

**The University of the State of New York  
The State Education Department  
Program Services Reimbursement Unit  
Albany, New York 12234**

**Reimbursable Cost Manual for Programs Receiving Funding Under Article 81 and Article 89 of the  
Education Law to Educate Students with Disabilities**

This Manual Applies to the July 2004 to June 2005 Tuition Rates and Defines Reimbursable Costs for the  
July 2004 to June 2005 Period.

**July 2004 Edition**

## **TABLE OF CONTENTS**

	<i>Introduction</i>	3
<b>I.</b>	<b><i>Cost Principles</i></b>	<b>5</b>
<b>II.</b>	<b><i>General Requirements and Definitions</i></b>	
	<i>Record Keeping</i>	40
	<i>Accounting Requirements</i>	43
	<i>Definitions</i>	45
<b>III.</b>	<b><i>Tuition Rate-Setting Methodology</i></b>	
	<i>Tuition Rate-Setting Methodology for Tuition Rates</i>	52
	<i>Tuition Rate Adjustments</i>	52
	<i>Close-Down Policy and Procedures</i>	53
<b>IV.</b>	<b><i>Index</i></b>	<b>55</b>
<b>V.</b>	<b><i>Appendices</i></b>	<b>57</b>
	A-1. <i>Categorization of Expenditures</i>	58
	A-2. <i>Categorization of Revenues</i>	60
	B. <i>Purchasing Consortia</i>	61
	C. <i>Travel Guidelines</i>	62
	D. <i>Guidelines for Development, Review and Approval of Capital Projects</i> <i>for Students with Disabilities</i>	63
	E. <i>Statement on the Governance Role of a Trustee or Board Member</i>	67

## INTRODUCTION

**THIS JULY 2004 REIMBURSABLE COST MANUAL DEFINES REIMBURSABLE COSTS FOR THE JULY 2004-JUNE 2005 SCHOOL YEAR. IT APPLIES TO THE 2004-05 PROSPECTIVE TUITION RATES AND THE - 2004-2005 RECONCILIATION ADJUSTMENT FACTORS AND RECONCILIATION RATES, AND FINAL AUDIT RATES BASED ON - 2004-2005 ACTUAL DATA.**

This **July 2004 Reimbursable Cost Manual** (Manual) applies to programs receiving public funds for educating students with disabilities ages 3-21, in private schools, special act school districts (SASDs), Boards of Cooperative Educational Services (BOCES), public school districts, and municipalities, under Articles 81 or 89 of the Education Law.

Approved programs should recognize that information in financial reports is continually being analyzed and any part of this Manual may be modified from year to year based on that analysis. Continuous review by the NYS Education Department (SED), other State agencies, the State Division of the Budget (DOB) (as mandated by the Institution Schools Act), and by municipalities providing funding to programs under section 4410 of the Education Law may also result in modifications. Since this Manual is revised and updated on a periodic basis, questions arising about a subject not described herein will be reviewed by SED and treatment of such subjects may be described in the subsequent edition of the Manual.

Final costs are determined upon field audit and will be considered for reimbursement provided that such costs are reasonable, necessary and directly related to the education program. Costs must also have adequate substantiating documentation. Designation of a cost as reimbursable during the initial rate-setting process or during the reconciliation process does not mean that the cost will be reimbursed through the final audit rate since all rates are subject to adjustment on field audit, in accordance with section 200.18 of the Commissioner's Regulations and this Manual. A more detailed review of expenditures during an audit may reveal that costs reimbursed during a prior rate calculation for that fiscal year should not be reimbursed. Programs will be given an opportunity to review and comment on the draft audit report before the report is made final in accordance with section 200.18 of the Commissioner's Regulations.

Section I, **Cost Principles**, describes costs SED considers reimbursable in the calculation of tuition rates for approved programs.

Section II, **General Requirements and Definitions**, provides information on recordkeeping requirements, general accounting standards and definitions for programs receiving reimbursement under Articles 81 and 89 of the Education Law.

Section III, **Tuition Rate-Setting Methodology**, provides information on rate setting, adjustments and closedown.

Section IV, the **Index**, provides an alphabetical listing of subjects described in this publication.

The Appendices contain supplementary information. Special attention should be given to Appendix A, "Categorization of Expenditures" and Appendix A-1, "Categorization of Revenues" that identify specific items of expense and revenue. They also provide direction as to where the cost categories should be reported on the CFR. Please be advised that reimbursement of expenses designated as nondirect care expenses will be subject to the nondirect care cost parameter. Appendix E, "Statement on the Governance

Role of a Trustee or Board Member” is new in this edition. As this is all new, and to make it easier for the reader, Appendix E is not underlined.

## SECTION I. COST PRINCIPLES

Generally, costs will be considered for reimbursement provided such costs are reasonable, necessary, and directly related to the education program and are sufficiently documented. Such reimbursable costs will be included in the calculation of tuition rates up to any limits or cost screens approved annually in the rate setting methodology.

### 1. **Accounting**

Costs of establishing and maintaining accounting and other information systems required for management of Articles 81 and 89 funded programs are reimbursable and subject to the nondirect care cost parameter. When consultants or the program's independent CPA firm, provide these non-audit services, refer to Item #15 Consultants for reimbursement standards. (See Section II, General Requirements and Definitions, of this Manual for specific details on record keeping requirements).

### 2. **Administration**

A. Administrative costs include salary and fringe benefit costs of persons whose primary function is management and administration of the program and/or agency, in accordance with Federal and State laws, Regulations of the Commissioner of Education and/or the Board of Directors. All administrative costs are subject to the nondirect care cost parameter.

B. Administrative costs may include, but are not limited to: other-than-personal-services costs of professional dues and conferences; travel; telephone; office equipment and supplies; bonding of employees handling program funds; fees for lawyers, accountants and consultants; charges from parent organizations; personnel advertising and other recruiting costs; minimum corporation franchise tax or similar business tax; postage; office equipment rental or depreciation; repairs and maintenance; depreciation on assets related to administration; administrative purchase of services; dues; licenses and permits; subscriptions and publications; interest on operating loans; administrative staff development; and membership in civic, business, professional or technical organizations.

### 3. **Advertising**

Advertising means the costs associated with publications and other public relations endeavors using the mediums of newspapers, internet websites, magazines, radio and television programs, direct mail, trade papers, and the like.

Outreach activities, such as publications and other public relations endeavors which describe the services offered by approved private schools enabling them to better contribute to community educational objectives, are reimbursable. The intended outcome of these publications and public relations endeavors should be that of providing information and not for the purpose of recruiting students into programs or soliciting fund raising monies or donations. New York State places students without regard to advertising or public relations activities. (Refer to Item #40, Recruitment of Personnel.)

Guidelines for Preschool Program Advertising:

- A. Chapter 474 of the Laws of 1996 amended Section 4410 of the Education Law to require the State Education Department (SED) to establish guidelines for advertising by preschool programs and evaluators. The following guidelines have been developed pursuant to the Statute and corresponding amendments to the Regulations of the Commissioner of Education.

These amendments also require preschool programs and evaluators to periodically submit copies of advertising to the State Education Department for review. However, neither the Statute nor the Regulations require approved programs to advertise. Advertising costs for the purpose of recruiting students into programs or soliciting fund raising monies or donations are **not reimbursable** and remain nonallowable in the calculation of tuition rates.

If you have any questions, please call the Policy Development Unit of VESID - Special Education Policy and Quality Assurance Office at (518) 473-2878.

- B. Advertisements should include:

- Clear identification that the program is for preschool children who have or are suspected of having a disability pursuant to Section 4410 of Article 89 of the Education Law;
- A statement that any services provided are based upon the individual needs of the preschool child found to have a disability, as determined by the Committee on Preschool Special Education of the local school district;
- A statement that the local school district will determine the location where needed special education services will be provided, which may be the child's normal daytime setting;
- A statement that parents are responsible for arranging for and paying the costs of any child care.

- C. The following are appropriate contents of advertising:

- A description of special services available: evaluation, special education, speech therapy, occupational therapy, physical therapy and labeled as special education services;
- A description of the appropriate licensure and/or certification of staff employed;
- A statement that indicates that the special education services are at no direct cost to the parent, but that funding is provided through county taxes and state funds, earmarked for special education services provided;
- A statement that transportation may be a service provided, but, parents are encouraged to transport their own children and may be reimbursed at a rate per mile or a public service fare established by the municipality and approved by the Commissioner.

- D. Advertisements should not include:

- Information, which would mislead a parent to believe their child, can receive, at no cost to them, day care services or any and all services the agency has to offer.
- Information which would mislead a parent to believe that the decision regarding appropriate services and where services will be provided is based solely upon what the parent/or the

- provider requests;
- Information which would indicate that services are “free” since services are paid through local and state funds;
- Information which would indicate that transportation is always provided;
- General statements that would lead the reader to believe that this is something other than a special education program (i.e., are you concerned about your children – come see us);
- Any information, which would be false, deceptive or fraudulent with respect to the services to be provided to preschool children and their families.

4. **Assistive Technology Devices and Services\***

An assistive technology device is defined as "any item, piece of equipment, or product system, whether acquired commercially, off the shelf, modified or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability." (34 CFR 300.5)

An assistive technology service is defined as "any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device." (34 CFR 300.6)

A. **Preschool Children**

Under the preschool system, an approved program would make available and be responsible for, in most situations, high and low assistive technology devices as part of its instructional program and be reimbursed, as part of the tuition rate, through the Department's current rate-setting methodology. When a child-specific assistive technology device is required, the county in which the child resides purchases or leases the device and submits costs to the Department on a STAC-1 form. The assistive technology device should be identified on the related service line of the form.

Counties must contract with assistive technology service providers and must submit the contracted rate for such services on the annual County List of Approved Rates for Related Services (SED-RS-3).

B. **School Age Children**

When the school district that is programmatically responsible for the student, purchases or leases equipment specified on the IEP, the cost **is not reimbursable** in the tuition rate.

\*The above information is referenced from Thomas Neveldine's memo of September 1995 regarding Assistive Technology Devices and Services.

5. **Auditing**

The cost of certified audits necessary for the administration and management of Articles 81 and 89 funded programs **is reimbursable** subject to the limitations and requirements for consultant services (Refer to Item #15 on Consultants).

6. **Bad Debts**

Bad debt expenses are not reimbursable. Actual or estimated losses resulting from uncollectible accounts or other claims, including related collection and legal costs, are not reimbursable operating expenses for Articles 81 and 89 funded programs.

7. **Bedding/Linen**

Costs of bedding and linens are not reimbursable as an education expense. Such costs are considered to be parental responsibility or residential expenses. However, bedding, linen and towels for the nurse's office and for the classrooms will be considered reimbursable.

8. **Bonding**

Costs of insurance premiums on bonds covering employees who handle program funds are reimbursable and subject to the nondirect care cost parameter.

9. **Capital Expenditures**

(A) Special act school districts (SASDs), public school districts and BOCES are not required to depreciate the cost of buildings, equipment, furniture, fixtures or vehicles over the useful life of such assets. Public school districts and BOCES must adhere to the applicable sections of the General Municipal Law, which govern Capital Expenditures. SASDs may choose to renovate existing buildings or expense equipment, furniture, fixtures or vehicles by transferring funds from the General Fund to a Capital Project or Capital Expenditure Fund as discussed in section (B) below:

- (1) Renovations of existing buildings: Costs of renovations, alterations, or major repairs must be approved by the District Board in accordance with the District's annual approved budget policy. Proposals for renovations, alterations or major repairs must be submitted to the Commissioner's designated program and fiscal representatives for their review and comment. See Appendix D: Guidelines for Development, Review and Approval of Capital Projects for Students with Disabilities.
- (2) Purchases of furniture, fixtures or equipment: For proposed purchases of equipment, furniture, and fixtures, three (3) estimates must be provided for items which cost more than \$1,000 and have a useful life of more than two years.
- (3) Special act school districts have no voters or bonding authority and are not considered component school districts within the meaning of Section 1950(14) of Education Law for the purpose of participation in funding of BOCES capital projects, without the prior written approval of SED and the New York State Division of the Budget.
- (4) Consistent with the provisions of Chapter 383 of the New York State Laws of 2001, SASDs and public school districts are authorized access to the Dormitory Authority

of the State of New York (DASNY) for financing and refinancing of bonds for school construction projects. SASDs and public school districts are further authorized to structure financing of capital projects consistent with the payment of building aid based on assumed amortization of debt service payments in accordance with the useful life of the project.

- (5) Special act school districts, public school districts and BOCES are required to fully access available Building Aid funding for all capital projects. Failure to apply for Building Aid funding will result in an adjustment to approved capital costs to reduce reimbursement through the tuition rate to the level of funding that would have resulted if the provider had applied for Building Aid.
- (6) The New York State Uniform Fire Prevention and Building Code applies certain standards to new work involving conversions, alterations, additions or repairs to any building owned or operated by a special act school district or a public school district. For construction costing up to \$5,000, the school district board must assure compliance with the code. Between \$5,000 and \$10,000, the school district board has the responsibility to assure compliance and to retain a licensed architect/engineer to prepare plans and specifications and provide supervision. For costs over \$10,000, or affecting health and safety, the school district board is responsible for assuring compliance and retaining the architect/engineer to prepare plans and specifications to be submitted for approval and a building permit to the New York State Education Department, Office of Facilities Planning, Room 514W, Education Building, Albany, New York 12234 For more information, please visit the website at <http://www.emsc.nysed.gov/fmis/>

(B) Interfund transfers will be recognized in the tuition rate calculation process under the following conditions:

- (1) In cases where there may be several transfers between funds, costs will only be reimbursed once in the tuition rate-setting process.
- (2) Proposed transfers from the General Fund to the Capital Fund or additions to the Capital Fund will be recognized in the tuition rate calculation if a fiscal staff review determines prior to the transfer of funds, that transfers or additions result from the need to fund capital projects. Such projects must have been approved by resolution of the Special Act District Board and endorsed by the SED program staff.

Fiscal staff will consult with the Department of Facilities Planning and/or State Aid Unit staff during the review process. Districts should submit copies of proposals to Facilities Planning staff and to the Rate Setting Unit (RSU). RSU staff review will confirm in writing that amounts to be transferred are reasonable and made at appropriate times during the completion of the project.

- (3) When the Trust and Agency fund is used as a clearinghouse for expenses, transfers from the General Fund to the Trust and Agency Fund will be recognized in the rate calculation process, if consistent with regular District practice and in compliance with this Manual. However, transfers from the Trust and Agency Fund back to the

General Fund will be offset in rate calculations, if the costs have already been included in a tuition rate.

(4) When a capital project(s) is completed and the Capital Projects Fund has a surplus, then a transfer(s) from the Capital Projects Fund to the General Fund is required. The transferred amount will be offset in rate calculations, if the previous transfers to the Capital Project Fund have already been included in a tuition rate. Interest income earned by Capital Projects Fund and retained in this fund will be offset in the tuition rate calculations to the extent it was not previously offset in tuition rate calculations.

(5) Transfers to Contingency funds are not reimbursable in the calculation of tuition rates.

(C) All other providers should also refer to Item #18 on Depreciation/Amortization in this Manual.

10. **Charges from Parent or Related Organizations**

Charges to programs receiving administrative services, insurance, supplies, technical consultants, etc. from a parent or related organization are reimbursable provided they are based on actual direct and indirect costs, allocated to all programs on a consistent basis, and defined as reimbursable in the Regulations of the Commissioner of Education, the CFR Manual or this Manual. (Refer to Section II. C. Definitions, Item 4, in this Manual for less-than-arm's-length (LTAL) transactions).

11. **Students' Activities**

A. Costs incurred for intramural activities, student publications, student clubs and other student activities, to the extent such activities are normally provided by public day schools, are reimbursable direct care expenditures. Reasonable costs of class field trips during school hours and extra-curricular activities after school hours are reimbursable as direct care expenditures.

B. Ordinary living expenses such as the cost of overnight class trips or other expenses that are normally assumed by parents of students attending public day schools are not reimbursable.

C. Costs incurred for, or in support of, alumni activities and similar services are not reimbursable.

12. **Clothing/Uniforms**

Ordinary living expenses, such as the cost of clothing and uniforms that are normally assumed by parents or legal guardians of students attending day care centers or public day schools, are not reimbursable. Clothing expenses for staff such as uniforms for custodians or bus drivers, even if required by school policy, are not reimbursable. Such costs are considered to be personal expenses.

13. **Commencement and Convocation**

Costs of commencement and convocation activities are reimbursable when they are consistent with local public school districts.

