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STATE OF OKLAHOMA

TO: Superintendents and Special Education Contacts/Directors

FROM: Dr. Rene Axtell, Assistant State Superintendent, Special Education Service

DATE: February 28, 2014

SUBJECT: High Need Student(s) Application Procedures

The Individuals with Disabilities Education Act (IDEA) of 2004 granted states the flexibility to set aside a percent of the funds reserved for state-level activities to establish a funding mechanism that would reimburse local educational agencies (LEA) for costs of high need students with disabilities.

The High Needs Risk Pool is established in 34 C.F.R. § 611 (e) (3) of the IDEA 2004. The act allows the State to develop a State plan that establishes the following: a definition of a high need child with a disability, the criteria for participation by school districts in the program, a plan to ensure that placements supported by the funds are consistent with requirements in 34 C.F.R. § 300.114 – 300.118, the funding mechanism for the distribution of funds under this program and an annual distribution schedule in accordance with the appropriation of other funds in that fiscal year. The Oklahoma State Department of Education (OSDE), in collaboration with a group of stakeholders, has developed an application process to reimburse LEAs for the excessive costs of high need students. The OSDE has exercised the option to retain the maximum amount of administrative funds, $2.5 million, for high need activities.

I.) Purpose

The application process enables LEAs to request assistance for providing direct special educational instructional costs for high need children with disabilities who meet the criteria established in IDEA 2004. High cost expenses are categorized as follows:

Tier I includes funding on a reimbursement basis for out-of-state (OOS) residential placements. For students with special needs whom the local individualized education program (IEP) team determines an OOS residential placement is needed and appropriate to provide a free and appropriate public education (FAPE), the local educational agency (LEA) may complete the application process to request Tier I reimbursement assistance.

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Tier II includes funding for all other high need students with excessive costs to the LEA. LEAs meeting these criteria may complete the application for Tier II reimbursement assistance.

II.) Definition: High Need Child with a Disability:

1) A "High Need Child" is defined as a child who has been identified as eligible for special education and related services and has a current IEP. The intensity, frequency and diversity of the special education needs of the child exceed the typical needs of a student with a disability.

2) IDEA 2004 requires the eligibility for reimbursement for a high need student be at least three times the average per pupil expenditure as defined in Section 9101 of the Elementary and Secondary Education Act of 1965.

3) The direct educational cost of providing the special education services to the high need student presents a significant impact on the financial resources of the LEA. This impact is likely to impair the LEA's ability to provide the required educational programs to other students.

III.) Additional Criteria for Consideration for the High Need Reimbursement Award:

1) The LEA must submit a properly completed application, provided by the Oklahoma State Department of Education (OSDE), within the annual time frame established by the OSDE.

2) The LEA may only seek reimbursement for appropriately incurred costs that exceed three times the state average per pupil expenditure as calculated annually. The total cost of all high need students in the LEA must be at least ten percent (10%) of the LEA's prior year's IDEA Flow-Through allocation. Appropriate costs are those associated with providing direct special education instructional and related services as identified within the student's IEP.

3) The costs eligible for reimbursement shall **not** include the following: legal fees, court costs or other costs associated with a cause of action brought on behalf of a student with a disability to ensure a FAPE, non-extraordinary nursing costs, indirect costs, and administrative or leadership costs associated with the provision of the services to the student.

4) Allowable expenditures include, but are not limited to: one-to-one assistance, extended school year services, specially trained related service providers, public or private day programs, specialized equipment or materials/supplies specific to the student, contracted services, and/or approved OOS residential treatment facility services.

5) Transportation costs are limited to personnel, equipment or services required for the specific high need cost as identified in the student's IEP. Any transportation costs not specific to the high need student will be unallowable.

6) An LEA submitting a claim under this provision of IDEA shall be prepared to provide documentation to the OSDE that may include, but is not limited to, a copy of contracts for services, invoices and payment records, the student's IEP, payroll records, and invoices for all instructional supplies and equipment associated specifically with the special education program provided to the high need student.

7) Disbursements from this fund shall not be used to pay costs that otherwise would be reimbursed as medical assistance for a student with a disability under the State Medicaid program under Title XIX of the Social Security Act.

IV.) Timelines and Notification of Awards Status:

1) The high need grant award program will begin accepting applications for **Tier I** funding in October of each fiscal year. The final date for acceptance of applications will be the last Friday in July of each fiscal year.

