment of obligations to support students by January 1st in accordance with 14 **Del.C.** §602(d), and therefore must be met by all reorganized school districts eligible to submit tuition bills.

4.2.2 Failure to meet this deadline may result in the Department of Education's inability to certify tuition bills.

4.3 The Department of Education shall certify that the billing is true and correct no later than 20 working days after receipt. No bill for tuition charges shall be paid until it has been certified by the Secretary of Education.

4.4 Upon certification, the receiving district shall provide a copy of the certified tuition bill to the sending districts whose students are being served by the special school or special program or who are enrolled in the receiving district and classified as pre-kindergarten, intensive or complex.

- 4.5 In accordance with 14 Del.C. §602(d), any sending district that has received a tuition bill from a receiving district shall pay the tuition charges no later than January 1st of the current school year. In the event payment is delayed beyond the statutorily required date, the Department of Education may process tuition payments from the sending district's local tuition appropriation.
- 4.6 Any billing disputes on behalf of the sending district shall be documented through written explanation and provided to the Chief Financial Officer (or equivalent) of the receiving district and the Department of Education no later than December 31st.
- 4.6.1 Only charges in dispute may be held, while the undisputed remainder of the tuition bill shall be paid.
- 4.6.2 Billing disputes shall be resolved by the parties and charges paid before the end of the current school year. If disputes have not been resolved by May 1st of each year, both parties shall notify the Department of Education of the circumstances and the Department of Education shall provide a resolution no later than June 1st of the same year. Upon review, the Department of Education shall provide a written decision to both parties, and that decision will serve as the basis for final certification of the tuition bill for immediate payment.
- 4.7 If any tuition bill is adjusted within the current school year after being certified by the Department of Education, and if the adjustments alter the cost, individual enrollment, total enrollment or tuition rate per pupil from what was already certified, the sending district shall resubmit the tuition bill to the Department of Education for approval and include reasons for changes.
- 4.8 Tuition billings for serving out-of-state students in accordance with 14 Del.C. §606 shall be submitted to the Department of Education on a form entitled "Establishment of Tuition Costs for Out-of-State/Country Students with Disabilities." The Department of Education shall certify the tuition bill in accordance with 14 Del.C. Ch. 6 and this regulation.
- 4.9 For all estimated and actual tuition rate data, the sum of the sending district enrollments shall be equal to the exact number of students in the total program enrollment.
- 4.10 Tuition billings that yield an increase or decrease of 10% or more per pupil over the prior year estimate shall include a detailed explanation for the rate change.

5.0 Process for Charter School Tuition Funding

- 5.1 No later than September 15th of each year, the Department of Education shall calculate a per pupil amount for each tuition-eligible student within each local reorganized school district, utilizing the methodology outlined below.
- 5.1.1 Eligible tuition expenditures are prior year total local tuition expenditures for a reorganized school district less local tuition expenditures for private placements, tuition-eligible English learners (also known as multi language learners) programs and pre-kindergarten services. Reorganized school districts shall use unique appropriations for a pre-kindergarten local tuition and local tuition-eligible English learner programs, as identified by the Department of Education. Additionally, reorganized school districts must follow the established account code guidance to properly identify local tuition expenditures for private placements.
- 5.1.2 Eligible Division I units are prior year Division I intensive and complex units of a local reorganized school district, excluding units attributed to pre-kindergarten and special schools.
- 5.2 The per pupil expense amounts shall be calculated as outlined in the following steps:
- 5.2.1 The eligible tuition expenditures determined in subsection 5.1.1 shall be divided by the number of eligible units determined in subsection 5.1.2.
- 5.2.2 The intensive per pupil rate shall be determined by dividing the amount calculated in subsection 5.2.1 by the intensive unit ratio as defined in 14 Del.C. §1703 (a).
- 5.2.3 The complex per pupil rate shall be determined by dividing the amount calculated in subsection 5.2.1 by the complex unit ratio as defined in 14 Del.C. §1703 (a).
- 5.3 Charter tuition funding shall be calculated by multiplying the number of intensive and complex students enrolled at the charter school in the current school year by the respective amounts calculated in subsections 5.2.2 and 5.2.3 for each respective sending district. The resulting tuition amount shall be multiplied by 50% to arrive at a final charter tuition funding amount.
- 5.4 Charter tuition funding shall be calculated by the Department of Education by November 30th. The sending district shall pay the tuition charges no later than January 1st of the current school year. In the event payment is delayed beyond the due date, the Department of Education may process tuition payments from the sending district's local tuition appropriation.

12 DE Reg. 940 (01/01/09)

27 DE Reg. 732 (04/01/24) (Prop.)