14. **Compensation for Personal Services**

Compensation for personal services includes all salaries and wages, as well as fringe benefits and pension plan costs. Accrued vacation/sick leave **is not reimbursable**. Payments for vacation/sick leave, including lump sum payments made upon retirement that are required by law or by employer-employee agreement and meet the criteria listed in item (B) below, are reimbursable when paid and reported in the base year financial reports. (Refer also to Section II. General Requirements and Definitions, Item A.1. Record Keeping - Payroll).

A. Salaries

Salaries include all taxable and non-taxable salaries and wages paid or accrued to employees on the agency payroll, including severance pay to regular employees. Reimbursement of salary expense shall be subject to the following principles:

- (1) Entities operating approved programs shall develop employer-employee agreements with written salary scales and issue them to employees.
- (2) Base year salary expense will be inflated at an amount approved by the State Division of Budget for the purpose of establishing a level of reimbursable costs on which to base the per pupil tuition rate calculation.
- (3) Payments for sick and vacation leave credits for a retiring employee transferred into a lump sum payment to the employee are reimbursable when reported and paid in the base year financial reports and when documented in employer-employee contract agreements.
- (4)(a) Compensation (i.e., salaries plus fringe benefits) for the entity's executive director, assistant executive director and chief financial officer will be directly compared to the regional median compensation for comparable administration job titles of public school districts, as determined and published annually by SED's Basic Educational Data Systems (BEDS). Reimbursement of employee compensation for these job titles shall not exceed the median paid to comparable personnel in public schools for similar work and hours of employment in the region in which the entity is located. Compensation for an "Executive Director" providing services to an Article 81 and/or Article 89 funded program will be compared to the median "Superintendent-Independent" compensation for the region in which the entity is located and compensation for an Assistant Executive Director and Chief Financial Officer will be compared to the median compensation for "Assistant Superintendent."
- (4)(b) For any individual who is employed in any job title or combination of job titles by the entity operating the approved programs, compensation up to 1.0 FTE for that individual in total, will be considered in the calculation of the portion of 1.0 FTE reimbursable in the tuition rates, subject to the limitations defined in (4)(a) above.

- (4)(c) An entity that employs co-executive directors shall have total reimbursement for all co-executive directors combined limited to a level commensurate with a 1.0 FTE position. This level will be the maximum compensation level for the entire entity operating the approved programs.
- (4)(d) For any individual employed as executive director, assistant executive director, chief financial officer or comparable administrative job titles who works in more than one entity (including organizations that have a less than arm's length relationship with the approved program), and whose FTE in total across entities exceeds 1.0, the allocation of compensation must be supported by personnel activity reports or equivalent documentation which meets the following standards:
- they must reflect contemporaneous time records of the actual activity of each employee;
  - they must account for the total activity for which each employee is compensated;
  - they must be prepared at least monthly and coincide with one or more pay periods;
  - they must be signed and dated by the employee and Board President or equivalent officer;
  - budget estimates or other allocation methods determined before the services are performed are not adequate documentation for use in completing annual financial reports but may be used for interim accounting purposes;

Compensation beyond 1.0 FTE for any individual in total will not be considered reimbursable in the calculation of tuition rates.

- (4)(e) Direct care student staff ratios shall not exceed the approved staffing levels supported by SED's program approval letter. Any net excess of staff will not be included as part of reimbursable costs in the tuition rate. Such additional staff may be deemed reimbursable upon demonstration to the satisfaction of the Commissioner that such costs were necessary.
- (5) Reimbursement of all employee compensation, including administrative job titles shall not exceed the levels paid to comparably qualified and appropriately certified personnel in local public schools for similar work and hours of employment. Any net excess compensation will not be included as part of reimbursable costs in the tuition rate calculation.
- (6) Compensation to all individuals including shareholders, trustees, board members, officers, family members or others who have a financial interest in the program and who are also program employees must be commensurate to actual services provided as program employees or consultants and shall not include any distribution of earnings in excess of reimbursable compensation. For all individuals, compensation for board service or trustee service **is not reimbursable**. For example, a full-time program employee may serve on the Board of Directors of the agency. However, compensation for board service will not be reimbursed. Compensation for such

employee's personal service to the program will be allowed in the computation of the tuition rate if:

- . The board member abstains from any discussion or vote on matters related to his/her compensation and the Board minutes reflect this.
  - . The board member has not been employed by the State Education Department within two (2) years of his/her appointment to the Board.
- (7) Expenses of a personal nature, such as a residence or personal use of a car, known as perquisites (or perks), are not reimbursable.
  - (8) Compensation paid to an employee(s), which serves to duplicate worker's compensation awards, jury fees or disability claims are not reimbursable.
  - (9) The estimated value of donated services **is not reimbursable**. (Refer to Item #24 on Fundraising).
  - (10) Expenses for compensation of overtime work for direct care and nondirect care staff that are compensated on an hourly basis are reimbursable subject to all applicable statutes, rules and regulations of the NYS Department of Labor. Overtime compensation for salaried direct care staff for extracurricular activities such as coaching stipends, extra period coverage, plays, etc. are reimbursable when documented in the employee's contract and if they do not exceed local school district compensation for such activities. Overtime for all others **is not reimbursable**.
  - (11) Bonus compensation shall mean a non-recurring and non-accumulating (i.e., not included in base salary of subsequent years) lump sum payment(s) in excess of regularly scheduled salary which is not directly related to hours worked. Bonus compensation may be reimbursed if based on merit as measured and supported by employee performance evaluations. Bonus compensation restricted to only administrative staff **is not reimbursable**. Bonus compensation shall be subject to all aspects, constraints and cost screens contained in the methodology. Bonus compensation specifically relating to grant awards for targeted enhancements of teacher compensation **is reimbursable**.
  - (12) Private schools shall submit to the Department upon request, proposed compensation packages of the owners/officers/partners whose annualized compensation exceed \$75,000 or whose owners/officers/partners are employed in other businesses or are the owners/officers/partners of other businesses. Such arrangements shall include the proposed salary based on qualifications and actual documented hours worked (time sheets), and fringe benefits, as well as a list of the other jobs and/or businesses and the time devoted to each. The package will be approved/disapproved in writing by the Department within 30 days of receipt from the Department. Compensation will be subject to median analysis in the calculation of tuition rates as described in this Manual and the Commissioner's Regulations.
  - (13) The costs of parent counseling and training to assist parents in understanding the special needs of their child; providing parents with information about child

development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP are reimbursable.

B. Fringe Benefits

- (1) Fringe benefits may include paid time off, such as vacation leave, sick leave, military leave, holidays, training and educational costs, provided the benefit is established by written school policy. Payments into specific employee benefit packages, such as teachers' retirement, employees' retirement and pension plans, Social Security, health insurance, life insurance (to the extent the Internal Revenue Service does not require payment of such premiums to be included in the employee's income), unemployment insurance, disability insurance, union welfare funds, or pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act of 1974, may also be included.
- (2) Reimbursement of fringe benefit expenses shall be subject to the following principles:
  - (a) Vacation and sick leave are reimbursable in the year actually paid and reported as a salary expense. Accrued vacation and sick leave expenses are not reimbursable until actually paid.
  - (b) Costs of benefits for employees who provide services to more than one program and/or entity must be allocated to separate programs and/or entities in proportion to the salary expense allocated to each program.
  - (c) Benefits including pensions, for individual employees or officers/directors are not significantly disproportionate to those received by other classes or groups of employees.
  - (d) Amounts paid or credited to employees for sabbatical leave will be reimbursed to the extent that such leaves, as reflected in labor-management agreements, are a prevalent practice of the local public school district.
  - (e) Employer-provided educational assistance costs are reimbursable as compensation only when the course or degree pursued is relevant to the field in which the employee is working. Such costs are limited to tuition charged by the educational institution, textbooks, fees and training materials. Costs of specialized programs specifically designed to enhance the effectiveness of executives or managers are reimbursable. Employer-provided educational assistance costs will be considered compensation to the individual. Costs of education or training necessary for an employee to meet minimum qualifications for the position for which he/she was hired are not reimbursable.

C. Pensions

- (1) Costs of employer funded pension plans which are approved by the Internal Revenue Service and accounted for under generally accepted accounting principles (GAAP) are reimbursable subject to the following exceptions and limitations:
  - a. Payments in lieu of pensions made to or for the benefit of school officers, directors, presidents, etc. are not reimbursable as a fringe benefit but will be considered as salary expense.
  - b. IRA or KEOGH plan payments made by an entity for employees or officers are not reimbursable as a fringe benefit as they are individual in nature, however, they will be considered as salary expense.
  - c. Employer funded plans such as 403(b) plans are reimbursable if they qualify under IRS Guidelines. Employees' contributions to such pension plans may be reimbursable expenses as part of reported gross salaries.
  - d. Self-Employed Retirement Plans (Partnerships and Sole Proprietorships) that are qualified and non-discriminatory, and which include 70% or more of the employees, are reimbursable. Costs of plans that do not include anyone other than the owner or owner's relatives will not be reimbursed. In instances where sole proprietors or partners are not offered plans, SED will allow the Self Employment Tax deduction allowed as an adjustment to income on IRS Form 1040 Income Tax Return. In no case will SED allow a charge for pensions that are accounted for as a salary deduction through compensation paid to the employee.
  - e. Where funding requirements of the Employee's Retirement Income Security Act (ERISA) differ from GAAP, an explanatory note should be included in the CPA financial statements. Reimbursement will be based upon GAAP requirements. In addition, the costs of any excise tax imposed on accumulated funding deficiencies are not reimbursable.
  - f. Any program decision to terminate participation in a pension plan must be communicated in writing to the Commissioner's designated fiscal representative not less than 90 days in advance of the proposed termination date and should indicate the reasons for termination and plans for disposition of funds in the pension plan.
  - g. Supplemental Executive Retirement Plans (SERP) are discriminatory and nonqualified by the IRS and therefore are not reimbursable.
- (2) The following principles shall apply concerning pension plan asset reversion transactions in which employers received plan assets in excess of plan obligations:
  - a. Net reversion assets will be classified as offsetting revenues.
  - b. Net reversion assets are the reversion dollar amount before any excise tax or

tax penalties are deducted.

- c. Net reversion assets will include funds received from pension plan termination insurance proceeds.
- d. The net reversion assets must be allocated to all programs based on the employees who participated in the pension plan.
- e. SED strongly encourages providers to give primary consideration to enhancing employee pension plans.

15. **Consultants**

Consultants include independent accountants, as defined in section 200.9 (e)(1)(ii)(a) of the Commissioner's Regulations, lawyers and other independent contractors. (Refer to Item # 39 (A) on Purchase of Services and Section II. General Requirements and Definitions, A.3. Consultants). Nondirect care consultant service costs are subject to the nondirect care cost parameter.

A. Costs of consultants' services are reimbursable provided that:

- (1) Fees do not exceed the prevailing rate for such services. The school will maintain documentation to support the regional prevailing rate at the time such costs are incurred. (Refer to Section II. General Requirements and Definitions, Item A on Record Keeping).
- (2) The services could not have been performed by an appropriately certified school officer or employee who possesses the necessary technical skills or by SED Office of Special Education Services (OSSES) /RSU (Rate Setting Unit) staff. (Refer to Section II. General Requirements and Definitions, Item C.1.(a)).
- (3) Paid consultants providing services to approved programs for students with disabilities are not officers or employees of the entity, employees of the State Education Department, employees of municipalities, or employees of other private schools whose positions are funded wholly or in part by State or local taxpayer funds.
- (4) Persons who have been employed by the State Education Department to monitor or audit approved programs for students with disabilities are not employed as consultants for a period of two years following State employment.
- (5) Fees and transactions meet criteria for less-than-arm's length transactions when applicable (Refer to Section IIC., Definitions, Item 4 in this Manual for LTAL).

B. Costs of legal, accounting or consulting services, and related costs incurred in

connection with reorganization of the agency, including mergers and acquisitions, unless mandated by the State Education Department, are not reimbursable. Costs associated with retainers for legal, accounting or consulting services are not reimbursable unless the fee represents payment for actual documented reimbursable services rendered provided the services are not for lobbying efforts. Lobbying activities include, but are not limited to, advocating for legislation and activities associated with obtaining grants, contracts, cooperative agreements, or loans.

- C. Legal, accounting or consultant costs that result from claims or lawsuits against an Article 81 and Article 89 funded program are reimbursable to the extent not recoverable from other parties. Claims against non-Article 81 and non-Article 89 programs are not reimbursable through the tuition rate.
- D. When an audit/financial review is conducted by a local school district, a municipality or the State in accordance with State law, Regulations of the Commissioner of Education, Municipal Law and this Manual, any legal/accounting/consultant costs incurred as a result of proceedings brought pursuant to Article 78 of Civil Practice Law & Rules to challenge the established tuition rates are not reimbursable.
- E. Fringe benefit costs for independent contractors or consultants are not reimbursable.
- F. Costs associated with non-audit services provided by a registered public accounting firm or any person associated with that firm, during or within 365 days of required audit work (prior to the beginning of the fiscal period being audited or after the date of the audit report issued for the audit period), are not reimbursable. Such non-audit services include:
  - Bookkeeping or other services related to the accounting records or financial statements of the audit client;
  - Financial information systems design and implementation;
  - Appraisal or valuation services, fairness opinions or contribution-in-kinds reports;
  - Actuarial services;
  - Internal audit outsourcing services;
  - Management functions or human resources
  - Broker or dealer, investment advisor, or investment banking services;
  - Legal services and expert services unrelated to the audit; and
  - Any other service that the Board of the approved provider determines, by regulation, is impermissible.

## 16. Contingency Provisions

Contributions to a contingency reserve or any similar provision made for events whose occurrence cannot be forecast are not reimbursable.

17. **Contributions and Donations**

Political and charitable contributions and donations made by the program are not reimbursable.

18. **Depreciation/Amortization**

This section does not apply to special act school districts, public school districts and BOCES. Public school districts and BOCES must comply with applicable sections of the General Municipal Law. (Refer to Item #9 on Capital Expenditures in this Manual).

A. Depreciation - Buildings, Furniture, Equipment and Vehicles:

- (1) Items having a unit cost of \$1,000 or more and an estimated useful life of two years or more must be capitalized. Group purchases of similar items (i.e., furniture, small tools, etc.) or separate purchases of similar items in the same fiscal year totaling \$1,000 or more should be treated as a single unit purchase.
- (2) Costs of facility acquisition or construction shall be depreciated over the expected useful life of the facility as indicated in Appendix O - "Guidelines for Depreciation and Amortization" of the CFR Manual. Cost of facility acquisition or construction includes architect and inspection fees and should be included in the cost of the building for depreciation purposes. Renovations or alterations that are considered to be directly related to the education program and therefore reimbursable through depreciation charges over the estimated useful life of the renovation or alteration as indicated in Appendix O of the CFR Manual may include: replacement of roofs, boilers, plumbing systems, or similar repairs needed to protect the agency's physical plant; installation of safety devices, such as fire exits, alarms or smoke detectors in existing buildings; renovations necessary to comply with New York State standards of instruction; renovations to protect the health or safety of New York State students; and other capital expenditures for minor renovation work. Proposals for acquisition, new construction, renovations, alterations or major repairs must be submitted to the Commissioner's designated program and fiscal representatives for their review and comment. Refer to Appendix D for guidelines on the development of capital projects.  
  
A move to a new location must be approved by SED program staff prior to the move. Moving costs are discussed in Item #41 B. (1) on Rent.
- (3) The straight-line method of computing depreciation is required by SED for all classes of assets. Provision for estimated salvage value must be made in accordance with generally accepted accounting principles when computing depreciation for vehicles, furniture and equipment.
- (4) Refer to Appendix O in the CFR Manual for the required minimum useful lives of assets acquired on or after July 1, 1992 to be used in the computation of reimbursable depreciation. Deviation from this Appendix for furniture, equipment and vehicles may be granted by SED if the assets in question were previously owned. Modifications to reduce useful lives from those indicated in this Appendix

must be requested in writing to the Department for their advance approval.

- (5) Depreciation based on reappraisals designed to increase the cost basis for depreciation **is not reimbursable**. Accumulated depreciation on assets transferred due to a change in legal status of the owner, such as incorporation, **is not reimbursable**. Accumulated depreciation on property owned by a division, subsidiary or affiliate of an entity prior to acquisition by the entity will not be reimbursed to the program after acquisition; the remaining undepreciated cost of the prior entity will be reimbursed over the remaining useful life of the asset as if no ownership change occurred.
- (6) The portion of the cost of building construction, acquisition, renovation or equipment cost funded by a government grant or other public funding cannot be reimbursed again through depreciation of these costs. The asset cost must be reduced by the amount of the grant(s) and the balance depreciated in accordance with this Manual.
- (7) Depreciation charges for donated assets are reimbursable in accordance with (1) through (6) above.
- (8) If assets are shared by more than one program and/or entity, the share of depreciation expense allocated to programs funded pursuant to Articles 81 or 89 shall be based on documented and reasonable criteria.
- (9) Depreciation charged for assets acquired through approved Dormitory Authority construction/renovation projects **is not reimbursable** in a tuition rate.

