

**210:15-13-8. High Needs Risk Pool.**

(a) **Purpose and scope.** As authorized by 20 USC § 1411(e), the State Department of Education sets aside a portion of the funds reserved for state-level activities under the Individuals with Disabilities Education Act (IDEA) for the purpose of reimbursing local educational agencies (LEAs) for costs expended in educating high need students with disabilities. Under the program, a "high need" student:

- (1) Has been identified as eligible for special education and related services; and
- (2) Has special education needs that exceed the typical needs of a student with a disability in terms of the intensity, frequency, and diversity of needs; and
- (3) Is classified in a disability category/categories that makes the LEA eligible for reimbursement for at least three times the average per pupil expenditure for the child; and
- (4) Requires intensive special education and related services, to an extent that serving the student presents a significant impact on the financial resources of the LEA that is likely to impair the LEA's ability to provide required educational programs to other students.

(b) **Criteria for participation by districts.** To be eligible for reimbursement for excessive costs incurred educating a high need student, an LEA must:

(1) Submit a properly completed application, provided by the State Department of Education (SDE), within the annual time frame established by the SDE.

(2) Provide documentation as requested to the State Department of Education that may include, but is not limited to:

- (A) Copies of any contracts for services;
- (B) Invoices and payment records;
- (C) The student's individualized education program (IEP);
- (D) Payroll records; and
- (E) Invoices for all instructional supplies and equipment associated specifically with the special education program provided to the high need student.

(3) Seek reimbursement only for appropriately incurred costs. Appropriately incurred costs are those associated with providing direct special education instructional and related services to the students.

(A) Appropriately incurred costs include, but are not limited to:

- (i) One-to-one assistance;
- (ii) Extended school year (ESY) services;
- (iii) Specially trained related services providers;
- (iv) Public or private day programs;
- (v) Specialized equipment or materials specific to the student;
- (vi) Transportation costs specific to the high needs student and identified in the IEP;
- (vii) Contracted services; and/or
- (viii) Approved out-of-state residential treatment facility services.

(B) The costs eligible for reimbursement shall not include:

- (i) Non-extraordinary nursing costs;
- (ii) Indirect costs;
- (iii) Administrative or leadership costs associated with the provision of services to the student;
- (iv) 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 free appropriate public education (FAPE); or

(v) Transportation costs not specific to the high needs student.

**(c) Ensuring placements comply with federal requirements.** To ensure compliance with federal standards and provide high needs students with access to a free appropriate public education (FAPE), all OOS placements must comply with the provisions of 34 CFR 300.114 through 34 CFR 300.118, including but not limited to the following requirements:

(1) The State Department of Education must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. This continuum shall include instruction available in regular classes, special classes, special schools, at home, and in hospitals and institutions.

(2) Because a child with a disability has the right to be educated in the least restrictive environment (LRE), the placement of a high needs student at an OOS residential facility is only appropriate if the nature or severity of the child's disability is such that education cannot be satisfactorily achieved in regular classes with the use of supplementary aids and services.

(3) In determining the educational placement of a child with a disability, the placement decision must be made by a group of persons including the parent(s) or guardian(s) and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. The child's placement must be considered at least annually, be based on the child's IEP, and be as close as possible to the child's home.

**(d) Tier I funding.** Tier I of the High Needs Risk Pool offers funding on a reimbursement basis for out-of-state (OOS) residential placements.

(1) If a student's IEP team determines that an OOS residential placement is necessary to meet the student's education needs, the student's LEA may apply to the State Department of Education for a Tier I funding reimbursement.

(2) 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. The contractual agreement shall include a provision that notice must be provided in writing to all parties at least thirty (30) days prior to the termination of a placement. Upon receiving a copy of the completed agreement, the State Department of Education will make the appropriate percentage of funds available to the LEA on a reimbursement basis. The LEA shall send quarterly copies of the student's progress reports provided by the OOS residential facility to the SDE on a regular basis.

(3) 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 High Needs 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.

(4) An LEA receiving reimbursement funds for a Tier I OOS residential placement must send written notification to the State Department of Education within five (5) working days in the event the high needs student's IEP team decides to terminate an OOS placement.

(5) If the terms of an OOS placement are violated by the LEA or the OOS residential facility, the SDE will send written notification to the LEA, the OOS facility, and the parent/guardian of the student that the placement has been terminated. All notices that will change the placement of a student in an OOS residential placement must be provided in writing at least thirty (30) days prior to dismissal of the student from the OOS facility.

(6) LEAs that are denied Tier I reimbursement funds because of a 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 thirty (30) days of available funding on a first come, first served 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 Tier I request data will actively remain in the database until the district no longer requires the reimbursement option for the high need student.

(e) **Tier II funding.** Tier II of the High Needs Risk Pool includes funding for all other high need students whose education needs result in excessive costs to the LEA.

(1) After all Tier I funding has been obligated for the school year, the remaining \$1 million (40% of the annual provision for High Needs 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 Needs Risk Pool funds are depleted.

(2) For an LEA to be eligible for Tier II funding, the total cost of all high needs students in the LEA must be at least ten percent (10%) of the LEA's previous year's IDEA Flow-Through allocation.

(f) **Application timelines and notification of award status.** The following procedures will apply to applications for reimbursement from the High Needs Risk Pool.

(1) **Tier I applications.** The State Department of Education will begin accepting applications for Tier I funding on October 1 of each fiscal year. Properly completed applications and all supporting documentation must be received by the last Friday in July to be eligible for consideration. An LEA seeking reimbursement for Tier I expenses must submit an application and all required supporting documentation annually, by the last Friday in July.

(2) **Tier II applications.** An LEA seeking reimbursement for Tier II expenses must submit a properly completed application and all required supporting documentation annually by the second Friday in July. All properly completed high needs reimbursement applications received in a timely manner will be reviewed to determine if the unique qualities of the high needs student related to intensity and diversity of services are in excess of the typical needs of a student with a disability. An LEA applying for reimbursement from the High Needs Risk Pool will receive a formal written notification of award status after careful review by the State Department of Education.