



REIMBURSEMENT FOR SPECIAL EDUCATION SERVICES IN RESIDENTIAL PLACEMENTS

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FOR THE
National Association of Psychiatric Health Systems



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ABOUT NAPHS

The **National Association of Psychiatric Health Systems (NAPHS)** advocates for behavioral health and represents provider systems that are committed to the delivery of responsive, accountable, and clinically effective prevention, treatment, and care for children, adolescents, adults, and older adults with mental and substance use disorders. Its members are behavioral healthcare provider organizations, including 400 specialty hospitals, general hospital psychiatric and addiction treatment units, residential treatment centers, youth services organizations, partial hospital services, behavioral group practices, and other providers of care. The association was founded in 1933.

The **NAPHS Youth Services Committee** promotes the need for behavioral health treatment, education, and rehabilitation services for troubled youth; greater visibility for youth services; and raising the importance of youth services on the national agenda. The committee addresses public-policy issues related to youth services and makes recommendations to the NAPHS Board of Trustees. The board established the committee in 1998 as a way of elevating youth service issues on the association's overall agenda. Advocacy priorities are to fight for expanded coverage for behavioral health care for youth, improved coordination of care, and fair funding.

For more information about youth services issues or association membership, visit www.naphs.org or call 202/393-6700.

ABOUT THE AUTHOR

Myrna R. Mandlawitz, Esq., is president of MRM Associates, an independent lobbying and consulting firm in Washington, DC. In this role she serves as the Washington representative and "issue advocate" for several national associations. In addition, she provides technical assistance and training to state and local education agencies and other organizations on a broad range of general and special education issues. Ms. Mandlawitz is a nationally known expert in special education law and policy. Previously, she served as the director of government relations and external affairs for the National Association of State Directors of Special Education (NASDSE), representing the state directors in Congress and the regulatory agencies on issues impacting the education of children and youth with disabilities. Ms. Mandlawitz spent 14 years as an elementary teacher, with a concentration on early childhood and elementary education. She worked in Virginia on the development and early implementation of the federal program for infants and toddlers with disabilities. She also focused on children's issues during her tenure with several civil liberties organizations. Her areas of expertise include advocacy, policy development, legislative analysis, and training. She has presented across the country on education policy and legal issues and the "Washington scene." Ms. Mandlawitz, a Virginia native, received a Bachelor's degree in anthropology and a Master's degree in early childhood education from Boston University and a law degree from Temple University in Philadelphia. She can be reached at 202/686-1637 or mandlawitz@erols.com.

A MESSAGE FROM THE NAPHS YOUTH SERVICES COMMITTEE

The Youth Services Committee of the National Association of Psychiatric Health Systems (NAPHS) includes the leadership of a wide variety of organizations committed to improving the lives of at-risk children, adolescents, and their families.

As treatment providers on the front lines of delivering behavioral health care, we recognize that education is an integral part of the lives of all children. We know how critical it is for young people to receive the best possible resources for their individual needs.

But for many youngsters—particularly those experiencing the challenges of living with mental and/or addictive disorders—accessing appropriate special education services is too often an uphill battle. Complex, confusing, and sometimes conflicting funding streams and lines of responsibility often make it hard for parents—and providers—to know who is responsible for payment of essential special education services.

To help providers better understand how existing systems work, we have commissioned one of the top experts in this field—Myrna R. Mandlawitz, Esq.—to share her considerable insight and experience.

We hope this document will prove to be a valuable tool in understanding, advocating for, and obtaining reimbursement for the special education services that are so essential to supporting the future of America's youth.

*National Association of Psychiatric Health Systems
Youth Services Committee*

Spring 2005

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REIMBURSEMENT FOR SPECIAL EDUCATION SERVICES IN RESIDENTIAL PLACEMENTS

Myrna R. Mandlawitz, Esq.

INTRODUCTION

As specialized treatment resources, residential treatment centers deliver a wide variety of therapeutic services to address the complex needs of children and adolescents with psychiatric and addictive disorders. Because education is essential for all youngsters, it is one of the many resources that must be available to young people in treatment.

Residential programs have developed a wide array of strategies for delivering education services—from certified special education schools (either freestanding or located within treatment programs) to direct linkages with school districts to offer educational services. In this way, residential programs prepare youngsters to transition back to a regular school environment as quickly as possible.