B. Amortization: Except for Goodwill (Refer to Item #25), intangible assets such as leaseholds, leasehold improvements, organization expenses, and mortgage expenses must be amortized in accordance with the following amortization periods:

- (1) Leasehold/Leasehold Improvements - Amortized over the useful life of the improvements or the remaining term of the lease, whichever is shorter. Amortization expense for leaseholds and leasehold improvements will be reimbursable only with the existence of a formal written lease agreement. The term of the lease includes any period for which the lease may be renewed or extended. In the absence of an expressed option, past actions on the part of the lessor and lessee pertaining to renewal will be considered in determining the term of the lease for amortization purposes.
- (2) Mortgage Related Expense - Expenses related to purchasing or constructing a facility such as attorney's fees; recording costs; transfer taxes; and service charges such as finder's fees and placement fees; etc. should be amortized over the term of the mortgage.
- (3) Organization Expense - Amortized over a 60-month period starting with the month the program becomes operational to provide educational services.

(3) Start-Up Costs (previously amortized) - Refer to Item #49 on Start-Up Costs.

19. **Due Process Costs for Preschool Students Served under Section 4410 of the Education Law**

Due process costs incurred by public school districts associated with educational programs or educational services approved pursuant to Section 4410 of the Education Law and Section 200.17 of the Regulations of the Commissioner.

A. General Public School District Due Process Costs:

The following general due process costs incurred by a public school district are reimbursable, to the extent reasonable and necessary:

1. Impartial Hearing Officer (IHO) Costs including the hourly fee up to the maximum rate developed by the Department and approved by the Director of the State Division of the Budget. The number of hours of service must also be submitted and reviewed for reasonableness. Reasonable and necessary travel costs incurred by the IHO may also be reimbursable. The Impartial Hearing Officer must be on the Department's list of certified IHOs.
2. Court Stenographer Costs at the impartial hearing are reimbursable.
3. School District Attorney Fees are reimbursable to the extent they are reasonable, when incurred at the impartial hearing, during review by the State review officer or in a judicial action or proceeding brought by another party to review the State review officer's determination. Under the conditions described below, school district attorneys' fees are reimbursable in an action or proceeding brought by the board of education. The district must provide a contract or retainer agreement that establishes the hourly rate for the school district attorney. Such hourly fees and number of hours of service shall be reviewed for reasonableness. Reasonable and necessary travel and other incidental costs, such as photocopying, may be reimbursable if documentation is presented. To be eligible to receive reimbursement for reasonable attorneys' fees in an action or proceeding brought by the board of education, the board of education must demonstrate that:
  - (i) (a) The board of education has not named or joined the State nor any State officer, department, board or agency of the State (State defendant) as a party to the action or proceeding; or
  - (b) There has been a judicial determination joining one or more State defendants as a necessary party; and
  - (ii) The board of education, upon final disposition of such action or proceeding, has received a judgment in its favor annulling the determination of the State review officer.

B. Interim Special Education Program or Service Costs paid for by the parents between the time of the Committee on Preschool Special Education meeting, which precipitated the impartial

hearing and final resolution (whether a decision from an Impartial Hearing Officer, State Review Officer or a Court) are not reimbursable unless the Impartial Hearing Officer, the State Review Officer or the Court requires the school district to reimburse the parents for such costs in their decisions.

- C. Parent Attorney Fees are not reimbursable unless the parents prevail in the final resolution (whether a decision from an Impartial Hearing officer, State Review Officer or a Court) and the final decision requires the public school district to reimburse the parents for their attorney fees.
- D. Evaluation of the child paid for by the parents as part of due process activities **is not reimbursable** unless the Impartial Hearing Officer, State Review Officer or Court requires the public school district to reimburse the parents for such evaluation costs.
- E. Application for the reimbursable costs described in (A) through (D) above shall be submitted upon final resolution (whether a determination from an Impartial Hearing Officer, State Review Officer or a Court).
- F. Documentation: The public school district must provide complete and detailed documentation of costs requested for reimbursement. For each item, the nature of the cost must be detailed, the per hour cost and the number of hours must be clear, as well as who performed the service. Costs requested, but not sufficiently documented will not be reimbursed.

20. **Dues/Licenses/Permits**

The costs of professional dues, licenses and permits are reimbursable and are subject to the nondirect care cost parameter.

21. **Entertainment Costs and Personal Expenditures**

- A. Costs incurred for entertainment of officers or employees, or for activities not related to the program, or any related items such as meals, lodging, rentals, transportation, and gratuities, are not reimbursable. (Refer to Item #30 on Meetings and Conferences and Item #57 on Travel).
- B. All personal expenses, such as personal travel expenses, laundry charges, beverage charges, gift certificates to staff and vendors, flowers or parties for staff, holiday parties, repairs on a personal vehicle, rental expenses for personal apartments, etc., are not reimbursable unless specified otherwise in this Manual.

22. **Fines and Penalties**

Costs resulting from violations of, or failure by, the entity to comply with Federal, State, and/or local laws and regulations, are not reimbursable.

23. **Food**

- A. The cost of food and food related salary and fringe benefit costs are reimbursable. Programs are strongly encouraged to take full advantage of the funding available through the following sources:
1. National School Lunch Program, the School Breakfast Program and the Special Milk Program. These national programs are administered at the State level by SED. Applications and further information regarding child nutrition or school food management may be obtained by writing to the New York State Education Department, Child Nutrition Program Administration, Room 362 EBA, Albany, NY 12234 or by calling (518) 473-8781.
  2. The New York State Department of Health, Division of Nutrition Child and Adult Care Food Program (CACFP). For more information about the program, call the Albany Office of CACFP at (518) 458-5550.
- B. For all approved programs providing required meals to students with disabilities, the following principles shall also apply:
- (1) When the program subcontracts for food services, the program shall employ competitive bidding practices.
  - (2) When the program directly supplies meals, the direct costs of food and food preparation must be reasonable in comparison to the prevailing market for such services.
- C. Costs of food provided to any staff including lunchroom monitors are not reimbursable.
- D. Food costs will not be reimbursed for special education itinerant programs unless required by the student's IEP as an instructional supply.

24. **Fund-Raising Costs**

Costs of organized fund raising (i.e., financial campaigns, endowment drives, or solicitation of gifts and bequests) to raise capital, or to obtain contributions are not reimbursable. However, reasonable and necessary costs associated with the procurement and retention of donated services used for IEP mandated services either directly or indirectly, may be reimbursable as long as the program can demonstrate that cost savings exist and that there is a direct benefit to the students in the program through the use of such donated services. These costs are subject to the nondirect care cost parameter.

25. **Goodwill**

Goodwill, defined as the stated value of a business in excess of its book value, is not a reimbursable cost.

26. **Grants**

- A. Costs of staff or consultants to prepare a proposal to obtain a government grant or to administer the activities or projects funded by such grants may be reimbursable within the tuition rate as a nondirect care expense to the extent that such costs remain net of **all** administrative expenses allowed by the grantor.
- B. Any claimed excess of actual government (Federal, State or local) grant expenses over approved budgeted grant expenses **is not reimbursable** through the tuition rate for either current or prior years, except for costs defined in A. above.
- C. Federal funds previously disbursed directly to approved programs to supplement the education of individuals with disabilities, flowed through the New York State Education Department. These funds and related expenditures were reported in discrete cost columns within the program code range 9800 – 9810 (Federal Grants). **Effective with the July 1, 2000 to June 30, 2001 reporting period**, revenues received from local education agencies (LEAs) pursuant to Sections 611 and 619 of the Individuals with Disabilities Education Act (IDEA) and the related expenses should be directly charged or allocated to the program(s) receiving the benefit. These revenues and related expenses must be reported on the full accrual basis of accounting. The expenses should be direct charged or allocated to the program(s) receiving the benefit. The revenue should be reported on CFR-1 line #94 as “Other Revenue” (for approved 853 schools, approved private preschool providers and BOCES). Approved providers will need to attach a separate sheet to their cost report submissions to identify IDEA Section 611 or 619 revenue.

27. **Insurance**

- A. Reimbursable insurance premium costs include those for liability, fire/disaster, or casualty loss insurance obtained to guard against loss to the program. NOTE: Self-insurance plans for liability, fire/disaster, or casualty loss, whereby a program establishes a reserve or contingency account/fund for future liabilities are not reimbursable. Self-insurance plans for unemployment and workers compensation are allowable for school districts if consistent with regular district practice and in compliance with this manual. (Please refer to Item #9.B.on Interfund Transfers).
- B. Entities have an obligation to adopt insurance practices that will obtain the best coverage for the lowest cost (i.e. solicit competitive bids on insurance).
- C. Costs of insurance on the lives of owners/officers or employees when the entity is identified as the beneficiary are not reimbursable. Costs to insure against the loss of key personnel are not reimbursable. (Refer to Item #14 on Compensation).
- D. Costs resulting from losses not covered because of deductible insurance policy provisions, and in keeping with sound business practice, are reimbursable. Costs are not reimbursable if the school chooses not to file a claim with the insurance company for losses that are covered under the policy in force at the time.
- E. Costs for Business Income Insurance to safeguard against the loss of revenues due to business interruption are reimbursable and subject to the nondirect care costs parameter.

28. **Interest Costs**

- A. Arm's-Length - Interest expense on capital indebtedness and working capital **is reimbursable** provided the interest rate is not in excess of the prime rate plus one percent of the lending institution at the time the loan was made. Interest expense will be reimbursed on loans in excess of the prime rate plus one percent only with written approval of the Commissioner in cases where the entity can establish that it was unable to secure a rate of prime plus one percent or lower despite its good faith efforts to do so. Good faith efforts shall be demonstrated by documentation that an entity has attempted within the last year to obtain the most competitive rate available from lending institutions in the entity's immediate geographic area. Loan procurement fees are not reimbursable.
- B. Less-Than-Arm's-Length - Interest expense on capital indebtedness or on working capital loans incurred in a LTAL transaction between the lender and the borrower will be reimbursed only with the prior written approval of the Commissioner upon establishment of the necessity and cost effectiveness of the transaction. A cost effective transaction relating to interest expense on capital indebtedness or on working capital loans is one in which the interest rate charged by the LTAL lender is less than or equal to the prime rate on lending in the geographic area and is greater than the actual cost of the capital rate to the lender. The borrowing LTAL entity must demonstrate that this LTAL transaction was necessary as a last resort to acquiring monies and that the interest rate charged by the lending LTAL entity was more favorable than could be obtained in the market place and that rate of interest must be demonstrated to be at prime or less of the lending institutions in the geographic region at the time the loan was incurred. Loan procurement fees are not reimbursable. (Refer to Section IIC, Definitions, Item #4 in this Manual for LTAL).
- C. Reimbursement of interest expense on capital indebtedness shall be subject to the following conditions:
- (1) Interest expense shall be included in the nondirect care cost parameter of the rate-setting methodology.
  - (2) Interest expense on bank loans, bonds, mortgages or similar instruments **is reimbursable** if such expense was incurred to finance the acquisition of fixed assets or vehicles, or implement major renovations necessary to provide special education services that conform to standards in Federal and State law and regulation. Interest costs on construction loans must be capitalized as required by GAAP.
  - (3) Mortgage interest expense will be reimbursed, as part of occupancy costs effective with the actual date of occupancy in the new location. Occupancy refers to the site where the students are physically located and receiving services as prescribed on their IEP's. Occupancy costs of the prior location are reimbursable up to the actual date of occupancy in the new location.
  - (4) Interest expense on the above **is reimbursable** only when there is a corresponding amortization of principal on the capital indebtedness and there are no loans/notes receivable from related parties at any time during the entity's loan repayment period.

Payments, which represent “interest only”, are not reimbursable.

- D. Working capital interest is defined as interest paid on loans that are secured for operational expenses. Entities are encouraged to explore the most cost efficient means of working capital borrowing. For example, a revolving line of credit may result in a lower average monthly principal and lower annual interest charges. Reimbursement for interest expense on working capital financing shall be subject to the following conditions:
- (1) Interest expense shall be included in the nondirect care cost parameter of the rate-setting methodology.
  - (2) Interest expense will be reimbursed only if conditions exist that warrants a loan and the principal amount of the loan. Documentation that the loan is warranted includes but is not limited to:
    - . Evidence that the required financial statements and financial reports were submitted by the deadline including any extension approved by the Commissioner and in the format required by the Commissioner.
    - . For a new program whose prospective rate was to be based on a budget, evidence that the complete budget with any applicable supporting data was received by SED fiscal staff within 30 days after a written request.
    - . Documentation of cash flow needs including receipts and disbursements.
    - . Documentation indicating that tuition billings or their equivalent were submitted to the appropriate funding sources in a timely manner in accordance with a written contract or schedule of payments and at least one follow-up notice was sent to delinquent sources.
    - . Documentation indicating that the required preschool program's contract with the county was submitted to the county on a timely basis and in the format required by the county.
  - (3) Interest expense on working capital loans for late filers of required financial information will be reimbursed on a prorated basis if submitted within 90 days of the respective due date. No interest expense will be reimbursed for entities that file cost reports more than 90 days after the respective due dates. Non-reimbursable interest expense will affect the tuition rates for the tuition rate year, in accordance with the rate-setting methodology, and will apply to all tuition rates for that year (prospective, appeal, reconciliation adjustments/rates and final audit).
  - (4) Interest expense on working capital loans used for the purpose of repayment of tuition to school districts and/or municipalities as a result of an audit or reconciliation rate **is not reimbursable**.
  - (5) Interest expense **is reimbursable** only when there are corresponding payments of principal on the working capital loans *and* only if there are no loans/notes receivable

from related parties at any time during the entity's loan repayment period. Payments, which represent "interest only", are not reimbursable.

- (6) Interest expenses paid on loans to the entity are not reimbursable unless the criteria in Item #28 have been met. In addition, these interest payments will be considered compensation when paid to a shareholder who is also a paid employee or a consultant of an entity or program.

29. **Investment Management**

Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are not reimbursable.

30. **Meetings and Conferences**

For reimbursement purposes, conferences are generally defined to include meetings, conventions, symposiums, seminars, Department sponsored sessions or other such assemblies whose primary purpose is the dissemination of technical information. Conferences must be directly related to the education program or to the administration of the program. Programs shall be required upon audit to provide brochures, agenda or other literature that verify attendance and document the purpose of the conference or meeting. The following reimbursement principles shall be applied to conference costs:

- (1) Reimbursement for off-site conference costs are limited to no more than three conferences within a 12 month period for any single individual and will be reimbursed consistent with New York State guidelines for costs of meals, transportation, rental of facilities, and other items incidental to such conferences. Reimbursement for transportation costs will be limited to the most cost effective means of travel. (Refer to Item #57 on Travel.)
- (2) Costs of conferences held at out-of-state resorts are limited to the guidelines detailed in Appendix C. Reimbursement is allowed up to three days per conference for each person but only when each person requesting reimbursement attends six or more hours per day of conference sessions.
- (3) Costs for food, beverages, entertainment and other related costs for meetings, including Board meetings, are not reimbursable.
- (4) Costs of conferences attended by teachers and other direct care staff whose purpose is to improve desired student learning outcomes by more effective means are reimbursable.
- (5) Costs of conferences attended by administration staff are limited to two people per conference and are reimbursable provided that the purpose of the conference is to improve or demonstrate new administrative techniques or concepts and the criteria in 1 - 3 above are met. Such costs will be subject to the nondirect care cost parameter.
- (6) Documentation to support the cost of meetings and conferences must include the names and job titles of staff that attended and the program(s) served by each staff person.

31. **Miscellaneous Expenses**

Expenses that do not fit into any other category for the operation of Article 81 and Article 89 education programs are reimbursable provided these expenses meet the cost principle criteria as discussed in this Manual. Miscellaneous expenses are subject to the nondirect care cost parameter.

32. **Office Supplies**

See #52 Supplies and Materials (Household).

33. **Payroll Preparation**

The cost of preparing payrolls and maintaining necessary related wage records **is reimbursable** subject to the nondirect care cost parameter.

34. **Plant Security**

Necessary expenses incurred to comply with security requirements, including wages and equipment of personnel engaged in plant protection, are reimbursable subject to the nondirect care cost parameter.

