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To: Approved special education providers (ASEPs)

From: New York State Education Department (NYSED) Rate Setting Unit (RSU)

Subject: Surplus use guidance

Background: In accordance with Chapter 56 of the Laws of 2022 and NYSED's tuition rate setting methodology, certain ASEPs may retain surpluses in 2021-22 and thereafter. In 2022-23, the allowable surplus percentage increased from 1% to 11%, which makes ASEPs' decisions about how to use surplus funds more consequential.

Issue: ASEPs and their representatives have asked RSU for clarification on [NYSED's April 30, 2024, surplus reporting guidance memo](#). The memo states that surplus funds may be used to "pay for prior year debts/expenses." ASEPs and their representatives have asked if "expenses" means that surplus funds may be used to make up for losses in prior years due to total cost screens or other methodology parameters, even if those losses are not recognized as debt.

Recommendation: ASEPs may not use surplus funds to cover unfunded prior-year expenses unless those expenses are recognized as debt. The law states (emphasis added):

Funds authorized to be retained...may be expended...for a purpose expressly authorized as part of the approved tuition methodology for the year in which the funds are to be expended, *provided that funds may be expended to pay prior year outstanding debts.*

RSU's 2024-25 Methodology Letter states:

The surplus may only be expended pursuant to an authorization of the governing board of the school for a purpose in accordance with Section 200.9 of the Commissioner's Regulations and the Reimbursable Cost Manual (RCM) *and may be used to pay prior year outstanding debts.*

ASEPs should review the methodology each year and use the funds in accordance with the Reimbursable Cost Manual. Please also review the Q&A appended to this memo, and contact your [assigned accountant in the Rate Setting Unit](#) if you have questions.

Appendix 1: Surplus Questions and Answers

Outstanding Debts:

1. The law states: "Funds authorized to be retained...may be expended...for a purpose expressly authorized as part of the approved tuition methodology for the year in which the funds are to be expended, provided that funds may be expended to pay prior year outstanding debts." How are prior outstanding debts defined?

Outstanding debts are funds borrowed and reported on the balance sheet as current or long-term liabilities.

2. Are there any limitations on outstanding debts?

It must be outstanding debt as defined above. Further, the outstanding debt must be for reimbursable expenses according to the Reimbursable Cost Manual (RCM), and the use of retained surpluses to pay such debt must be approved by the governing board of the school or school district.

3. According to US GAAP, debt is defined as the obligation to pay another party a sum of money at a later date. As a result, debt can include:

- i. Loans or notes from banks or other lending institutions (lines of credit, loans, mortgages)

Yes, if the balance(s) were for reimbursable expenses according to the RCM.

- ii. Debt securities, such as bonds, sold to outside parties

We don't see how this is applicable to approved special education providers.

- iii. Loans made by shareholders, Board members, employees, or other individuals or entities, including loans from related parties

Yes, if the loan balance(s) were for reimbursable expenses according to the RCM. Note that the RCM and Commissioner's Regulations require providers to retain appropriate documentation to support loans and other financial transactions. Loans must be supported with written agreements, loan dates and amounts of borrowings and repayments, applicable interest rates for each borrowing and documentation (i.e. Board meeting minutes), etc.

Please refer to the RCM for additional information regarding less-than-arm's-length transactions.

- iv. Intercompany balances attributable to loans, coverages of expenditures, or other support provided to fund a provider's operations

Yes, if the balance(s) were for reimbursable expenses according to the RCM.

- v. Accounts payable to vendors

Yes, if the A/P balance(s) are reimbursable expenses according to the RCM.

- vi. Accrued expenses, such as salaries or pensions or other costs that have been incurred but not yet paid.

Accrued expenses are not outstanding debt.

- vii. Other long-term or short-term obligations that may exist as of a balance sheet date or from time to time during each fiscal year

If the debt was incurred in a prior year and continued to be a liability at the close of the previous fiscal year.

- 4. SED providers can be stand-alone agencies or components of larger multi-funded organizations. For example, a provider can be funded through SED, OCFS, OPWDD, and OMH. If a provider overspent in one of its SED tuition-based programs, and that loss was covered through interfund borrowings (for example paid for out of fundraised dollars or surpluses in an OMH program) is that interfund borrowing considered outstanding debt?

These are not debts on the balance sheet because they were expensed and covered by other revenue sources.

Consider the following two scenarios:

Scenario 1: Agency one is an SED only funded agency that overspent an SED program by \$500,000 and funded the overspending through a loan from a bank and by extending its vendors (increased days in Accounts Payable).

Scenario 2: Agency two is a multi-funded organization that overspent an SED program by \$500,000 and funded the overspending through fundraising and funding from OMH surpluses.

Both of these agencies had the same overspending within their SED tuition-based program. One is funded through traditional debt, while the other relies upon inter-fund support. Both providers experienced similar losses. Would both providers have outstanding debt to which surpluses could be carried back and applied against.

In scenario 2, the costs are not considered prior year outstanding debt.

- 5. Is a provider that has negative equity/net deficit automatically considered to have outstanding debt as its liabilities exceed its assets?

Outstanding debts are funds borrowed and reported on the balance sheet as current or long-term liabilities, thus negative equity would not be fundable.

Losses:

6. In evaluating the carry-back and carry-forward of surpluses, in determining how much of the surplus can be applied against any particular year's overspending, what is included in overspending? Does overspending include the following?

i. Allowable costs in excess of total cost screens (after all waivers, ETTP, and other similar adjustments)?

A surplus accrued in a prior year can be used to pay for reimbursable expenses (according to the RCM) in excess of allowable and reimbursable costs in the current year, which can include costs in excess of total cost screens.

ii. Allowable costs in excess of non-direct care screens?

A surplus accrued in a prior or current year can be used to pay for reimbursable expenses (according to the RCM) in excess of allowable and reimbursable costs in the current year, which can include costs in excess of non-direct care screens.