According to a recent Rutgers University² report, youngsters in residential care programs “are among the most troubled.” Compared to children in all mental health settings, youngsters in residential treatment programs experience more family problems (72%), face more school problems (57%), and suffer more skill deficits (22%). Almost half of the youngsters in residential care have been victims of abuse or neglect, with approximately one-fifth experiencing post-traumatic stress.

Youngsters placed in private residential facilities may qualify for special education services, and the number of students with disabilities served in those settings is rising. Between school years 1990–1991 and 1999–2000, the U.S. Department of Education reported a 42 percent increase in the number of students overall in residential facilities; and for students classified with emotional disturbance, the number served in private residential facilities rose by 56 percent during the same period.²

Treatment facilities work hard to ensure the quality and sufficiency of services to address the youngsters’ educational needs. Therefore, the determination of financial responsibility and how to access reimbursement for special education services are prominent concerns.

Because young people are referred to residential care from many sources (e.g., juvenile justice, foster care, courts, child welfare), it is sometimes unclear exactly who is responsible for paying for education services. Many treatment programs report that a particularly problematic area is reimbursement for the educational services required by youngsters who have been placed in residential care by public agencies.

This paper is intended to help the clinical and administrative staff in residential programs to understand the law, to better navigate the special education reimbursement funding system, and to improve internal systems to gather the information necessary to improve education reimbursement.

Program staffs need to be aware of idiosyncrasies in state regulations and policies on reimbursement to determine which approach will be best in working with each state education agency (SEA) and local education agency (LEA). Where facilities have had success, they have employed a variety of methods, and this paper provides some models.

Facilities need to be aware of idiosyncrasies in regulations and policies on reimbursement of each state education agency (SEA) and local education agency (LEA).

Some of the confusion regarding responsibility for payment lies with the child's circumstance. For example, rules may differ when the child is a ward of the state, when the child has not yet been declared eligible for special education services, or when specific agencies such as juvenile justice or child welfare are involved.

This paper offers basic information for facility staff members as they begin to examine what information is needed and what resources are available to assist in determining who pays for education services.

DETERMINING FINANCIAL RESPONSIBILITY—CHECKLIST FOR EDUCATIONAL REIMBURSEMENT

Following are several action steps, by no means an exclusive listing, that should be taken in determining financial responsibility for special education services.

First, determine whether or not the youngster is eligible for special education:

- ✓ Gather federal, state, and local laws; regulations; and guidance that are important to decision-making.
- ✓ Be certain that your facility has contact information for the individuals in state and local education agencies and the federal Department of Education who should be involved and/or can be helpful in decision-making.
- ✓ Determine if the youngster has been determined as eligible for special education services under the *Individuals with Disabilities Education Act (IDEA)*³ prior to placement in the residential facility.
- ✓ If the youngster has not been determined eligible for special education services prior to placement, identify what processes must be followed to establish eligibility.

If a facility does not already include a question on its intake form regarding specific agency responsibility for education services, one should be added as this is an important proactive measure.

Through the intake process, many facilities will have determined the answers to the following questions. It is an important checklist for planning a youngster's educational program. If a facility does not already include a question on its intake form regarding specific agency responsibility for education services, one should be added as this is an important proactive measure.

- ✓ Was the youngster placed in the facility by a public agency (e.g., local school district, social services, juvenile justice) or by a private physician and/or the youngster’s parents?
- ✓ Is the youngster a ward of the state?
- ✓ Is the facility in the same or a different state than the youngster’s legal place of residence?
- ✓ What role does the state education agency (SEA) assume in providing funding for educational services?
- ✓ What other sources of funding may be available?

DETERMINING ELIGIBILITY FOR SPECIAL EDUCATION

Child Find

The IDEA requires that the state education agency (SEA) identify, locate, and evaluate all children suspected of having disabilities in the state, regardless of the severity of their disability, to determine if they qualify for special education and related services. This process is known as “child find.”⁴ Youngsters may be identified by the school district through community outreach, such as informational brochures in pediatricians’ offices or public service announcements. The child-find effort must extend also to children who are wards of the state and children in private schools and facilities, including private psychiatric treatment programs.⁵ Children may also be referred for evaluation by parents, doctors, or other concerned parties, such as a residential facility where the youngster is receiving treatment. Once the SEA or LEA responsible for a child’s education is identified, referring the youngster to the school district for evaluation should relieve the residential facility of having to conduct and pay for an evaluation and then seek reimbursement for those expenses.