2) All LEAs seeking reimbursement for **Tier I** expenses must submit an annual application with required supporting documentation, according to the timelines stated above.

3) **Tier II** applications must be submitted by the second Friday in July of each year. All applicants seeking reimbursement for Tier 2 expenses must submit an annual application and supporting documentation, according to the timeline stated above.

4) Risk pool funds do not carry-over and must be expended or encumbered before June 30 of the program year awarded.

5) In the event there is an extraordinary situation that would create a fiscal impact on the LEA resulting in a denial of services to students with disabilities in the district, consideration for immediate review of the application may be made. In this case, the application should be submitted with a memorandum of request addressed to Dr. Rene Axtell, Assistant State Superintendent that includes all required documents and supports demonstrating the need for immediate attention and funding. If funding is available, the request for high need funding will be considered.

6) Risk Pool funds cannot be used for expenses incurred for the high need student in prior years.

7) All high need applications received in a timely manner will be reviewed to determine if the unique qualities of the high need student related to intensity of and diversity of services are in excess of the typical needs of a student with a disability.

8) LEAs applying for Risk Pool funds will receive a formal written notification after careful review by the OSDE.

V. Application Procedures for High Need Funding Awards:

1. The IEP team will determine the least restrictive environment (LRE) for a student with a disability through a formally convened IEP meeting and according to the requirements of the IDEA.

2. If the IEP team determines that a student's educational needs can be met by the LEA, the LEA may apply to the OSDE for a Tier II funding reimbursement for excessive costs incurred to meet the student's educational needs.

3. If the IEP team determines that a student's educational needs can only be met through placement in an OOS residential facility, this placement option will be recorded on the IEP at the IEP meeting where the child is enrolled. The LEA may apply to the OSDE for a Tier I funding reimbursement.

4. The OOS residential placement application (Tier I) and procedures for completion of the application and the in-state (Tier II) reimbursement application and procedures will be posted on the OSDE Web site, SES Finance page.

5. Applicants will complete and submit the appropriate application and supporting documentation by the posted deadlines.

6. At least two members of the OSDE-SES Finance Team will review and score all timely applications after the submission date.

7. Awards will be made on a reimbursement basis, according to the Determination Matrix included in each application. Tier I funds will be awarded on a sliding scale to qualifying LEAs on a priority basis, demonstrated by documented need, until $1.5 million (60% of the annual provision for Risk Pool funds) has been obligated for the ensuing school year. Once this amount has been obligated, no more funds for Tier I requests will be available during that fiscal year for OOS residential placements.

8. The remaining $1 million (40% of the total annual provision for Risk Pool funds) will be available for Tier II funding requests only. All qualifying LEAs will be awarded Tier II funding at a prorated rate, if necessary, until the remaining 40% of the high need funds are depleted.

9. Before receiving Tier I funding, it is the responsibility of the LEA to enter into a formal contractual agreement with the OOS residential facility where the child will be placed. Upon the receipt of a copy of the completed agreement, The OSDE will make the appropriate percentage of funds available to the LEA on a reimbursement basis. The LEA will send quarterly copies of the student's progress reports provided by the OOS residential facility to the OSDE on a regular basis.

10. All LEAs receiving reimbursement funds for Tier I OOS residential placement must send written notification within five (5) working days after the IEP team decides to terminate an OOS placement. If terms of the OOS placement are violated by the LEA or the OOS residential facility, the OSDE will send written notification that the placement has been terminated. All notices that will change the placement of a student in an OOS placement must be provided in writing at least 30 days prior to dismissal of the student from the OOS residential facility, as stated in all OOS residential contracts. A copy of all written notices described above must be provided to the OSDE, the parent/guardian, and the OOS residential facility.

11. LEAs that are denied Tier I High Need reimbursement funds because of lack of available funds will be notified in writing and their request data will be added to a database in the order the applications were received. When Tier I funds become available, these LEAs will be notified in writing within 30 days of available funding on a “first come, first serve” basis. This will include notification of any OOS placement opening that may occur before the end of the school year due to cancellation. The LEA request data will actively remain in the database until the district no longer requires the reimbursement option for the high need student.

12. LEAs seeking high need reimbursement assistance must apply for Tier I and Tier II reimbursement funds annually. Tier I reimbursements will be awarded to active participants first and new applications will be considered in the order received.