

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 REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE 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.

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'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 December 1, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department 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

1.0 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.~~ Chapter 6.

2.0 Definitions

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

"Department" means the Delaware Department of Education.

"Inter-district student" means a tuition-eligible student who is receiving services in a school district or charter school other than the district of residence.

"Receiving school district" means any reorganized school district which enrolls in its schools any pupil who is not a resident.

"Sending school district" means any reorganized school district which sends a resident student to a receiving school district or charter school.

"Special program" means a program established pursuant to 14 ~~Del.C.~~ §203.

3.0 Process for Determining Tuition Eligibility (Special Programs)

- 3.1 A school district may charge tuition for intra-district (meaning students receiving services in the school district in their district of residence) and inter-district students enrolled in a special program established pursuant to 14 ~~Del.C.~~ §203.
- 3.2 The student shall be enrolled and attending the special program as of September 30th of the current school year. School districts may reach agreements around partial year billing for inter-district students attending special programs for less than the full year.

4.0 Process for Determining Tuition Eligibility (PreK, Intensive, Complex)

- 4.1 Pursuant to 14 Del.C. §1703, a school district may bill tuition for local share and excess costs of students classified as preK, intensive and complex.
- 4.2 Pursuant to 14 Del.C. §509(f), a charter school may bill tuition for excess local costs of students classified as intensive and complex.
- 4.3 The student shall be enrolled and attending the school district or charter school as of September 30th of the current school year.

5.0 Tuition Calculations and Expenditures

- 5.1 The charges attributed to tuition billing shall be limited to educational-related expenses (meaning those expenses that are necessary to provide a free and appropriate education to tuition-eligible students) and eligible indirect costs (meaning those costs that have been incurred for common or joint purposes) that are necessary for the education of tuition-eligible students. An indirect cost rate shall not exceed the restricted rate approved by the Department in the fiscal year.
- 5.2 Any tuition funding collected by any receiving school district or charter school must be expended on costs identified as the basis for the charge.

6.0 Process for Tuition Billing

- 6.1 A school district or charter school shall calculate the tuition charges by using the most current tuition billing forms and instructions for any tuition expenditures for all tuition-eligible students, excluding private placements approved through the Interagency Collaborative Team (ICT). A tuition billing form means the standardized templates developed and approved by the Department to determine the tuition costs allowable per tuition-eligible student.
- 6.2 A school district or charter school shall submit tuition bills to the Department for certification no later than November 15th of each year. 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 school districts and charter schools eligible to submit tuition bills. Failure to meet this deadline may result in the Department's inability to certify tuition bills.
- 6.3 Tuition bills must include documentary evidence to support and justify each entry on the tuition bill. Documents to be submitted may include enrollment reports, payroll reports, financial statements, etc., and must allow the Department to validate each tuition bill submitted.
 - 6.3.1 Tuition billings that yield an increase or decrease of 10% or more per student over the prior year estimate shall include a detailed explanation for the change.
 - 6.3.2 If the Department is unable to certify any tuition bill as submitted, additional documentary evidence may be requested.
- 6.4 The Department shall certify that the billing is true and correct no later than 20 working days after receipt of all documentary evidence including any additional information requested as allowed for in subsection 6.3.2. No bill for tuition charges shall be paid until it has been certified by the Secretary of Education, or designee.
- 6.5 Upon certification, the receiving school district or charter school shall provide a copy of the certified tuition bill to the sending school district whose students are being served by the receiving school district or charter school.
- 6.6 Any billing disputes on behalf of the sending school district shall be documented through written explanation and provided to the Chief Financial Officer (or equivalent) of the receiving school district or charter school and the Department no later than December 31st.
 - 6.6.1 Only charges in dispute may be held; the undisputed remainder of the tuition bill shall be paid.
 - 6.6.2 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 the circumstances and the Department shall provide a resolution no later than June 1st of the same year. Upon review, the Department 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.
- 6.7 In accordance with 14 Del.C. §602(d), any sending school district that has received a tuition bill from a receiving school district or charter school 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 may process tuition payments from the sending school district's local tuition appropriation.
- 6.8 If any tuition bill is adjusted within the current school year after being certified by the Department, and if the adjustments alter the cost, individual enrollment, total enrollment or tuition rate per student from what was

already certified, the receiving school district or charter school shall send an amended tuition bill to the Department for approval and include justification.

6.9 Tuition billings for a special program serving out-of-state students shall be submitted to the Department on a form entitled "Establishment of Tuition Costs for Out-of-State/Country Students with Disabilities." The Department shall certify the tuition bill in accordance with 14 Del.C. Ch. 6 and other sections of this regulation.

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

27 DE Reg. 303 (11/01/23) (Prop.)