The child-find effort must extend also to children who are wards of the state and children in private schools and facilities, including private psychiatric treatment programs.

Once the youngster has been identified as potentially eligible for services, a comprehensive evaluation addressing all areas of suspected disability is conducted by the local school district.⁶

Evaluation

For the child to receive special education and related services, the evaluation team must determine that the youngster not only meets the criteria for one of 13 categories of disability enumerated in the IDEA, but also, as a result of that disability, needs special education and related services.⁷ In other words, it is not enough that the child have a specific disability, but the disability must affect the child’s ability to benefit from the educational process.

The determination that a child is eligible for special education services is an essential first step in securing reimbursement. By certified mail, the facility should inform the local school district and the

SEA in which the youngster currently resides and request immediate action to ensure that education costs incurred by the program are reimbursed.

Once eligibility has been determined, the IDEA requires that the youngster receive services in the “least restrictive environment” (LRE).⁸ The concept of LRE dictates that, to the maximum extent possible, the student will be educated with non-disabled students in the regular classroom. Therefore, school districts must do whatever possible to provide an appropriate program for the youngster in a regular classroom, a special education resource room, or even a separate special education classroom or school before considering a residential placement. In some instances, when school districts refuse to place the child in a residential setting, they may be ordered by the courts to pay for a residential placement. This may occur if other public agencies, such as child welfare or juvenile justice, are involved and agree that a residential setting is the least restrictive environment for that child.

Each youngster designated as a child with a disability under the IDEA has an individualized education plan (IEP) that delineates the special education and related services the student must receive.⁹ When a student who already has an IEP arrives at a residential facility, the facility will work with the appropriate school district to implement that plan. If the student has been placed in the facility by the school district, reimbursement should not be an issue.

School Transfers

The IDEA amendments of 2004 addresses the case of students with IEPs who transfer schools during the academic year within and outside the state.¹⁰ This provision was added just recently with the 2004 reauthorization of the law; therefore, applicability to residential facilities will not be clear until implementing regulations are issued. However, it is important that facility directors be aware of this provision.

For children transferring to another district within the same state, the receiving district must provide a free appropriate public education, including services comparable to the previous IEP, in consultation with the parents until the new district either adopts the previous IEP or develops and implements a new IEP. For a child transferring to another state, the new district must provide a free appropriate public education, including services comparable to the previous IEP, in consultation with the parents until the new district conducts an evaluation and develops a new IEP, if determined to be necessary.

Referrals and Evaluations

In those instances where a student is placed in a residential setting and does not have an IEP, there are several options for the facility. If the facility has an approved educational program, the staff of the facility may do its own evaluation and determine eligibility for services. However, this should always be done in conjunction with the appropriate school district to ensure that the school district accepts responsibility for payment. Another option is to refer the student to the school district for evaluation and then proceed, once eligibility has been established, to participate with the school district in developing the IEP. In either instance, once the child is classified as needing special education and related services, the issue of funding is more clear-cut (see discussion below).

PAYMENT RESPONSIBILITY

Because residential treatment centers generally may assume that the large majority of youngsters placed with them qualify for special education services, the next threshold question addresses responsibility for the cost of educational services.

The IDEA states that children with disabilities who are placed in private schools or facilities by the local school district or the state education agency (SEA) must be afforded special education and related services at no cost to their parents. The law further requires that the SEA determine whether the private schools and facilities meet the standards that apply to SEAs and local districts and that students have the same rights they would have if served by those public agencies.¹¹

Parental Placement

When parents unilaterally place their child in a private school or facility even though the school district offered the child appropriate special education services, parents are responsible for payment. Parents may also remove their child to a private placement when there is a dispute about the program offered by the school district. Under these circumstances, parents and the school district may resolve differences about services or payment through the IDEA due-process procedures. However, until a legal determination is made to the contrary, parents are responsible for payment.¹²

General Supervisory Responsibility of the SEA

The SEA bears general supervisory responsibility for ensuring that all children with disabilities in the state have the right to a free appropriate public education (FAPE). Under IDEA this responsibility means that a child who is determined to have a disability, as defined by the law, has the right to special education and related services.¹³ If, based on a comprehensive evaluation of the child, the school district or SEA determines that a public or private residential program is necessary for educational purposes, that program, including non-medical care and room and board, must be at no cost to the family.¹⁴