35. **Postage**

Postage costs such as stamps, postage meter rentals, and mailing permits for Article 81 and Article 89 programs and activities are reimbursable subject to the nondirect care cost parameter.

36. **Printing and Reproduction**

- A. Cost for printing and reproduction of forms or reports, etc., which are necessary for Article 81 and Article 89 programs, are reimbursable.
- B. Costs of providing information regarding program services, placement procedures, admission policies and related matters to be used by placing agencies are reimbursable subject to the nondirect care cost parameter.
- C. Costs of publications about research or fund raising are not reimbursable.

37. **Professional Dues**

Costs of the school's membership in civic, business, technical, and professional organizations are reimbursable subject to the following restrictions:

- A. The benefit from the membership is related to Article 81 and Article 89 programs.
- B. The cost of membership is reasonably commensurate to the value of the services or benefits received.
- C. The expenditure is not for membership in an organization whose primary purpose is to

influence legislation.

38. **Profits and Losses on Investments**

Profits and/or losses on the sale or exchange of either short or long term investments are not considered in the computation of tuition rates. (Refer to Item #44 on Revenues).

39. **Purchase of Services**

A. Fees paid to independent contractors (see item #15 on Consultants), such as payments for garbage pickup, upkeep of grounds, data processing, payroll processing, temporary office workers, security guards, or pest exterminators are reimbursable.

Tuition costs paid by the special act school district (SASD) for non-disabled children of SASD staff or the related residential agency staff that are required to reside on the grounds of the special act school district and attend local public school districts are reimbursable.

B. Health related costs such as speech therapy, physical and occupational therapy and psychological services are reimbursable in the calculation of the program's tuition rate to the extent such services are prescribed in a student's IEP and are subject to the following:

(1) For Article 89 school age students, costs of diagnostic or evaluative services are the responsibility of the school district or the committee on special education (CSE), and are not reimbursable.

For Article 81 school age students, costs of diagnostic or evaluative services by the Article 81 school's committee on special education are reimbursable in the tuition rate.

(2) For Article 89 preschool students, evaluation costs and bilingual evaluation costs reported in the preschool provider's evaluation cost center are reimbursable, at the rates established annually pursuant to section 4410 of the Education Law and the related Commissioner's Regulations.

(3) Consistent with federal and state regulations, related services for students with disabilities may include medical services as provided by a licensed physician, or other appropriately licensed health professional. These services must be for diagnostic or evaluative services only to determine whether a student has a medically related disability. Reimbursement for such evaluations is discussed above in B. (1) and (2). The cost for medical services other than diagnostic or evaluative service in approved private schools should be reimbursed through the maintenance rate as appropriate. Costs incurred to comply with OSHA mandates (Part 1910.1030 of Title 29 of the Code of Federal Regulations) that all health care employers offer Hepatitis B vaccine free of charge to employees who "reasonably" anticipate exposure to blood and other infectious materials are reimbursable in the tuition rate.

(4)(a). Costs incurred in less-than-arm's-length purchase of health related service transactions that are determined to be above actual documented costs of the owner

shall be reimbursed only with written approval of the Commissioner obtained prior to the LTAL transaction upon the establishment of the cost-effectiveness that may result from the transaction. The Commissioner's approval may be rescinded retroactively if, based on further review/reconciliation/audit, it is determined that information used in the initial approval was erroneous, incomplete, did not fairly represent all relevant facts, data or issues, or there is inadequate supporting documentation for information/data provided and used during the approval process.

- (4)(b). A cost-effective purchase of health related services transaction is one in which the amount paid to one related party by another related party for the purchase of health related services, on a per session basis, is less than or equal to the average per session base year costs of the purchase of such services from other entities approved under Article 81 or 89 of the Education Law to deliver such related services and, those entities have tuition rates established by the Education Department and approved by the State Division of the Budget and are located within the same Basic Education Data Systems geographic region as the entity requesting the cost-effective determination. The data to be used for this analysis shall be derived from the financial reports submitted to the Department by approved programs as required under Section 200.9(e) of the Commissioner's Regulations. For example, requests for a cost-effectiveness determination for the purchase of health related services transaction for the 2004-05 school year would have the per session average calculated using the 2002-03 financial report data submitted by approved programs and must be approved prior to July 1 of the school year to which the determination pertains. The per session average shall not be subject to revision based on subsequent data from future financial reports.

40. **Recruitment of Personnel**

- A. Costs of recruiting personnel required to meet State program or fiscal mandates or of solicitation of bids for necessary goods and services are reimbursable. Costs of "help wanted" advertising and of operating an aptitude and educational testing program for prospective employees, travel costs of employees engaged in recruiting personnel and travel costs of applicants for interviews for prospective employment are reimbursable provided that the size of the staff recruited and maintained is in keeping with workload requirements. Costs of fingerprinting staff, drug testing, etc. are reimbursable if mandatory in the recruitment of personnel. Records must be kept which include the prospective employee's credentials and salary requests. Where the program uses employment agencies, costs not in excess of standard commercial rates for such services are reimbursable. These costs are subject to the nondirect care cost parameter.
- B. Costs for recruiting LTAL individuals are not reimbursable. (Refer to Section II C., Definitions, Item 3 in this Manual for LTAL).

41. **Rent**

- A. Rental agreements, including renewals, must be in writing, dated and signed by the lessee and the lessor.

B. Property - Rental costs of buildings and facilities are reimbursable under the following circumstances:

- (1) Rental costs are within the nondirect care cost parameter. Entities operating approved programs may submit copies of new or renegotiated leases to RSU (RATE SETTING UNIT) staff for review at least 90 days before the effective date of the lease to allow the Commissioner's designated fiscal representatives to determine whether the costs of rental agreements are within the limitations of the program's nondirect care cost parameter.

A move to a new location must be approved by SED program staff prior to the program's move. Moving costs are reimbursable if the move is necessary to enable the program to conform to requirements of the Regulations of the Commissioner of Education or the students' IEP. However, the program must establish that a change in location or lease resulted from Education Department program mandates, consistent with regulatory or IEP requirements, or arm's-length landlord action in response to market forces. In addition, the program's occupancy costs of the new location are not reimbursable before the actual date of the program's occupancy. The program's occupancy costs of the prior location are reimbursable up to the actual date of the program's occupancy in the new location.

- (2) Occupancy costs are based on actual documented rental charges, supported by bills, vouchers, etc. Donated rent **is not reimbursable**.

Rent security deposits are not reimbursable.

- (3) Rental costs specified in sale/transfer and leaseback agreements may not be greater than what the actual costs would have been had the program retained legal title. A sale/transfer or leaseback agreement is one in which a entity either: sells/transfers assets to another party (e.g., insurance company, associated organization or institution, or private investor) and the property is leased back to the program, or sells/transfers assets to a person or entity related to the program who then leases the asset to the program.

Sale/transfer and leaseback agreements should be identified in an explanatory note in the program's certified financial statements.

- (4) The share of rental expense allocated to programs funded pursuant to Articles 81 and 89 is based on documented and reasonable criteria, such as square footage utilization, when more than one program is operated in a rented facility.

- (5) Costs incurred in less-than-arm's-length lease of real property transactions that are determined to be above actual documented costs of the owner shall be reimbursed only with written approval of the Commissioner upon the establishment of the cost effectiveness resulting from the transaction. This written approval must be obtained prior to the LTAL transaction upon the establishment of the cost-effectiveness that may result from the transaction. The Commissioner's approval may be rescinded retroactively if, based on further review/reconciliation/audit, it is determined that

information used in the initial approval was erroneous, incomplete, did not fairly represent all relevant facts, data or issues, or there is inadequate supporting documentation for information/data provided and used during the approval process.

A cost effective lease of real property transaction is one in which the lease amount paid and incidental costs of the property to one related party by another related party, on a per pupil basis, is less than or equal to the average per pupil base year costs of property (including rental costs, building depreciation, and mortgage interest) provided by other entities, approved under Articles 81 or 89 of the Education and, those entities have tuition rates established by the Education Department and approved by the State Division of the Budget and are located within the same Basic Education Data Systems geographic region as the entity requesting the cost effective determination. The data to be used for this analysis shall be derived from the financial reports submitted to the Department by approved programs as required under Section 200.9(e) of the Commissioner's Regulations. For example, requests for a cost effectiveness determination for a lease of real property transaction for the 2004-05 school year would have the per pupil average calculated using the 2002-03 financial report data submitted by approved programs and must be approved prior to July 1 of the school year to which the determination pertains, i.e. July 1, 2004. The per pupil average shall not be subject to revision based on subsequent data from future financial reports. Approved cost-effective rental amounts are subject to the nondirect care screen parameter.

- C. Furnishings and Equipment - Rental costs of furniture and fixtures are reimbursable provided that annual rental charges and maintenance costs are comparable to the costs that would be reimbursed if the equipment were owned by the program and being maintained and depreciated by the program.

The cost of lease-purchase agreements for furnishings and equipment **is reimbursable** provided that the lease-purchase agreements are reasonable and appropriate.

Reimbursement of rental costs of furniture and equipment specified in sale/transfer and leaseback agreements will be subject to the conditions specified in B (3) above. Reimbursement for rental costs in LTAL transactions will be limited to owner's actual costs.

- D. Vehicles - Rental costs of program vehicles are reimbursable provided that annual rental charges and maintenance costs are comparable to the costs that would be reimbursed if the vehicles were owned by the program and being maintained and depreciated by the program. The cost of lease-purchase agreements for vehicles **is reimbursable** provided that the lease-purchase agreements are reasonable and appropriate.

Rental costs of vehicles used by administrative staff will be reimbursed only to the extent that they are within the limits of the nondirect care cost parameter and are necessary for operating the program. (See Item #57 on Travel).

42. **Repairs and Maintenance - Plant, Equipment, and Vehicles**

- A. Costs incurred for necessary maintenance, repair or upkeep of property that do not add to the

permanent value of the property's usefulness nor appreciably prolong its intended life, but keep it in efficient operating condition, are reimbursable to the extent that they are not otherwise included in rental or other charges.

- B. Costs incurred for necessary maintenance or repair of office, stationary or movable equipment that keeps the equipment in an efficient operating condition are reimbursable.
- C. Costs incurred for necessary maintenance and repair of agency vehicles that keep these vehicles in an efficient operating condition are reimbursable.
  - (1) Costs of maintenance and repair of vehicles provided as perks to agency officers or employees for personal use are not reimbursable.
  - (2) If an agency rents vehicles, only repair and maintenance expenses not covered by the rental/lease agreement are reimbursable. (See Item #41 on Rent).
- D. These costs are reimbursable only to the extent that they are within the limits of the nondirect care cost parameter and are necessary for operating the program.

43. **Research**

Costs of staff salaries, supplies or printing and reproduction of materials or any other costs associated with general research activities are not reimbursable.

44. **Revenues**

- A. Section 4401 of Education Law states that an approved tuition rate shall be computed after the following revenues have been offset by SED against the proper expenditures:
  - (1) Any cash receipts that reduce the cost of an item will be applied against the item, except gifts, donations and earned interest from other than public funds. Gains from the sale of program equipment, vehicles or buildings not purchased through a grant or private funds will be offset by SED against replacement assets or total program costs when a tuition rate is calculated. (See Item #18 on Depreciation relating to costs funded by grants).
  - (2) Funding received from a governmental agency or unit for specific education programs or cost items will be offset by SED against the appropriate program costs in the calculation of tuition rates so that costs will not be reimbursed more than once by public funds.
  - (3) Any income earned from investment of public funds (e.g., tuition) resulting from the operations of approved programs will be considered applied income to reduce the costs of the program(s).
  - (4) Interest income earned on assets/fund balances in funds other than the General Fund shall be offset in the tuition rate calculation if these assets/fund balances were not transferred to these funds in accordance with the accounting requirements in Section

I Item 9 (B) of this Manual.

(5) State Transportation Aid, BOCES Aid and Building Aid when not applicable to a Dormitory Authority project are offsetting revenues for Special Act School Districts (SASD).

B. Tuition revenues received from State or local governments or school districts for education of students pursuant to Article 81 and Article 89 of Education Law are not offset against costs when a tuition rate is calculated.

45. **Scholarships and Student Aid**

Costs of scholarships, fellowships and other forms of student aid that apply only to instruction of privately funded or nondisabled students are not reimbursable.

46. **Severance Pay**

A. Severance pay is compensation in addition to the regular salary that is paid by a program to employees whose services are being terminated.

B. Cost of severance pay **is reimbursable** provided that:

- (1) Such payment is required by law or by employer-employee agreement or contract.
- (2) The cost of severance pay does not exceed two weeks for a full-time employee.
- (3) Severance payment should be allocated to all appropriate programs and/or entities on a reasonable basis. Costs should be reported in programs where salary and fringe benefits of the employee who received severance pay would have been reported.

C. Severance pay for normal, recurring staff turnover **is not reimbursable** in the absence of legal requirements, contracts, or agreements.

47. **Special Education Itinerant Teacher Services**

A. The following costs are reimbursable in the calculation of preschool special education itinerant teacher (SEIT) tuition rates:

- (1) Costs for certified special education teacher salaries and fringe benefits are reimbursable.
- (2) Costs associated with substitute special education teachers as well as the costs associated with providing regular education classroom coverage when a special education teacher is engaged in consultation with the regular education teacher, (i.e., indirect service as defined in Section 200.16 (h)(3)(ii) of the Commissioner's Regulations), are reimbursable. Under no circumstances will the reimbursable hours for regular education classroom coverage exceed the weekly amount of such indirect service as required by the student's IEP.

- (3) Travel costs incurred by the special education teacher in providing direct and indirect services or performing other required functions are reimbursable.
  - (4) Reimbursable nondirect care costs are subject to the nondirect care cost parameter and include, but are not limited to: nondirect supplies and materials, office space and related expenses, administration and overhead.
  - (5) Total reimbursable expenditures are subject to the total cost screen.
- B. Expenditures for related services, as defined in Section 4410(1)(J) of the Education Law and Section 200.1(qq) of the Regulations, are not reimbursable in the calculation of tuition rates for special education itinerant teacher services.

48. **Staff Development**

- A. The costs of in-service training provided for employee development, including training materials, salaries and related costs of instructors are reimbursable.
- B. Educational costs at an undergraduate or postgraduate college level are discussed in Item #14 on Compensation in this Manual.

49. **Start-Up Costs**

Start-up costs as defined in SOP 98-5 relating to initiating an approved program or expanding an existing approved program to include a new site shall be expensed in the initial year of operation in accordance with generally accepted accounting principles (Statement of Position -SOP 98-5) and are reimbursable as one-time only expenses subject to the parameters of the tuition rate-setting methodology. Additionally, previously unamortized start-up costs shall also be expensed in accordance with generally accepted accounting principles (SOP 98-5) and are reimbursable as one-time only expenses subject to the parameters of the tuition rate-setting methodology and the nondirect care cost screen. Start-up costs must be incurred after the date of program approval issued by the Department to be considered for reimbursement.

50. **Stipends**

Payments to students for on the job training or work stipends as part of an educational program are not reimbursable. Such stipends should be paid by the party that receives some benefit from the job or work experience involving the student or by private sources. However, monies provided to students through the entity's payroll for services performed by students that would otherwise need to be performed by school employees are reimbursable if those payments conform to all appropriate labor laws and regulations.

51. **Subscriptions and Publications**

Costs of subscriptions to civic, business, professional and technical periodicals are reimbursable when related to Article 81 and Article 89 programs and addressed to the school.

52. **Supplies and Materials (Household)**

Purchases made specifically for Article 81 and Article 89 programs should be charged at actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the entity. Withdrawals from general stores or stockrooms should be charged at their cost under any method of pricing that conforms to sound accounting practices. Incoming transportation charges are part of material costs. Direct material cost should include only the materials and supplies actually used and due credit should be given for any excess materials retained or returned to vendors. Due credit should also be given for all proceeds or value received for any scrap. Where government donated or furnished material is used in the Article 81 and/or Article 89 program, no estimated value of such material will be included in the computation of tuition rates.

Private providers are expected to purchase supplies and materials through New York State contract or private purchasing consortia whenever possible and when those contracts or consortia can provide materials at a cost lower than the market place in general. Appendix B provides a listing of approved vendors offering a wide range of products at prices negotiated by purchasing consortia.

Costs of supplies such as light bulbs, brooms, paper products, repair tools, ladders, etc. for repairs and maintenance of the facility are reimbursable subject to the nondirect care cost parameter. Costs of consumable office supplies such as paper, pencils, pens, paper clips, etc. or of printing financial reports, checks, or office forms are reimbursable subject to the nondirect care cost parameter.