If the SEA determines that the youngster's educational and mental health needs cannot be separated and therapeutic services are necessary for the child to benefit from special education, the therapeutic services may be determined to be a related service. Under these circumstances, the SEA is responsible for the entire cost of the placement, excluding medical care. If, however, the educational and emotional needs are distinct, the SEA's responsibility would be limited to educational services provided in the residential placement.¹⁵ The distinction of placement for "educational purposes" may sometimes be murky, and neither the IDEA statute nor regulations offer guidance on this point. In some instances, the courts will make the determination.¹⁶

The state education agency (SEA) determines, under state law, which school district within the state is responsible for the cost of education in residential placements.

The SEA determines, under state law, which school district within the state is responsible for the cost of education in residential placements. It is very important to be conversant with state policies and regulations because varying lengths of treatment in a residential facility, the child's personal

circumstances (e.g., ward of the state), or other situations may affect which school district is responsible for provision of special education services. However, as a general rule, most states assign responsibility to the school district in which the child's parents reside. Again, whether youngsters in residential facilities are considered residents within the school district where the facility is located is a state law determination.¹⁷ While the IDEA does not speak specifically to which local district is responsible for residential costs, ultimately the SEA must ensure that all eligible children receive appropriate special education services and therefore must ensure that this issue is equitably resolved.¹⁸

Responsibilities of Other State and Local Agencies

The SEA or a local school district often is not the agency that places the youngster in the residential facility. When a public agency other than the SEA places a child with a disability in an in- or out-of-state residential treatment facility, the child's state of residency is responsible for providing special education services. The physical location of the child or the facility does not control financial

When a public agency other than the state education agency (SEA) places a child with a disability in an in- or out-of-state residential treatment facility, the child's state of residency is responsible for providing special education services.

responsibility. Rather, the residency of the child controls and is established by where the child's parent or guardian resides or of which state the child is a ward.¹⁹

The IDEA regulations allow and encourage SEAs to explore other sources of payment for high-need children with disabilities.²⁰ Other public agencies may be obligated for provision or payment of special education services under state or federal law or assigned responsibility under state policies or interagency agreements. The IDEA obligates those agencies to fulfill these responsibilities either directly or through contracts or other arrangements. However, if the agencies do not fulfill their financial obligations, the SEA must provide payment and may later seek reimbursement from the responsible agencies.²¹

The IDEA requires that states establish interagency agreements between the SEA and other public agencies. These agreements must delineate the financial responsibility of each agency in providing special education to eligible children with disabilities in the state.²² However, children's eligibility for special education services cannot alter entitlements to benefits under Medicaid or other public insurance programs for which they may otherwise qualify.²³

The IDEA addresses enforcement of interagency agreements by making an SEA's expenditure of state administrative funds contingent on certification that interagency agreements establishing payment responsibilities are current.²⁴ Further, the law clarifies that if there are instances when a public agency with financial responsibility under an interagency agreement initially fails to pay for special education services, the local school district may claim reimbursement for funds expended to cover the other agency's financial obligation. This is another attempt to enforce interagency agreements.²⁵

During the 2004 reauthorization of the IDEA, the committee report on the Senate IDEA bill specifically addressed confusion regarding which agency is responsible for provision of special education and related services for children publicly placed in residential facilities. As a result of NAPHS advocacy, the 2004 IDEA contains language in the Senate report as follows: "The Committee has heard that there is often confusion regarding which public agency has the obligation to pay for

children with disabilities who are placed by public agencies in residential treatment or special education schools that are out-of-local agency or out-of-State. Many of these children have multiple and complicated problems, and often are victims of severe neglect, sexual and physical abuse, violence, and abandonment. These children may be in the foster care system or parental rights may have been terminated with the State becoming the legal guardian. Under IDEA, when such children are placed by public agencies, the State is responsible for determining which agency is responsible for paying for educational and related services for these children. The committee encourages States to clarify agency financial obligations and responsibilities in these situations, and to make information about those obligations and responsibilities available to school districts and parents of children with disabilities."²⁶

Other Funding Sources

Public insurance programs, such as Medicaid and the State Children's Health Insurance Program (SCHIP), may provide additional funding sources for eligible youngsters. In some instances, children with severe mental or physical disabilities will qualify for Medicaid, even if their parents do not, if they also qualify for Supplemental Security Income benefits. Also, while the array of services provided to adults under Medicaid is state-determined, states must provide Early and Periodic Screening, Diagnosis and Treatment (EPSDT) for children. EPSDT requires states to provide treatment for both physical and mental illnesses.²⁷

Funding for special education is a combination of federal, state, and local resources.

SCHIP is an option when parents' income is too high for Medicaid eligibility and they do not have access to health coverage through their employment. Coverage under SCHIP often mirrors Medicaid coverage, although coverage varies across the states.²⁸

FUNDING MECHANISMS

Special Education Funding

Funding for special education is a combination of federal, state, and local resources. The federal government provides grants to states under the IDEA based on a formula that includes a base amount, with any new dollars allocated on a population and poverty formula.²⁹ The IDEA requires that a minimum of 75 percent of federal funds flow directly to local school districts. Federal dollars represent the smallest contribution to local school districts' financing of special education.

States and local communities contribute much larger percentages toward special education. Each state must adopt an in-state formula to distribute funds to local school districts.

Those models range from flat grants and percentage reimbursements to census- and resource-based and weighted formulas.³⁰ Local dollars are the third part of the formula.

Cost-Sharing

Other state agencies also contribute to the cost of non-public placements. In a recent National Association of State Directors of Special Education (NASDSE) survey, 40 states reported sharing costs with other agencies for in-state placements, and 38 indicated that other agencies contributed to the costs of out-of-state placements. Those agencies included, among others, health, social services,

corrections, mental health/mental retardation, the Bureau of Indian Affairs, the court system, Medicaid, and Supplemental Security Income Disability.³¹

States also have interagency arrangements focused on serving youngsters with multiple special needs. Some of these mechanisms are legislatively mandated, while others are voluntary or informal agreements. Several states use these arrangements to determine payment for residential treatment.³²

Direct Payment by SEAs

In the NASDSE survey on non-public placements, nine of the 47 responding SEAs reported paying the *total* cost of in-state, non-public placements all or some of the time. Twenty-nine reported paying *part* of the costs of in-state placements all or some of the time. Nine SEAs, overlapping but not identical to the nine reporting on in-state payments, reported paying the total cost of out-of-state placements all or some of the time. Twenty-nine, again overlapping but not identical to the other list, reported paying part of the cost of out-of-state placements all or some of the time.³³

States have established a variety of approaches to reimbursement. Following are just a few examples.

- Illinois has a process for approval of private residential placements and will reimburse expenses for room and board to the local school district. The process requires the local school district to document contacts with other agencies, including their participation in planning for services. The school district must also provide a detailed reintegration plan.³⁴
- Arizona has developed a flow chart for use in determining which school district is responsible for a child in residential treatment. Once the responsible school district has been identified, the district may apply for a “Residential Special Education Voucher” from the state.³⁵
- Colorado enters into “excess costs” contracts with out-of-district facilities. Prior to placement in the facilities, the SEA requires that the appropriate local school district be notified of the child’s placement and be given an opportunity to be involved. The interagency agreement between the SEA and the department of human services makes the child’s case manager responsible for notifying the school district of the placement. If the case manager fails to do so, the department of social services or division of youth corrections is held responsible for any excess education costs at issue. The agreement also provides for a dispute-resolution process when responsibility for payment is in dispute.³⁶

SEAs also establish rates for placements in non-public facilities. In some instances SEAs may set non-negotiable rates, while in other cases SEAs may pay a per diem reimbursement or negotiate with each facility. SEAs may also approve the funding level for each placement, based on the costs of tuition and services for a specific youngster rather than on a flat rate for the particular facility.³⁷

High-cost Services

Some states have adopted funding mechanisms to target resources to certain populations or areas of need. For the 1999–2000 school year, 16 states reported having separate funding mechanisms targeted to private residential placements. In addition, two states reported providing funds for state-placed students, and another reported reimbursement to districts for out-of-state placements.³⁸

States increasingly are developing separate funding streams that can be accessed by local districts to serve exceptionally high-cost students with disabilities. *High cost* is defined by each state, but whatever the definition, these provisions usually involve supplemental funding for students who require a high level of costly services. Twenty-five states reported having funding for high-cost students in the 1999–2000 school year, several of which noted these funds may be used for in- or out-of-district or state special education programs.³⁹