53. **Supplies and Materials (Non-Household)**

- A. Reasonable and necessary costs incurred for purchased supplies and materials that are related to Article 81 and Article 89 programs are reimbursable. Reimbursable supply costs include:
- (1) Costs of consumable items used in the classroom and SEIT programs (craft paper, chalk, paste, etc.);
  - (2) Costs incurred for freight, express, cartage, postage and other transportation services relating either to goods purchased, in process, or delivered;
  - (3) Costs of supplies required and supported by the individualized education program (IEP) for students with disabilities as part of their education; and
  - (4) The costs of consumable medical supplies (aspirin, bandages, etc.) are reimbursable provided they are administered for emergency care by qualified professionals.

54. **Taxes**

- A. In general, taxes that the entity must pay and charged to a program (such as water, school or property tax) are reimbursable if they are paid or accrued in accordance with generally accepted accounting principles. Payments made to local governments in lieu of taxes commensurate with services received are reimbursable. The payment of minimum New York State Corporation Franchise Tax or similar business tax **is reimbursable**. Any amounts over the minimum are the result of a corporation having to base its franchise tax on one of the other given calculation methods (e.g., income capital, officers' compensation, etc.)

and is not considered the required minimum tax. Such costs will be subject to the nondirect care cost parameter.

- B. Payments for Federal, State and local income taxes or any related penalties and interest are not reimbursable. Penalties and interest on late payments or nonpayment of payroll withholding taxes are not reimbursable.

To get more information on the minimum New York City and New York State Corporation Taxes, you may call the New York State Department of Taxation and Finance, Taxpayer Assistance Bureau at 1-800-972-1233.

55. **Telephone/Facsimiles**

- A. Costs incurred for telephone service, local and long distance telephone calls, electronic facsimiles (FAX) and charges for cellular telephones, etc., are reimbursable provided that:
  - (1) They pertain to the special education program; and
  - (2) Long distance telephone or message charges are documented by monthly bills and proof of payment and directly attributable to the Article 81 and Article 89 funded programs.
- B. Long distance telephone charges and all cell phone charges that are not properly documented will not be reimbursed.
- C. Reimbursement received from persons who make personal calls from business phones, including business cell phones, must be offset against this expense.
- D. These costs are subject to the nondirect care cost parameter.

56. **Transportation of Students**

- A. Costs of transportation to and from a school age (5-21) student's home to the program for the September through June and/or the July/August component are the responsibility of the local school district and are therefore not reimbursable in the computation of a tuition rate.
- B. Costs of transportation of students residing in child care institutions between the residence and the education program are reimbursable in accordance with Section 200.12 of the Commissioner's Regulations.
- C. Certain New York City private programs may be open on days when the New York City Board of Education does not provide transportation. Programs should contact the Commissioner's designated fiscal representatives about the reimbursement of transportation costs in these circumstances.
- D. Special act school districts should refer to Item #44 on Revenues regarding State Transportation Aid.

- E. Costs of transportation to and from a preschool (ages 3-4) student's special education program and/or services are the responsibility of the appropriate municipality and are therefore not reimbursable in the computation of the tuition rate.

57. **Travel**

Travel costs include costs of transportation, lodging and subsistence incurred by employees in travel status on official school business. Reimbursement for such travel costs shall be consistent with Bulletins issued by the N.Y.S. Division of the Budget and the Office of the State Comptroller. (See Appendix C of this Manual).

- A. The method used to claim costs (e.g. per diem, actual costs) must be consistently applied to the entire trip.
- B. Out-of-state travel costs, except for conferences as explained in Item #30 Meetings and Conferences, are not reimbursable.
- C. Costs of first class air accommodations are not reimbursable.
- D. Costs of automobile travel are reimbursable as follows:
  - (1) Costs of personal use of a program-owned or leased automobile are not reimbursable. The costs of vehicles used by program officials, employees or Board members to commute to and from their homes are not reimbursable.
  - (2) The Commissioner reserves the right to determine whether a program-owned or rented automobile is a luxury vehicle. For purposes of reimbursement, a luxury vehicle is described as a car that exceeds a sales price of \$38,000 in accordance with the 2001 IRS Retailer's Excise Tax Rates for passenger cars. If the Commissioner determines that an automobile is a luxury car, the added expense of owning or operating such a vehicle will not be reimbursed.

Stereo equipment, remote car starters, foglights, winches, and the like that are factory installed or after-market installed as optional equipment are considered luxury items and are not reimbursable whether the vehicle is program owned, rented or leased by the entity.
  - (3) Use of privately-owned vehicles for program business by employees **is reimbursable** provided such use is documented and necessary. Such use will be compensated at a rate not to exceed the mileage rate allowed by the Internal Revenue Service (IRS) for automobile travel or for the use of privately owned motorcycle. Private car mileage reimbursements in excess of the allowable IRS reimbursement rate per mile are subject to withholding and reporting requirements. Auto repair, depreciation, insurance, rental, garage and maintenance costs incurred by employees for privately-owned vehicles are not reimbursable.
  - (4) For CFR filers, reimbursement for the purchase of vehicles will be in accordance with Appendix O of the CFR Manual governing depreciation. Reimbursable

depreciation expense for vehicles used by administrative staff and Board members will be subject to the limitations of the nondirect care cost parameter.

- E. Reasonable and necessary costs of meals, lodging and transportation will be reimbursed for Board members in travel status to attend Board meetings at a level of reimbursement consistent with the guidelines established by the Office of the State Comptroller for New York State employees. (See Appendix C).
- F. Travel expenses of spouses, family members or any nonemployee are not reimbursable unless the spouse or family member is an employee of the entity(ies) and a legitimate business purpose exists for them to travel.

58. **Utilities**

Costs of electricity, gas, heat, water, fuel, bottled gas, etc. are reimbursable, provided these costs have not already been included in costs reported for rental or lease agreements. Such costs must be directly charged to applicable programs or allocated on a reasonable basis and will be subject to the limitations of the nondirect care cost parameter.

## SECTION II. GENERAL REQUIREMENTS AND DEFINITIONS

### A. **Record Keeping**

Section 200.9 (d) of the Commissioner's Regulations requires entities operating approved programs to retain all pertinent accounting, allocation and enrollment/attendance records supporting reported data directly or indirectly related to the establishment of tuition rates for seven years following the end of each reporting year. Information relating to the acquisition of fixed assets, equipment, land or building improvements and any related financing arrangements and grants must be retained as long as the facility is used by any education program the provider operates if this period exceeds seven years.

Costs will not be reimbursable on field audit without appropriate written documentation of costs. Documentation includes but is not limited to:

#### 1. Payroll

Compensation costs must be based on payrolls that are approved and documented. Payroll must be supported by employee time records prepared during, not after, the time period for which the employee was paid. Employee time sheets must be signed by the employee and a supervisor, and must be completed at least monthly.

#### 2. Time Distribution

Actual hours of service is the preferred statistical basis upon which to allocate salaries and fringe benefits for shared staff who work on multiple programs. Entities must maintain appropriate documentation reflecting the hours used in this allocation. Acceptable documentation may include payroll records or time studies. If hours of service cannot be calculated or a time study cannot be completed, then alternative methods that are equitable and conform to generally accepted accounting principles may be utilized. Documentation for all allocation methods (bases and percentages) must be retained for a minimum of seven years. Guidelines for acceptable time studies for CFR filers are provided in Appendix L - "Acceptable Time Studies" of the CFR Manual.

#### 3. Consultants

The Department will use government publications including the Handbook for Employers published by the New York State Unemployment Insurance Division as a guide to determine when individuals employed by the program are independent contractors or consultants and when individuals are employees.

Adequate documentation includes, but is not limited to, the consultant's resume, a written contract which includes the nature of the services to be provided, the charge per day and service dates. In addition, the documentation should include the number of days actually worked and the students' names for each service date and number of hours worked if direct care services were provided.

Requests for proposals (RFP) or other bidding documentation must be kept on file by the entities operating the program. The entity will need to justify that the consultant hired was the most economical and/or appropriate available for a particular service.

4. Purchases

All purchases must be supported with invoices listing items purchased and indicating date of purchase and date of payment, as well as canceled checks. Costs must be charged directly to specific programs whenever possible. The particular program(s) must be identified on invoices or associated documents. When applicable, competitive bidding practices should be used in conformance with the School Business Management-Handbook Number 5.

5. Travel

Logs must be kept for each employee indicating dates of travel, destination, purpose, mileage, and related costs such as tolls, parking and gasoline.

6. Attendance Records

Instruction:

Attendance records must be maintained for all students indicating date of admission, discharge, program, and funding source. Daily attendance records must be maintained indicating whether each student is present or absent and summarized monthly. In addition, individual student files must be maintained and kept current. Also, both legal and illegal absences, as defined in item C (6) on "Full-Time Equivalent Enrollment" in this Section, must be documented by the provider. Attendance records and documentation of absences must be kept for seven years as well as a signed and dated copy of each student's IEP.

Related Services:

Related service records for each child indicating, for each service session, the date, duration, nature and scope of service provided, with the name, license or certification number and signature of the related service provider.

7. Contractual Agreements

All contractual agreements (e.g., leases) must be in writing signed and dated.

8. Liabilities: Short and Long-Term

Long-term payables (e.g., mortgage and loans) must be supported with amortization schedules, the signed and dated mortgage/loan agreements, and evidence of payments made. The acquired assets related to each loan must be identified as well as the program(s) utilizing each of these assets.

Working capital loans and lines of credit borrowings must be supported with the written

agreement, loan dates and amounts of borrowings and repayments, applicable interest rates for each borrowing and documentation supporting the necessity for the loan and the borrowed amount.

9. Equipment and Furniture

Inventory records, including the invoice, must be kept for all items purchased by the entity or donated to the entity for the benefit of approved programs. These records should list: the invoice number; a description of the item; the make; model; or serial number of the item; cost; date of purchase; date retired; if applicable, the program(s) using the asset; and the location. For donated items, inventory records should identify the item as donated, listing the date of donation and the fair market value of the item at the time of donation.

10. Vehicles

Records must include date purchased, cost, make, model, vehicle ID # and year of the vehicle. If vehicles were rented or leased, a copy of the rental agreements or leases should be retained.

Vehicle use must be documented with individual vehicle logs that include at a minimum: the date, time of travel, to and from destinations, mileage between each, purpose of travel, and name of traveler. If the vehicle was assigned to an employee, also list the name of the employee to whom it was assigned. The annual mileage for program purposes and repairs and maintenance costs for each vehicle should be summarized and maintained.

11. Buildings

Records for buildings and land owned by the entity and used by the program must describe the buildings and land owned. Records must include a copy of the purchase agreement, deed, any mortgages and the amortization schedule for such mortgages. Records must include an annual calculation of the portion of space in each building used by or for the benefit of each program (education and non-education) and for the purposes of program administration and agency administration. All related information must be retained as long as the facility is used by an approved education program even if this period exceeds seven years.

12. Building Improvements

Records must include the date work was completed, a description of the improvement, including location (i.e. floor, rooms), the cost, the program(s) that benefited, the share of costs allocable to each program and the basis for allocation. Detailed bills from the person or business doing the work are acceptable records.

13. Allocations

- a) Any expenditures that cannot be charged directly to a specific program must be allocated across all programs and/or entities benefited by the expenditure. For example:

- . Salaries of employees who perform tasks for more than one program must be allocated among all programs for which they work.
  - . The cost of supplies that are purchased for distribution among multiple programs must be allocated among these programs if direct charges are not possible.
  - . General maintenance and overhead expenses must be allocated among all programs and entities.
- b) Entities operating programs must use allocation methods that are fair and reasonable, as determined by the Commissioner's fiscal representatives. Such allocation methods, as well as the statistical basis used to calculate allocation percentages, must be documented and retained for each fiscal year for review upon audit. Allocation percentages should be reviewed on an annual basis and adjusted as necessary.
- c) For CFR filers (except DSS Residential Facilities), agency administration costs shall be allocated to all programs operated by the entity based on the Ratio Value Method of allocation. Agency administration costs allocated to grant cost centers shall be the lower of actual costs allowable based on the Ratio Value Method or the maximum amount that can be charged based on grantor requirements.

14. Classification (Direct Care/Non-Direct Care)

Entities operating programs may be required upon audit to support the classification of costs as direct care. For example, the classification of conference costs as direct care would be supported by copies of brochures or other literature that explains the purpose of the conference.

**B. Accounting Requirements**

1. Entities operating programs must maintain accounts in accordance with generally accepted accounting principles and section 200.9 (d) of the Commissioner's Regulations.
2. The accrual basis of accounting is required for all programs receiving Article 81 and Article 89 funds.
3. Accounting books of original entry shall include asset, liability and fund balance or equity accounts, as well as expenditure and revenue accounts. Subsidiary revenue and expenditure accounts shall be maintained for, but not limited to, each approved program requiring a tuition rate, for preschool evaluation costs, and for each government grant administered by the Commissioner.
4. As established in section 200.9(e)(ii)(a) of the Commissioner's Regulations, the financial statements must be certified by a licensed or certified public accountant independent of the program. In instances where a program retains a licensed or certified public accountant or

accounting entity to certify the programs' financial statements and the CPA also provides other non-audit services such as management consulting, automation consulting or bookkeeping services, the provision of these services should be fully disclosed via explanatory notes to the audited financial statements.

5. Entities operating programs must establish adequate systems of internal controls and to conduct risk assessments in accordance with guidelines of the Committee of Sponsoring Organizations (COSO).
  
6. For special act school districts (SASD), public school districts and BOCES, the following accounting principles shall apply:
  - (a) For capital expenditures, refer to Section I., Cost Principles, Item #9 in this Manual.
  - (b) Amounts paid to the New York State Teachers' Retirement System and/or New York State Employee Retirement System must be expensed in the fiscal year the amount is due to the retirement systems.
  - (c) Encumbrances at year end will not be included in the tuition rate for that year. The expenditure will be included in the tuition rate only after the expenditure is made.
  - (d) Public school districts and BOCES must adhere to all applicable sections of the General Municipal Law.
  
7. Public school districts, SASDs and BOCES may apply for and receive discounts or rebates on the price of certain eligible telecommunication services and equipment under the Federal Universal Telecommunication Discount Program for Schools and Libraries (E-Rate Discount Program). The New York State Education Department strongly encourages all schools (K-12) to take maximum advantage of the significant discounts offered by the E-Rate program on telecommunications, Internet access, and internal wiring services. The E-Rate Central website (<http://www.e-ratecentral.com>) posts news bulletins, weekly summaries, special instructions and tips covering all phases of the E-Rate application process. E-Rate forms are available in several formats for off-line computer use. To assist public school districts, SASDs and BOCES in properly accounting for and reporting any discounts or rebates received, the following guidelines are provided:
  - (a). If a discounted price is paid for an eligible service or item under the E-Rate program, the expense should be recorded at the discounted amount and reported accordingly for rate setting purposes.
  - (b). If a rebate is received, the public school district, SASD or BOCES should record the rebate as offsetting revenues as follows:

**Public School District: Schedule SS-10, Line 3**

SASD: Schedule SS-20, Line 4

BOCES: Schedule CFR-1, Line 94

C. **Definitions**

1. **Commissioner's Approval**

- (a) In order to receive approval of the Commissioner, the program must submit a written request to the Commissioner's designated representative with all supporting documents. The Commissioner delegates responsibility for monitoring approved programs educating students with disabilities to the staff of the VESID-Special Education Policy and Quality Assurance Office and rate-setting responsibility to the staff of the Rate Setting Unit.

The Commissioner's designated representative for program issues is the Deputy Commissioner of the Office of Vocational and Educational Services for Individuals with Disabilities (VESID), Room 1603, One Commerce Plaza, Albany, New York 12234.

The Commissioner's designated representative for fiscal issues is the Chief Operating Officer of the New York State Education Department, Room 128, Education Building, Albany, New York 12234.

- (b) Program and fiscal issues that require prior written approval of the Commissioner's designees include but are not limited to:
- Education program expansion requiring additional staff, property related costs, classroom equipment, etc. when the cost is expected to be reimbursed fully or partially through the tuition rate. Both program and fiscal designee written approval are required;
  - New or renovated facility space, both instructional and non-instructional to be occupied by approved programs including costs associated with such space. Both program and fiscal designee written approval are required;
  - Service to students whose disabilities are different from the disabilities of students the program is approved to serve. Program designee written approval is required;
  - Anticipation of large decreases or increases in student population. Program designee written approval is necessary.
  - Reimbursement of interest expense in less-than-arm's length relationships or in excess of the prime rate plus one percent in arm's-length relationships; and/or for reimbursement of costs incurred in less-than-arm's-length relationships that are above the actual costs of the owner or vendor. Fiscal designee written approval is necessary.

approval is required.