In its report to Congress, the President’s Commission on Excellence in Special Education recommended that the federal government provide assistance to SEAs and local districts in determining how to pay for high-need youngsters.⁴⁰ The commission also recommended that states be allowed to use federal dollars to establish and maintain “safety net” programs, state-based programs from which local districts could seek reimbursement for certain costs. The safety net would be a discretionary program managed by a board or official who would decide if the reimbursement would be made and at what level.⁴¹

The commission recommended further that school districts be allowed to retain a portion of their unspent federal dollars at the local or regional level to create risk management pools. A risk management pool is a nonprofit insurance cooperative among local school districts or regional education entities that basically acts in the same way as a safety-net program, but without the discretionary element.⁴²

Possibly in response to the commission’s recommendations, the IDEA amendments of 2004 include a provision that addresses the cost of providing services to high-need children with disabilities.⁴³ States have the option to reserve a percentage of their federal funds designated for state-level activities to establish a high-cost fund and to support innovative methods of cost-sharing. Participating states must develop a definition of a “high need child with a disability,” addressing the financial impact on local school districts and ensuring that the cost of the high-need child is greater than three times the state’s average per-pupil expenditure. The state must also establish eligibility criteria for participation by local school districts and a funding mechanism and schedule for annual disbursements.

For states that had risk pools or high-needs assistance programs in place on January 1, 2004, these funds may be used for those established programs as long as the program criteria meet the state’s definition of “high need child with a disability.” Funds may not be used to pay costs that would otherwise be reimbursed by the state Medicaid program.

Funds may be used only for costs associated with providing direct special education and related services as identified in the child’s IEP. This provision does not limit or condition an eligible child’s right to a free appropriate public education, nor does it authorize a state or local school district to establish a limit on the amount that can be spent on the education of a child with a disability.

LAWS, REGULATIONS, AND GUIDANCE

It is important for facility staff to know who in the SEA is responsible for making decisions about youngsters in residential treatment. As the staff gains more experience in working with SEAs, they will also become more familiar with the federal, state, and local regulations and policies that govern these matters.

Learn state and local laws, regulations, and policies regarding special education in residential placements.

At the federal level, the *Individuals with Disabilities Education Act* and its accompanying regulations⁴⁴ control. In some instances, where youngsters may not qualify for services under the IDEA, students may receive some services under Section 504⁴⁵; however, there are no funds attached to that statute. In addition to federal statutes and regulations, the Office of Special Education Programs (OSEP) at the U.S. Department of Education issues letters of clarification interpreting various provisions of the IDEA.

Staff members will also want to learn state and local laws, regulations, and policies regarding special education in residential placements. In a recent survey by the National Association of State Directors of Special Education (NASDSE), 35 of 47 states responding said they have regulations addressing in-state placements, and 31 have regulations for out-of-state placements.⁴⁶ Because these laws and regulations can change frequently, it is important to review the pertinent information at least annually.

CHALLENGES TO ACCESSING SPECIAL EDUCATION FUNDING

There are several possible challenges that may impede residential treatment centers' ability to access special education funding.

- *Designation as a "Child with a Disability"*: The youngster must first be determined eligible for special education services for the facility to receive IDEA funds.
- *Determination of Residency*: Residency establishes which school district or SEA is responsible for the youngster's educational services.
- *Transfer of School Records*: The IDEA and the *Family Educational Rights and Privacy Act* (FERPA)⁴⁷ govern access to educational records of students with disabilities. If the school district places the child in a residential facility, transfer of records should not be an issue. Both laws also allow disclosure of information to other agencies interested in the student's education. However, any delay in timely communication among other agencies and the school district may impede delivery of services and access to funding.

Having standard contracts with states and local districts that are most likely to place youngsters should facilitate the payment process.

The IDEA amendments of 2004 address transmittal of records for children transferring from one school district to another, both within and outside the state. The law requires that the new school take reasonable steps to promptly obtain the child's records from the previous school, including the IEP and supporting documents. Further, it requires that the previous school take reasonable steps to respond promptly to such a request.⁴⁸ Hopefully, this provision also will facilitate transfer of records for children placed in residential facilities.

- *Determination of Single Line of Responsibility for Payment*: If the state has not determined responsibility for payment through laws, regulations, or policy, the facility's ability to work with the school district or SEA may be more difficult.

- *Enforcement of Interagency Agreements:* Enforcement of interagency agreements has been a problem, even though the agreements are mandated in the IDEA. As noted earlier, Congress has proposed changes that would impose greater sanctions on SEAs and other agencies that do not comply with agreements.

Conclusion

In making determinations of financial responsibility, facilities need to be proactive. Having standard contracts with states and local districts that are most likely to place youngsters should facilitate the payment process. Ensuring that all parties—SEAs, local school districts, and other public agencies—are involved up front in planning for the placement should help smooth the way. In addition, good working relationships among facility staff, state and local special education directors, and other public agencies with funding responsibilities should help in resolving problems that may arise.

Facilities can begin the process of determining responsibility without an in-depth knowledge of regulations and policies. However, as the staff becomes more conversant with relevant federal, state, and local laws and policies, this knowledge will assist them in understanding and proceeding more smoothly through the reimbursement process. In fact, some of the confusion around this issue may arise from varying interpretations of these complex policies and regulations, so any additional knowledge will be useful.

Other key components in the equation are determination of student eligibility for services, awareness of other funding sources, and urging enforcement of interagency financial agreements. As facilities address these issues and develop relationships with state and local agencies, they will gain a greater understanding of and encounter fewer difficulties in working through the reimbursement process.

Other key components in working through the reimbursement process are determination of student eligibility for services, awareness of other funding sources, and urging enforcement of interagency financial agreements.

RESOURCE LIST

The National Association of Psychiatric Health Systems is committed to improving the lives of at-risk children, adolescents, and their families. For information about NAPHS, visit www.naphs.org or call 202/393-6700.

American Association of School Administrators (local school district superintendents)
www.aasa.org; (703) 528-0700

Bazelon Center for Mental Health Law
www.bazelon.org; (202) 467-5730

Center for Special Education Finance
<http://csef.air.org>; (650) 843-8136

Council of Chief State School Officers (state superintendents of education)
www.ccsso.org; (202) 336-7000

Council of State Governments
www.csg.org; (202) 624-5460

Education Commission of the States
www.ecs.org; (303) 299-3600

The Federal Resource Center for Special Education (Federally funded special education technical assistance centers)
www.dssc.org/frc; (202) 884-8215

Northeast Regional Resource Center
www.wested.org/nerrc; (802) 951-8226

Mid-South Regional Resource Center
www.ihdi.uky.edu/msrrc; (859) 257-4921

Southeast Regional Resource Center
<http://edla.aum.edu/serrc/serrc.html>; (334) 244-3100

North Central Regional Resource Center
<http://www.dssc.org/frc/ncrrc.htm>; (612) 626-8155

Mountain Plains Regional Resource Center
www.usu.edu/mprrc; (435) 752-0238

Western Regional Resource Center
<http://interact.uoregon.edu/WRRC/wrrc.html>; (541) 346-5641

National Alliance for the Mentally Ill
www.nami.org; (703) 524-7600

National Association of State Boards of Education
www.nasbe.org; (703) 684-4000

National Association of State Directors of Special Education
www.nasdse.org; (703) 519-3800

National Center on Education, Disability, and Juvenile Justice
www.edjj.org; (301) 405-6462

National Conference of State Legislatures
www.ncsl.org; (202) 624-5400 (DC); (303) 364-7700 (Denver)

National Education Association Health Information Network
<http://www.neahealthinfo.org/home.htm>; (202) 822-7570

National Governors Association
www.nga.org; (202) 624-5300

National Mental Health Association
www.nmha.org; (703) 684-7722

National School Boards Association
www.nsba.org; (703) 838-6722

Office of Special Education Programs, U.S. Department of Education
<http://www.ed.gov/about/offices/list/osers/osep/index.html>; (202) 245-7459

ENDNOTES

To locate PUBLIC LAWS and/or PENDING LEGISLATION: <http://thomas.loc.gov>.

For DEPARTMENT OF EDUCATION information: <http://www.ed.gov>.