- Approval by the Department and the Division of the Budget of any request for a determination of cost effectiveness. Fiscal designee written approval is required.

2. Entity

The governmental unit or corporate organization operating a program(s), as defined in Section II, C. 5. of this Manual.

3. Fiscal Viability

Fiscal viability as referenced in the Commissioner's Regulations 200.7(a) and 200.9(e) means:

- (a) Private schools seeking initial approval to be reimbursed with public funds shall have access to sufficient capital or lines of credit to cover all operating, property maintenance, leasing or purchase costs during the period of conditional approval. Schools must be able to demonstrate that sufficient internal controls exist for the protection of school assets. Furthermore, appropriate insurance policies covering assets and limiting school liability must be in place.
- (b) Entities operating approved programs must use the accrual basis of accounting and maintain accounting books of original entry including asset, liability and fund balance or equity accounts, as well as expenditure and revenue accounts. Subsidiary revenue and expenditure accounts must be maintained for each program requiring a tuition rate, for evaluation costs, and for government grants administered by the State Education Department.
- (c) The required financial statements for providers must include a balance sheet, a statement of activity, and a statement of cash flow, if applicable. To be considered fiscally viable, the provider's balance sheet should show a positive fund balance or net assets, an acceptable current ratio (current assets divided by current liabilities) of 1:1 or greater and sufficient working capital (current assets minus current liabilities) to demonstrate solvency. Such current assets typically include cash, marketable securities and receivables, but do not include loans or lines of credit. Approved programs where fiscal viability is a concern, will be required to submit to the Department a plan to address fiscal viability. The plan must include a description of management's strategies, key assumptions and specific steps to improve fiscal viability. Also required is a five-year projection of revenue, expenditures and net assets or fund balance; a comparison of the projection for the last complete year to actual results; a current year projection for cash flow; and the projected date for net assets or fund balance to be positive. It must also show any negative impact on the educational program. The plans must be updated annually and submitted to the Department by the CFR due date. Where an adequate plan is not provided or fiscal viability remains a concern, the VESID Office of Quality Assurance will be notified and consulted for potential further action.

- (d) The entity will be required to retain all pertinent accounting, allocation, enrollment/attendance records, information relating to the acquisition of fixed assets, equipment, and/or building improvements and any related financial arrangements for at least seven years unless otherwise specified in this Manual and provide access to such records during an SED audit or audit by any other funding or regulatory entity. (See Section IIA., Record Keeping).

4. Less-Than-Arm's-Length (LTAL) Relationship

In general, a LTAL relationship exists when there are related parties and one party can exercise control or significant influence over the management or operating policies of another party, to the extent that one of the parties is or may be prevented from fully pursuing its own separate interests. These relationships must be disclosed in the Notes to the audited Financial Statements.

Related parties consist of all affiliates of an entity, including but not limited to:

- its management and their immediate families;
- its principal owners and their immediate families;
- any party that may have an opportunity to enter into a transaction, or deal with the agency/entity and that party has ownership of, control over, or can significantly influence the management or operating policies of a program(s)/entity(ies) to the extent that an arm's-length transaction may not be achieved.

Common related party transactions include the following:

- (a) services received or furnished (e.g., accounting, management, engineering, legal services and therapy/medical);
- (b) services, purchases, and transfers of realty and personal property;
- (c) purchase of health related services such as speech therapy, physical therapy, occupational therapy and psychological services as prescribed in a student's IEP (refer to the Cost Principles Section I, Item 38 B. (4) for the treatment of LTAL transactions and cost effectiveness;
- (d) lease of equipment;
- (e) lease of real property; (refer to Cost Principles in Section I., #40 B. (5) for the treatment of LTAL transactions and cost effectiveness)
- (f) borrowings and lendings; (refer to Cost Principles in Section I., #27 B.) for the treatment of LTAL transactions and cost effectiveness)
- (g) all LTAL transactions except for (c) purchase of health services, (e) lease of real property and (f) borrowings and lendings above will be reimbursed using actual documented costs of the owner or vendor. Items (c), (e), and (f) above, may be

reimbursable at a level other than actual costs if a written approval from the Commissioner's designee is provided.

5. Program

Program means an approved program that provides special education to students with disabilities requiring the establishment of a tuition rate consistent with Part 200 of the Commissioner's Regulations.

Full-time programs are defined as:

- (a) For school age, those programs operating for either 5 hours or 5.5 hours per day or more;
- (b) For preschool, those programs operating for more than 2.5 hours per day.

6. Staffing Ratios

Staff-to-student ratios are defined in Part 200 of the Commissioner's Regulations. A specific approved program's student-staff ratio is also defined in that program's programmatic approval letter from VESID-SEQA. Direct care personnel in excess of, or not prescribed by such ratios, are not reimbursable, unless supported by the student's individualized education program (IEP) requirements and the program generated summary data relating to those IEPs. A Department programmatic review and approval of variations from these ratios is required for costs of additional staff to be reimbursable.

7. Full-Time Equivalent Enrollment

Section 175.6 of the Commissioner's Regulations provides the framework for calculating student enrollment for approved programs. The following specific standards apply to the calculation:

- (a) "Enrollment" means the student is physically present at or legally absent from the special education program.
- (b) Legal absences include personal illness, illness or death in the family, impassable roads, weather, religious observance, quarantine, required court appearances, attendance at health clinics, approved college visits, military obligations, or for such other reasons as may be approved by the Commissioner.
- (c) A full time student who is enrolled from September through June is deemed to be in attendance during that period and therefore a 1.000 FTE. If a student is enrolled for less than the full program duration, then full-time equivalent enrollment is calculated by dividing the total weeks of enrollment by the total number of weeks the program operated. The first and last weeks of the period of enrollment that contain three consecutive days of enrollment within the same week and month plus all weeks in between shall be counted in determining the total number of weeks of enrollment,

provided that no more than four weeks of enrollment may be counted in any calendar month. For the summer programs, weeks should be counted as they actually occur; that is, more than 4 weeks in a single month may be counted. Full-time equivalent enrollment shall be calculated to three decimal places without rounding. A full time student who is enrolled for the entire summer program regardless of the number of weeks the program operates, is counted a 1.000 FTE for enrollment and attendance purposes.

- (d) Tuition rates are calculated on the basis of full-time equivalent student enrollment and therefore billing and reimbursement must be based upon full-time equivalent enrollment. Billing and payment procedures based on actual student attendance are not acceptable practices. Voluntary agencies for foster care students placed in institutions, residential treatment facilities or other day treatment programs should refer to the Local Commissioner's Memorandum on this subject and the DSS Administrative Directive 88 ADM-28 for further clarification. **Please be advised that BOCES and public school districts are also required to report student enrollment and bill for tuition based programs they operate under Articles 81 and 89 in accordance with section 175.6 of the Commissioner's Regulations.**
- (e) For preschool special class and special class in an integrated setting programs that operated for more than five hours per day, full-time equivalent enrollment shall not be prorated for the hours over five hours per day

For preschool special class and special class in an integrated setting programs that operate for less than five hours per day, full-time equivalent enrollment shall be prorated as follows. For the following examples, assume a total non-prorated FTE for the program of 50.000 as calculated consistent with the previous subsections 6(a)-(d):

. 2.5 hr program:  
$$50.000 \times \frac{2.5 \text{ hr}}{5.0 \text{ hr}} = 25.000 \text{ prorated FTE}$$

. 3.0 hr program:  
$$50.000 \times \frac{3.0 \text{ hr}}{5.0 \text{ hr}} = 30.000 \text{ prorated FTE}$$

- (f) For preschool students in special class and special class in an integrated setting programs who are enrolled less than 5 days per week, in accordance with IEP requirements, the appropriate method of calculating FTE enrollment for students is as follows:

. The day of the week the student is enrolled or discharged determines whether the three days in a week requirement is met for counting the student enrolled for the week. The specific days of the week a student is scheduled to attend school is not a determining factor. If a student's enrollment period begins on Monday, Tuesday or Wednesday, and the student is present or legally absent for the dates that week specified in his/her IEP, the week is counted as a week enrolled.

- . Similarly, if a student's enrollment period ends on Thursday or Friday and a student is present or legally absent for his/her scheduled days that week until the discharge date, the week is counted as a week enrolled. All weeks between the first and last weeks of enrollment are counted as weeks enrolled, in accordance with Part 175.6 of the Commissioner's Regulations.
- . A proration of FTE enrollment of less than 25 hours per week is still required for students in such special class and special class in an integrated setting programs.
- (g) For programs operating Special Education Itinerant Teacher (SEIT) programs, the following rules regarding billing apply:
  - Special education itinerant teacher rates shall be paid on the basis of enrollment as defined in Section 175.6(a)(1) and (2) of the Commissioner's Regulations.
  - Approved programs may bill for SEIT services if the child is absent and the SEIT teacher is available at the site when services are scheduled to be delivered. Make-up sessions are encouraged but are not billable.
  - Approved programs may bill for scheduled SEIT services when the student is available to receive the service and the SEIT teacher is absent, however, programs are encouraged to use substitute SEIT teachers in such instances. The cost of substitute SEIT teachers is **reimbursable**.

8. Close Down

Close down, as defined in section 200.7 (e) and 200.9 (g) of the Commissioner's Regulations, is the period during which an entity operating an approved program plans to cease operation, transfer ownership or voluntarily terminate its status as an approved private residential or non-residential program for students with disabilities that receives public funds pursuant to Article 81 and/or Article 89 of the Education Law. The close down period means the period of time beginning with the date of the Commissioner's receipt of notice and ending on the date of the program's cessation of operations, transfer of ownership or voluntary termination of its status as an approved program. Reimbursement shall be determined in accordance with the provisions set forth in section 200.9 (g) of the Commissioner's Regulations and this Manual. Financial reports and financial statements as required pursuant to section 200.9 (e) of the Commissioner's Regulations must be submitted to the Commissioner no later than 90 days following close down. The entity is required to transfer student records back to the public school district of origin's Committee on Special Education or Committee on Preschool Special Education. Financial and other records must be maintained by the entity for seven years. The entity must provide the Department with the name, address, and phone number of the contact person for these records.

9. Agency Administration

Agency administration is defined as those expenses which are not directly related to a

specific program, but are attributable to the overall operation of the agency. These costs include: costs for the overall direction of the organization; costs for general recordkeeping, budget and fiscal management; costs for public relations (non-fundraising); and costs for parent agency expenditures.

10. Reasonable Cost

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. In determining reasonableness of a given cost, consideration shall be given to:

- a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the approved program.
- b. The restraints or requirements imposed by such factors as: sound business practices; arm's length bargaining; Federal, State or local laws and regulations.
- c. Prices for comparable goods or services determined by reviewing similar entities.
- d. Whether the individuals concerned acted with prudence given their responsibilities to the entity's Board of Directors, its employees, the public at large and the State government.
- e. Significant deviations from the established practices of the entity or similar entities which may unjustifiably increase the cost of the approved program.

### SECTION III. TUITION RATE-SETTING METHODOLOGY

#### A. Rate-Setting Methodology For - 2004-05 Tuition Rates

The "Tuition Rate-Setting Methodology for 2004-05 Tuition Rates for Students with Disabilities Memorandum" will be available on the Internet in the "Methodology Letter" section found within the "Correspondence" link on the RSU (Rate Setting Unit's) home page (<http://www.oms.nysed.gov/rsu/home.html>).

#### B. Tuition Rate Adjustments

##### 1. Tuition Rate Appeals:

Tuition rate appeals must be submitted in accordance with the "2004-05 Criteria and Procedures for Tuition Rate Appeals". These criteria will be available on the Internet as a direct link from within the "Tuition Rate-Setting Methodology for 2004-05 Tuition Rates for Students with Disabilities Memorandum" on RSU's home page (<http://www.oms.nysed.gov/rsu/home.html>).

##### 2. Corrected Rates:

Tuition rates will only be adjusted for errors in the reporting of student FTE enrollment, and only if verified with the student enrollment reported on the STAC system. Corrected rates are subject to approval by the Division of the Budget and are retroactive to the start of the applicable school year. Requests for rate corrections must be filed within 30 days of receipt of the prospective tuition rate.

##### 3. Reconciliation Process:

The "2004-05 Reconciliation Process" will be available as a direct link from within the "Tuition Rate Setting Methodology for 2004-05 Tuition Rates Memorandum" found within the "Correspondence" link on RSU's homepage (<http://www.oms.nysed.gov/rsu/home.html>).

##### 4. Rates Based on Audit:

All approved programs shall be subject to a fiscal audit pursuant to section 200.18 of the Commissioner's Regulations. Tuition rates may be adjusted accordingly based on the results of the final audit of actual program expenditures, revenues, enrollment and other relevant program information. The rate-setting methodology in effect for the financial statement period shall be applied to the results of the final audit. All tuition rate adjustments based on audit are subject to the approval and certification of the Division of the Budget. After the rate based on audit is certified, school district or municipality tuition payments to programs are to be adjusted accordingly.

5. Rates for Newly Approved Special Class Programs:

For the initial year of operation, special class programs will be subject to the provisions of Section 200.9 (f) (2)(viii). This section of the regulations states the if a new programs student enrollment is not equal to or greater than the minimum number required in Section 200.7(c) (3), then that program will continue to receive a rate based on the regional weighted average per diem tuition rate previously approved for that program. Upon reconciliation, for programs failing to meet the minimum number of students, the program's per diem rate will be limited to the lower of the per diem based on the school's actual costs or the regional weighted average per diem initially established.

6. Rates for 1:1 Aides:

For the 2004-05 school year, regional weighted average 1:1 aide add-on rates will be developed and added to the schools' base tuition rates. All 1:1 aide costs (salaries, fringe benefits of the aide, and allocated direct and indirect costs) should be reported in one separate cost center on the providers' financial reports.

C. Close-down Policy and Procedures

1. Pursuant to section 200.7(e) and section 200.9(g) of the Regulations of the Commissioner of Education, if the owner or operator of an approved private residential or non-residential program for students with disabilities receiving public funds, pursuant to Article 81 and/or Article 89 of the Education Law, intends to cease the operation of such program or chooses to transfer ownership of such program or to voluntarily terminate its status as an approved program, the owner or operator must:

- (a) Provide to the Commissioner written notice not less than 90 days prior to the closing date;
- (b) Submit to the Commissioner a detailed plan which makes provision for a safe and orderly transfer of each student with a disability who was publicly placed in the program; and
- (c) Continue to provide uninterrupted services until the required notice and plan have been received and approved by the Commissioner and a transfer of such students has been completed in accordance with the approved plan.

2. Disposition of assets during a close down period:

- (a) Entities operating an approved private residential and nonresidential program must submit to the Rate Setting Unit (RSU) an inventory list of all furniture and equipment (not funded via IDEA grants) and consumable supplies and materials to allow the State Education Department to arrange for an orderly disposition of assets to other approved providers. A similar listing of equipment for items purchased with IDEA grants must be provided to the entity's SED Regional Associate of the VESID-Special Education Policy and Quality Assurance Office. Such lists must be submitted not less than 90 days prior to the closing date and include the following

information:

- For furniture and equipment – a site-specific listing describing each item, the location at that site (i.e., room number), the cost of the item, school year of acquisition and the amount depreciated.
  - For consumable supplies and materials – a site specific listing grouped in categories (such as books, toys/games, curriculum materials, instructional supplies) with the total quantity of items in that group, the location of the items within that site and the market value of each group of items.
- (b) Disposition of assets for BOCES, public school districts and special act school districts must be in accordance with a board approved written policy.
3. Reimbursement procedures during a close down period:
- (a) The following types of expenditures during the closedown period would not be viewed by this Department as reimbursable:
- . Costs relating to non-essential and non-mandated staff during the closedown period. This includes salaries and fringe benefits of any of those non-essential, non-mandated staff;
  - . Expenses for dues, conferences, etc.;
  - . Expenses intended to enhance the value of the property or space occupied by the program; and
  - . Major equipment purchases such as computers, typewriters, photocopying machines or any other such items during this period that are not essential for the provision of education services to students with disabilities enrolled in the program during this period.
- (b) Financial statement forms annually submitted to the State Education Department by an entity operating an approved program must be filed for the last school year of operation or portion thereof which includes the final date of the close down period.
4. These close down policies and procedures shall also apply to BOCES, and public school districts operating preschool programs and summer school age programs for students with disabilities pursuant to Articles 81 and 89 of the Education Law and to special act school districts.

**SECTION IV. INDEX**

**A**

*A-1. Categorization of Revenues, 2*  
 Accounting, **5, 43**  
*Accounting Requirements, 2*  
 Administration, **5, 21, 51, 59, 66**  
 Advertising, **5, 6**  
 Amortization, **10, 17, 18**  
Assistive Technology Devices and Services, 7  
 Auditing, **7**

**B**

Bad Debts, 8  
 Bedding/Linen, **8**  
 BOCES, **3, 8, 44, 49, 54**  
 Bonding, **8**  
Building Improvements, 42  
 Buildings, **17, 42**

**C**

Capital Expenditure, **8**  
 Capital Expenditures, **8**  
 Capital Indebtedness, **59**  
 Capital Projects Fund, **9**  
*Categorization of Expenditures, 2*  
*Close-Down Policy and Procedures, 2*  
Clothing, 10  
 Commencement and Convocation, **10**  
Commissioner's Approval, 45  
Compensation, 10, 11, 12, 13, 24, 35, 40  
 Conferences, **20, 27, 38**  
 Consultants, **5, 7, 15, 28, 40**  
 Contingency Provisions, **17**  
Contractual Agreements, 41  
Contributions and Donations, 17  
*Cost Principles, 2*

**D**

Depreciation, **10, 17, 18, 33, 58**  
 Dues/Licenses/Permits, **20**

**E**

Enrollment, **41, 48**  
Entertainment Costs and Personal Expenditures, 20  
Equipment and Furniture, 42

**F**

Fines and Penalties, **21**  
 Food, **21, 22, 58, 60**  
 Fringe Benefits, **13, 58**

**G**

General Fund, **8, 9, 33**  
*General Requirements and Definitions, 2*  
 Goodwill, **18, 23**  
 Grants, **23, 60**  
*Guidelines for Development, Review and Approval of Capital Projects, 2*

**H**

Household, **27, 35, 36, 58**

**I**

*Index, 2*  
 Insurance, **24, 40, 58, 59**  
 Interest Costs, **24**  
*Introduction, 2*  
Investment, 26

**L**

Leasehold Improvements, **18, 58**  
 LTAL, **10, 24, 30, 31, 47**

**M**

Management, 26, 41, 45  
*Meal and Lodging Allowance, 2*  
 Meetings, **20, 27, 38**  
 Miscellaneous Expenses, **27**

**O**

Office Supplies, 27

**P**

Payroll, **10, 27, 40**

Plant Security, **28**

Postage, **28**

Preparation, 27

Printing and Reproduction, 28

Professional Dues, 28

Profits and Losses on Investments, 28

Property, **30, 58, 59**

Purchase of Services, **15, 28**

Purchases, **8, 35, 41**

*Purchasing Consortia, 2*

**R**

*Record Keeping, 2*

Records, **10, 30, 40, 41, 42, 47**

Records Keeping, **10, 40, 47**

Recruitment of Personnel, 30

Rent, **17, 30, 31, 33, 59**

Repairs and Maintenance, 32, 58

Research, **21, 22, 33**

**S**

Salaries, **10, 11, 43**

Scholarships and Student Aid, 34

Severance Pay, **34**

Special Act School Districts, **33**

Staff Development, 35, 58

Stipends, **35**

Subscriptions and Publications, 35

Supplies and Materials, **27, 35, 36**

**T**

Taxes, **36, 37, 59**

Telephone/Facsimiles, **37**

Transportation, **33, 37, 58, 60**

Travel, **20, 27, 32, 34, 38, 39, 41, 58**

*Tuition Rate Adjustments, 2*

*Tuition Rate-Setting Methodology, 2*

*Tuition Rate-Setting Methodology for 1998-99*

*Tuition, 2*

**U**

Utilities, **39, 58**

**V**

Vehicles, **17, 32, 42**

## **SECTION V. APPENDICES**

**APPENDIX A-1**

<b>Categorization of Expenditures</b>		
CFR-1 Account Code	CFR-1 Item Description	Cost Category
11999	Personal Services	Direct Care = job codes 200 - 390 Nondirect Care = job codes 100 - 190; 400; 500 - 590
12999	Vacation Accruals	Not Reimbursable
13200	Mandated Fringe Benefits	Based on personal services above
13300	Non-Mandated Fringe Benefits	Based on personal services above
14010	Food	Direct Care
14020	Repairs and Maintenance	Nondirect Care
14030	Utilities	Nondirect Care
14040	Transportation - Related	Direct Care
14250	Staff Travel	Nondirect Care
14050	Participant Incidentals	Direct Care
14070	Expensed Adaptive Equipment	Direct Care
14080	Expensed Equipment	Nondirect Care
14090	Raw Materials	Not Applicable
14100	Participant Wages - Non-Contract	Not Applicable
14110	Participant Wages - Contract	Not Applicable
14120	Participant Fringe Benefits	Not Applicable
14130	Section 43.04 Services Assessments	Not Applicable
14140	Staff Development	Direct Care
14150	Contracted Services	Direct Care
14160	Supplies and Matls - Non-Household	Direct Care
14170	Household Supplies	Nondirect Care
14190	Telephone	Nondirect Care
14260	Insurance - General	Nondirect Care
14998	Other - OTPS	Nondirect Care
15010	Lease/Rental - Vehicle	Direct Care
15020	Lease/Rental - Equipment	Direct Care
15040	Depreciation - Vehicle	Direct Care
15050	Depreciation - Equipment	Direct Care
15070	Interest - Vehicle	Direct Care
15998	Other - Equipment	Direct Care
16010	Lease/Rental - Real Property	Nondirect Care
16020	Leasehold/Leasehold Improvements	Nondirect Care
16030	Depreciation - Building	Nondirect Care
16040	Depreciation - Bldg/Land Improvements	Nondirect Care
16060	Mortgage Interest	Nondirect Care

16070	Mortgage Expenses	Nondirect Care
16080	Insurance - Property and Casualty	Nondirect Care
16090	Real Estate Taxes	Nondirect Care
16100	Interest - Capital Indebtedness	Nondirect Care
16110	Start-Up Expenses	Nondirect Care
16120	MCFFA Interest Expense	Not Applicable
16130	MCFFA Administration Fees	Not Applicable
16140	Maintenance In Lieu of Rent	Not Applicable
16998	Other - Property	Nondirect Care

Note: All CFR-3 line items are categorized as nondirect care.

**APPENDIX A-2**

<b>Categorization of Revenues</b>		
CFR-1 Account Code	CFR-1 Revenue Description	Revenue Category
0	Participant Fee	Offsetting
0	SSI – SSA	Not Applicable
20030	Home Relief	Not Applicable
20040	Medicaid	Offsetting
20060	Medicare	Offsetting
20070	Other Third Parties	Offsetting
20080	OMRDD Residential Room and Board	Not Applicable
20090	Transportation – Medicaid	Regular
20100	Transportation - Other	Regular
21070	Sales – Contract Total	Not Applicable
22040	Federal Grants	Offsetting
22030	State Grants	Offsetting
22080	LTSE Income Total OMH/OMRDD	Not Applicable
22160	Food Stamps/Food Revenue	Offsetting
22010	Gifts/Legacies/Bequests/Donations	Regular
22020	Section 202/8 HUD Funds	Not Applicable
22050	Interest/Dividend Income	Offsetting
22090	Prior Period Rate Adjustments	Regular
22100	VESID	Regular
22110	LDSS County	Regular
22120	Article 89 Section 4402	Regular
22130	DOH Chapter 428	Regular
22140	Article 89 Section 4408	Regular
22150	Article 81 Section 4410	Regular
20110	Net Deficit Funding	Not Applicable
22998	Other – Revenue	Regular

APPENDIX B  
PURCHASING CONSORTIA

**NAMES AND ADDRESSES**

1. Greater New York Hospital Association Services, Inc.  
555 West 57th Street  
New York, New York 10019  
Phone (212) 246-7100
2. Iroquois Shared Services  
74 No. Pearl Street  
Albany, New York 12207  
Phone (518) 434-7960
3. Joint Purchasing Corporation  
1865 Broadway  
New York, New York 10023  
Phone (212) 759-3456
4. Nassau/Suffolk Hospital Shared Services, Inc.  
888 Veterans Memorial Highway  
Suite 100  
Hauppauge, New York 11788  
Phone (516) 435-3333
5. Northern Metropolitan Hospitals Shared Services Corporation  
400 Stony Brook Court  
Newburgh, New York 12550  
Phone (914) 562-7526
6. RRHA Joint Ventures Corporation  
P. O. Box 23238  
Rochester, New York 14692  
Phone (716) 427-2820
7. Shared Services, Inc. (an affiliate of AmeriNet, Inc.)  
5740 Commons Park  
P. O. Box 160  
East Syracuse, New York 13057  
Phone (315) 445-1851
8. United Shared Services\*  
1876 Niagara Falls  
Tonawanda, New York 14150  
Phone (716) 695-6370

9. Vector Healthsystems (an affiliate of Amerinet, Inc.)  
P. O. Box 9427  
Providence, Rhode Island 02940-9427  
Phone (800) 338-9427

## **APPENDIX C**

### **TRAVEL GUIDELINES**

In-state and out-of-state meal and lodging allowances and per diem rates are available on the State Comptroller's Internet at website at: <http://www.osc.state.ny.us/agencies/> under "New York State Travel Guidelines".

**APPENDIX D**  
**GUIDELINES FOR DEVELOPMENT, REVIEW AND APPROVAL**  
**OF CAPITAL PROJECTS FOR STUDENTS**  
**WITH DISABILITIES**

**I. School Age Only Projects and Combined School Age/Preschool Projects**

**A. Guidelines for State review and approval of applications for capital projects.**

All applications for capital projects must be put in writing to their VESID Special Education and Quality Assurance Office and the Rate Setting Unit. The application must include line drawings of existing and proposed facilities with square footages listed for each room, cost estimates that include all estimated construction and incidental costs, current enrollment data and student staffing ratios. Additionally, documentation of health/safety issues or violations, building code non-compliance, and/or non-compliance with accessibility requirements must be provided to justify the need for the proposed project.

- The agency will be notified by the RSU (RATE SETTING UNIT) if any additional information is needed to review the project application.
- Project plans will be reviewed by the RSU (RATE SETTING UNIT), VESID Special Education and Quality Assurance Office and the Office of Facilities Planning.
- The agency will be notified in writing of the capital project cost that is approved by the New York State Division of the Budget and will be considered for reimbursement in future tuition rates.

**B. Guidelines for development of applications for capital projects.**

All proposed projects will be reviewed to determine the adequacy and appropriateness of services and program space to meet the educational needs of the students with disabilities. Prior to incurring any obligation, it is recommended that the agency receives notification of the approved capital project costs that will be included as part of future tuition rates.

Before capital projects<sup>1</sup> are approved for education funding for students with disabilities, it must be determined that current education space is not being reallocated to non-education programs causing a lack of appropriate space for the education programs.

---

<sup>1</sup>Capital projects refer to construction, renovation and acquisition of real property for educational purposes, including administrative and ancillary space and facilities used to support educational functions.

- . Administrative space may be approved in buildings to be constructed or renovated.
- . Existing education areas may also be converted to administrative space when new education facilities are being constructed.

Note: Where another state agency also has oversight responsibility for the applying program, the Department will confer with such other supervising agency prior to approving any application to construct administrative and/or other shared space.

1) Room Sizes for Special Education Classrooms

- 15:1 - approximately 770 square feet
- 12:1+1 - approximately 770 square feet
- 8:1+1 - approximately 550 square feet
- 6:1+1 - approximately 450 square feet
- 12:1+4 - approximately 900 square feet
- Resource Room - approximately 300 square feet
- Preschool Programs - 50 square feet per student or 60 square feet per student for classroom serving students who are non-ambulatory

The guidelines for preschool programs will be applied with the expectation that classrooms will serve a maximum of 12 students. The square footage requirement for preschool students includes space for a variety of recreational and instructional activities. Consideration will be given to less than 50 square feet per student if other areas of the building have been allocated, outside of the special education classroom, for such activities.

Note: For classrooms which are planned for use by more than one class, size should accommodate the largest requirement.

2) Specialized Areas

. Physical Education Space

While Department requirements are applicable, physical education space for secondary level students recommended for a building with an enrollment of 500 or less may be exceeded based on the programmatic needs of the students to be served and the physical education and recreation program planned by the school. These dimensions may also be exceeded for schools involved in interscholastic sports.

The construction of swimming pools may be considered only in those instances where the development of a pool is necessary to meet the programmatic needs of the population served. This relates to programs serving students with multiple disabilities who are unable to access community pools, unable to adequately utilize other recreational areas, and require the pool for therapeutic purposes.

. Library

For secondary level students, a library or media center of up to 1,500 feet may be developed. Dimensions are based on the projected enrollment and the number of students to use this room at any one time. This guideline may be exceeded based on the specialized needs of the population to be served. For elementary level students, library space of up to 900 square feet may be developed based on enrollment and planned use of space.

. Art

Art rooms of 800 to 900 square feet may be developed for use by classes of 15:1, 12:1+1 or 12:1+4. Dimensions of 500 to 700 square feet are recommended for classes of 8:1+1 and 6:1+1. Additional classrooms may be needed based on enrollment.

. Industrial Arts

Industrial Arts rooms of between 800 and 1,500 square feet may be developed based on the proposed purpose of the space (e.g., an automotive shop normally requires more area than an electrical shop).

. Home Economics

Home Economics rooms of 800 to 1,000 square feet may be developed for use by classes of 15:1, 12:1+1 or 12:1+4. Dimensions for Home Economics classrooms for 8:1+1 and 6:1+1 classes may have less square footage based on planned use of space.

. Science (Laboratory Rooms)

Science rooms for laboratory instruction of approximately 900 square feet in addition to classroom space may be developed for classes of between 12 and 15 students. Dimensions for laboratory space for classes of 6 to 8 students is recommended at approximately 600 - 700 square feet.

. Music

Music rooms of 770 square feet for classes of 15:1, 12:1+1 and 8:1+1 or 450 square feet for classes of 6:1+1 and 900 square feet for classes of 12:1+4 may be developed.

. Storage

A reasonable amount of storage space may be included in school building plans for general storage areas and storage within classrooms such as Art, Home Economics, Music, Science Laboratory and Industrial Arts.

. Related Services

A determination on the amount of space allocated for related services should be based on the number of staff and students using the room, activities to be conducted (group or individual speech therapy, counseling, physical therapy, etc.) and equipment to be used.

. Multi-Purpose Rooms

Other spaces may be developed. However, consideration must be given to using the following areas for multiple purposes (e.g., gym with stage for use as auditorium, cafeteria with stage for use as auditorium, etc.). Size is based on student enrollment and/or the proposed use of the space, such as Auditorium, Cafeteria, and remedial rooms or Music practice rooms.

. Administration Space

Administration space is determined based on the functions required to be conducted in the school building and the amount of staff using the space.

. Final Determination

In determining the appropriate number of classrooms to be included in the school building, the following factors should be considered:

- . Student enrollment;
- . Number of class size configurations and the number of students in each class;
- . Proposed scheduling of classroom use;
- . Number of staff for school building;
- . Multiple use of classroom space and specialty area space.

## **II. Preschool Only Projects**

A. All applications for capital projects for preschool only programs must be submitted via the “Approved Preschool Special Education Program Modification Requests” process. Preschool programs considering a capital project, a change in program location or adding a new site or deleting an existing site should contact their Regional Associate for further guidance on the required procedures.

The “Approved Preschool Special Education Program Modification Requests” forms and instructions are available from the SED VESID website at [www.vesid.nysed.gov/specialed/home](http://www.vesid.nysed.gov/specialed/home) or from the link to the SED Rate Setting Unit’s webpage at [www.oms.nysed.gov/rsu/home](http://www.oms.nysed.gov/rsu/home).

B. Please be advised that cost screen waivers will not be approved with respect to capital projects involving preschool-only space.

---

APPENDIXE

---

**Statement on the Governance Role of a Trustee or Board Member**  
**Board of Regents**  
**The University of the State of New York**  
[www.nysed.gov](http://www.nysed.gov)

**Preface:**

The Statement on the Governance Role of a Trustee or Board Member is intended to provide guidance and information to assist trustees and board members in exercising their fiduciary responsibilities. The statement is relevant for all institutions that have been incorporated by the Board of Regents or the New York State Legislature, including programs receiving funding under Article 81 and/or Article 89 of Education Law. Board members of these institutions should additionally be familiar with the requirements and provisions of this manual and Part 200 of the Regulations of the Commissioner of Education.