To locate STATE EDUCATION AGENCIES:
http://wdcrobcolp01.ed.gov/Programs/EROD/org_list.cfm?category_ID=SEA

- ¹ Warner L.A. & Pottick K.J. (2003). Nearly 66,000 Youth Live in U.S. Mental Health Programs. Latest Findings in Children's Mental Health, Policy Report submitted to the Annie E. Casey Foundation. New Brunswick, NJ: Institute for Health, Health Care Policy, and Aging Research, Rutgers University. Vol. 2(1). Summer 2003.
- ² Twenty-fourth Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, U.S. Department of Education (2002), A-219, A-221.
- ³ Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et. seq. (2004).
- ⁴ Assistance to States for the Education of Children with Disabilities, 34 C.F.R. Part 300 (Regulations implementing the Individuals with Disabilities Education Act), § 300.125.
- ^v *Letter to Cousineau*, U.S. Department of Education, Office of Special Education Programs (July 2001) (Clarification of child find, educational, and financial responsibilities under the IDEA for children with disabilities placed in private facilities.); 20 U.S.C. § 612(a)(3)
- ⁶ 34 C.F.R. §§ 300.530–536.
- ⁷ 34 C.F.R. § 300.7.
- ⁸ 34 C.F.R. §§ 300.550–554.
- ⁹ 34 C.F.R. §§ 300.340–347.
- ¹⁰ 20 U.S.C. § 614(d)(2)(C)(i).
- ¹¹ 34 C.F.R. § 300.401.
- ¹² 34 C.F.R. §§ 300.403; 300.450–457.
- ¹³ 34 C.F.R. §§ 300.300; 300.600.
- ¹⁴ 34 C.F.R. § 300.302. *See also*, *Letter to Cousineau*, 1.
- ¹⁵ *Letter to Cousineau*, 2.
- ¹⁶ *See, for example*, *Babb v. Knox County Sch. Sys.*, 965 F.2d 104 (6th Cir. 1992) (The concept of education under the IDEA embodies both academic and a broad range of related services “under the general rubric of ‘treatment.’”). *See, in contrast*, *Clovis v. Cal. Office of Admin. Hearings*, 903 F.2d 635 (9th Cir. 1990) (Held that a psychiatric hospitalization was primarily for medical purposes, separate from the educational process, and therefore placement was not covered by the IDEA.).
- ¹⁷ Comments, 34 C.F.R. § 300.451.
- ¹⁸ *Letter to Cousineau*, 2–3.
- ¹⁹ *Letter to McAllister*, U.S. Department of Education, Office of Special Education Programs (1994), 2.
- ²⁰ 34 C.F.R. § 300.600.
- ²¹ 34 C.F.R. § 300.142(b).
- ²² 34 C.F.R. § 300.142(a).

- ²³ Comments, 34 C.F.R. §§ 300.141; 300.601.
- ²⁴ 20 U.S.C. § 611(e)(1)(C).
- ²⁵ 20 U.S.C. § 612(a)(12)(B)(ii).
- ²⁶ S. Rep. No. 185, 16.
- ²⁷ *Teaming Up: Using the IDEA and Medicaid to Secure Comprehensive Mental Health Services for Children and Youth*. Bazelon Center for Mental Health Law (2003), 3–4.
- ²⁸ Center for Medicare and Medicaid Services, U.S. Department of Health and Human Services, <http://www.cms.hhs.gov/schip/about-SCHIP.asp>.
- ²⁹ 34 C.F.R. § 300.706.
- ³⁰ Parrish, et.al., *State Special Education Finance Systems, 1999–2000, part I*. Center for Special Education Finance (May 2003).
- ³¹ Jackson and Ahearn, 3.
- ³² Parrish, 26–27.
- ³³ Jackson and Ahearn, 3.
- ³⁴ *Application for Approval of Private Residential Placement Room and Board Reimbursement*, Illinois State Board of Education (2003).
- ³⁵ *Educational Vouchers Manual*, Arizona Department of Education (2003).
- ³⁶ *Out-of-District Manual*, Colorado Department of Education (2002).
- ³⁷ Jackson and Ahearn, 2–3.
- ³⁸ Parrish, 22–24.
- ³⁹ Parrish, 25–26.
- ⁴⁰ *A New Era: Revitalizing Special Education for Children and Their Families*. Report of the President’s Commission on Excellence in Special Education (July 1, 2002), 32.
- ⁴¹ *A New Era*, 33, 74.
- ⁴² *A New Era*, 33, 74.
- ⁴³ 20 U.S.C. § 611(e)(3).
- ⁴⁴ Assistance to States for the Education of Children with Disabilities, 34 C.F.R. Part 300 (1999).
- ⁴⁵ Section 504, Rehabilitation Act of 1973, 29 U.S.C. § 794(a).



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