---

**THE UNIVERSITY OF THE STATE OF NEW YORK**  
**Regents of The University**

Carl T. Hayden, *Chancellor*, A.B., J.D. .... Elmira  
Adelaide L. Sanford, *Vice Chancellor*, B.A., M.A., P.D. ....Hollis  
Diane O'Neill McGivern, B.S.N., M.A., Ph.D. . ....Staten Island  
Saul B. Cohen, B.A., M.A., Ph.D. ....New Rochelle  
James C. Dawson, A.A., B.A., M.S., Ph.D. ....Peru  
Robert M. Bennett, B.A., M.S. ....Tonawanda  
Robert M. Johnson, B.S., J.D. ....Huntington  
Anthony S. Bottar, B.A., J.D. ....North Syracuse  
Merryl H. Tisch, B.A., M.A. ....New York  
Ena L. Farley, B.A., M.A., Ph.D. ....Brockport  
Geraldine D. Chapey, B.A., M.A., Ed.D. ....Belle Harbor  
Arnold B. Gardner, B.A., LL.B. ....Buffalo  
Charlotte K. Frank, B.B.A., M.S.Ed., Ph.D. ....New York  
Harry Phillips, 3rd, B.A., M.S.F.S. ....Hartsdale  
Joseph E. Bowman, Jr., B.A., M.L.S., M.A., M.Ed., Ed.D. ....Albany  
Lorraine A. Cortés-Vázquez, B.A., M.P.A. ....Bronx

**President of The University and Commissioner of Education**

Richard P. Mills

**Chief Operating Officer**

Richard H. Cate

---

The State Education Department does not discriminate on the basis of age, color, religion, creed, disability, marital status, veteran status, national origin, race, gender, genetic predisposition or carrier status, or sexual orientation in its educational programs, services and activities. Portions of this publication can be made available in a variety of formats, including braille, large print or audio tape, upon request. Inquiries concerning this policy of nondiscrimination should be directed to the Department's Office for Diversity, Ethics, and Access, Room 530, Education Building, Albany, NY 12234. **Requests for additional copies of this publication may be made by contacting the Publications Sales Desk, Room 309, Education Building, Albany, NY 12234.**

---

**THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK**  
/ ALBANY, NY 12234  
November 2001

Dear Colleague:

The University of the State of New York (USNY) is a vast multi-billion dollar enterprise that encompasses schools, colleges, universities, libraries, museums, public broadcasting and other educational and cultural institutions that have been incorporated by the Board of Regents or the New York State Legislature. This enterprise has one common characteristic among almost all of its components. Each institution is governed by a board of individuals who willingly volunteer their services. On behalf of the Board of Regents and the State Education Department, we thank you for your contributions as a trustee/board member. You are performing a much-needed and valuable service to your institution and the community it serves.

This *Statement on the Governance Role of a Trustee or Board Member* is provided by the Board of Regents to assist trustees/board members in exercising their responsibilities. The Statement provides certain fundamental information regarding the stewardship role that members fulfill. The Regents recognize that USNY institutions vary greatly in the mission, size, form and structure of their boards. This document was prepared to provide guidance and information to assist all trustees/board members in the performance of their responsibilities. From the small historical society to the multi-million dollar college, university or school district, each member has a fiduciary responsibility for the institution he/she governs.

We urge you to share this document with your board colleagues, become familiar with its contents, and integrate its provisions into your institution's governance process, e.g., include in orientation materials for new board members or in the institution's handbook, where one exists. It can also be accessed at the following web site – [www.nysed.gov](http://www.nysed.gov).

If you have questions or comments regarding the Statement, please refer to Appendix E for offices to contact in the State Education Department or write to the address listed above in the letterhead.

Sincerely,

Carl T. Hayden  
Chancellor, Board of Regents  
and  
Richard P. Mills  
Commissioner of Education and President of the  
University of the State of New York

---

**Board of Regents**  
**The University of the State of New York**

The University of the State of New York (USNY), created by the Legislature in 1784, includes: • all elementary, secondary and postsecondary educational institutions, both public and private • libraries •

museums • historical societies and •other educational institutions that have been incorporated by the Regents or the Legislature or have been admitted to membership by the Regents.

As a trustee or board member, you have assumed an oversight role with your institution's service to the community, which includes protecting the public interest. This is a very important role because, as a trustee or board member, you and your colleagues are responsible for the overall direction, operation, assets and fiscal well-being of your institution. The assets of the institution are held in trust for the people of the State with trustees/board members acting as fiduciaries. As a volunteer, you must be willing to donate the time and attention to ensure that senior managers are fulfilling the institution's charter and/or legislative mandate. Presented below are fundamental questions that trustees/board members need to ask and revisit continuously to ensure they are fulfilling their role in a responsible manner.

---

***What is the purpose of the institution?***

As a trustee/board member, you should understand the purpose and mission of your institution which is defined by its charter, certificate of incorporation or by legislation. USNY institutions encompass a wide array of education purposes as described above. In the case of organizations that are incorporated or chartered by the Board of Regents, you should obtain a copy of the Regents-issued charter or certificate of incorporation. Institutions chartered or incorporated by the Board of Regents are treated as not-for-profit entities. You should familiarize yourself with the institution's corporate status, powers, privileges, and duties, which are defined by its charter or certificate. Independent colleges and universities derive their corporate powers from the Board of Regents as do certain non-degree granting institutions. Libraries, museums, historical societies, public television and/or radio stations also derive their corporate powers from the Board of Regents. All of these institutions are governed by a board of trustees which is legally responsible for assuring that the institution fulfills the distinctive purposes for which it was established.

On the other hand, the State University of New York, its four university centers and various colleges of arts and sciences, technical colleges, medical centers and community colleges derive their authority from Education Law, as does the City University of New York, all of which are part of the USNY enterprise. A board of trustees governs and provides oversight for each.

USNY encompasses school districts and boards of cooperative educational services (BOCES) which also obtain their authority from the Education Law and other relevant statutes. As a board member, you need to know whether the school district is a common school, union free, central, central high school, or city school district. There are also "special act" school districts which have been established by the New York State Legislature on the grounds of charitable institutions caring for children and youth. BOCES are voluntary associations of school districts that agree to provide education and business services in a cooperative manner for purposes of economy and efficiency. The New York State School Boards Association publishes a handbook for school board members that provides more detailed information on the role of a school board member.

---

***What is the financial status of the institution?***

One of the most important issues you need to monitor is the financial status of your institution and whether its assets are being used for the benefit of the institution's mission. Ask for copies of fiscal reports, financial statements, and tax returns where applicable. Talk to executive staff and other board members about the financial condition of the institution.

---

***Just exactly what am I responsible for?***

You should meet with other trustees/board members to discuss their expectations of you. Inquire about

by-laws, committees, organizational structure, financial responsibility, and conflict of interest policies. Keep in mind that being a trustee/board member requires a commitment of personal time and effort with generally no fiscal remuneration.

---

***What duties do trustees and board members have to fulfill?***

Although varied in purpose and mission, USNY institutions are, for the most part, not-for-profit corporations subject to the Education Law and other laws governing not-for-profit corporations wherein trustees/board members must fulfill certain duties to the institution and the community it serves. Such duties involve care, loyalty and obedience.

***Duty of Care***

A trustee or board member must act in good faith and exercise the degree of diligence, care and skill that an ordinary prudent individual would use under similar circumstances in a like position. To conform with this standard, trustees and board members should:

- Regularly attend and participate in board meetings and committee meetings where applicable;
- Read, review and inquire about materials that involve the institution, especially board minutes, reports, and any literature that involves the institution;
- Have a fiduciary responsibility for the assets, finances and investments of the institution and exercise due diligence, care and caution as if handling one's own personal finances; and
- Use one's own judgment in analyzing matters that have an impact on the institution.

***Duty of Loyalty***

Trustees/board members owe allegiance to the institution and must act in good faith with the best interest of the organization in mind. They should not seek to benefit personally from any business derived from the institution without full disclosure to the board. They must avoid conflicts of interest or even the appearance of such. Acts of self-dealing constitute a breach of fiduciary responsibility that could result in personal liability.

***Duty of Obedience***

A trustee/board member has a responsibility to insure that the institution's resources are dedicated to the fulfillment of its mission. The member also has a duty to ensure that the institution complies with all applicable laws and does not engage in any unauthorized activities.

The NYS Attorney General publishes *A Handbook for Not-For-Profit Board Members*, which may be obtained from the following web site address: <http://www.oag.state.ny.us/charities/duties.html>. The Handbook contains more detailed information on the duties of a trustee/board member of a not-for-profit corporation.

---

***What is the difference between provisional and absolute charters?***

Corporations formed for the principal purpose of operating a college, university, school conducting some or all of the grades nursery through twelve, library, museum, historical society, or public television and/or radio station are created by the Board of Regents by issuance of an instrument called a charter, which sets forth the powers of the corporation. The document by which all other education corporations are created is known as a certificate of incorporation.

The initial incorporation of the educational institution is executed by the issuance of a provisional charter that is valid for a fixed term of one to five years. If the Board of Regents is not satisfied that the corporation can qualify for an absolute charter, it may extend the provisional charter for an additional

term of years.

The process for the issuance of a certificate of incorporation is the same as that pertaining to a provisional charter. The legal effect of a certificate of incorporation is the same as that of an absolute charter.

If you are a trustee of a chartered institution, you need to be aware of the following:

- Whether your institution has a provisional or absolute charter;
- The specific standards that apply to your institution (see Appendix A);
- The specific powers of the corporation contained in the charter; and
- Whether the board has the number of members stipulated in its charter.

---

***How do I distinguish between my governance role and that of a supporter or team player for my institution?***

There is a fine line between governance and being a supporter of an institution. Members need to avoid meddling in managing daily affairs. Trustees/board members must balance their role as supporters for the institution's success against their governance role as overseers of the institution's management to ensure that assets are used properly, laws and regulations are followed, and the public interest is best served. The board needs to support the institution's management but must also govern by holding the chief executive officer (CEO) accountable for the institution's operations and service to the public.

In the governance role, trustees/board members should be concerned with protecting the public interest which they serve. Members exercise this role by hiring a CEO to manage the operation of the institution and evaluating his/her overall performance in providing services to the public.

In a supportive role, board members assist by fund-raising, liaison and networking with other community leaders, and providing expertise in specialty areas such as law, planning, accounting and overall corporate management.

---

***What if I lack knowledge or experience in fiscal governance?***

One of the most important responsibilities of a trustee or board member is to ensure that financial resources are being used efficiently and effectively toward meeting the institution's goals, and that its assets are properly safeguarded. The area of fiscal governance is one in which board members may feel the least qualified and rely entirely on the CEO for guidance.

Trustees/board members should be cautious about relying completely on the guidance and judgment of the institution's CEO and management. Members have ultimate responsibility for governance of the institution's resources and their primary role of protecting the public interest. In monitoring the institution's budget, board members should ask questions about the assumptions made in preparing the budget. What types of data were used to prepare the budget? How are estimates developed for such expenditures as payroll, supplies and materials, travel and conferences, capital outlays, etc.? Are accounting and/or management processes adequate to ensure accurate and reliable data? What will be accomplished by passing this budget? How will outcomes be measured, evaluated and reported? How will the board hold the CEO accountable for budget outcomes? How are variances from expectations handled?

Similar questions may be raised about other areas, such as the institution's system of financial controls, processes employed to comply with applicable laws and regulations, accountability with performance results, etc.

---

***What if the institution needs more expertise with fiscal matters?***

When matters of fiscal governance become very technical and require greater expertise in assessing the fiscal condition of the institution or its long-term well-being, a board should seek the advice of experts. One mechanism for giving emphasis to the responsibility of fiscal governance is to create an audit committee composed of board members who have expertise in dealing with fiscal affairs. An audit committee is organized pursuant to a charge or mission approved by the board. It should be established in the institution’s charter, certificate of incorporation or by-laws. It holds meetings routinely throughout the fiscal year that involve such activities as:

- Helping set the fiscal environment or “tone at the top,” which promotes a theme of fiscal responsibility and ethical conduct among all institution staff and board members;
- Reviewing the certified financial audit report of the institution and providing input on the results to the full board;
- Assessing the effectiveness of the institution’s system of internal controls and reporting on any weaknesses;
- Assessing any risk associated with the validity and reliability of financial data; and
- Monitoring compliance with laws and regulations applicable to the institution’s operations.

These are just some of the many activities that an audit committee can pursue to assist a board in its role of fiscal governance. Appendix D provides links to web sites that contain more information on audit committees and other issues relevant to the duties and responsibilities of trustees and board members.

---

***Where can I get additional help?***

There are many sources available to trustees and board members needing further information and guidance on their role. Members are encouraged to seek additional guidance, evaluate the need for additional training, and contact the NYS education Department (SED) for guidance. The offices and contact information for SED are illustrated on Appendix E.

The procedures for the creation of education corporations by the Regents, and other related matters, are outlined in the pamphlet entitled “Education Corporations – Law Pamphlet 9.” This pamphlet is available from the NYS Education Department Office of Counsel, and is soon to be available on the SED web site ([www.counsel.nysed.gov](http://www.counsel.nysed.gov)).

Members are strongly encouraged to seek the advice of an attorney in matters involving the interpretation of laws and regulations pertaining to the institution’s operations. The information contained in this document is not a substitute for the guidance provided by legal counsel.

The appendices contain additional information that may be helpful in fulfilling your role as a trustee or board member. Their content is listed below.

**Topic Appendix**

[Appendix A: Select Regulations of the Commissioner of Education Applicable to Chartered Institutions](#)

[Appendix B: Best Practices for Boards to Follow](#)

[Appendix C: Top Ten Warning Signs for Boards](#)

[Appendix D: Links to Web Sites](#)

[Appendix E: Contact Offices in SED by Type of Institution](#)

---

Appendix A  
The University of the State of New York  
The State Education Department  
**Select Regulations of the Commissioner of Education  
Applicable to Chartered Institutions**

<b>Elementary and Secondary Schools</b>	<b>Part 100</b>
<b>Nursery Schools and Kindergartens</b>	<b>Part 125</b>
<b>Libraries and Library Systems</b>	<b>Part 90</b>
<b>Historical Societies</b>	<b>Section 52.22 and Section 3.30 of the Rules of the Board of Regents</b>
<b>Museums</b>	<b>Section 52.22 and Section 3.27 of the Rules of the Board of Regents</b>
<b>Public Television and/or Radio Stations</b>	<b>Part 179 and Part 26 of the Rules of the Board of Regents</b>
<b>Colleges and Universities</b>	<b>Part 52</b>

NOTE: This list is not exhaustive. Moreover, it does not include relevant provisions of the Education Law or other laws affecting these institutions.

---

Appendix B  
The University of the State of New York  
The State Education Department

**Best Practices for Boards to Follow**

1. Be informed of the institution's activities by:
  - Discussing operations with board members and officers.
  - Reviewing materials provided by the institution.
  - Actively participating in meetings of the board and the committees.
  - Asking questions and obtaining an understanding of the issues facing the institution.
2. Establish an audit and finance committee with responsibility to periodically meet with management and the auditors to consider:
  - The adequacy of internal controls and financial reporting processes, and the reliability of fiscal reports.
  - The independence and performance of the internal and external auditors.
  - Steps taken by management to address audit report findings.
  - Compliance with legal and regulatory requirements.
  - Steps taken by management to minimize significant risks to the institution.
3. Ensure the institution is carrying out its purpose without extravagance or waste and is not engaging in

any questionable or illegal activities by:

- Requiring management to provide periodic reports on how well the institution is fulfilling its mission and the activities accomplished for the period.
  - Approving strategic plans, budgets, policies, plans of operation, development plans and goals, contracts, key financial and program reports, and other items.
  - Holding the chief executive officer accountable for results.
  - Being involved in the selection and compensation of the chief executive officer.
  - Using good judgment in analyzing matters that may impact the institution.
4. Monitor the financial condition and management practices of the institution by:
- Reviewing periodic fiscal reports, financial statements and tax returns.
  - Ensuring reserve funds are used for their intended purposes.
  - Verifying fund raising expenses are reasonable in relation to the amount of fund raising revenue generated.
  - Ensuring net assets are positive, but not excessive.
  - Verifying any deficits are being addressed with remedial action.
  - Ensuring records are complete and accurate, and required reports are filed with federal and state agencies.
5. To help ensure effectiveness, trustees/board members need to address the following, consistent with statute:
- Consist of a minimum of five voting members who are independent.
  - Meet at least twice a year, and more often as needed or required by statute.
  - Keep complete and accurate minutes of all meetings.
  - Not compensate their members for services in their role as trustee or board member (see note below).
  - Develop a training program for both new and experienced board members.
  - Seek expert advice when needed.
  - Avoid any conflict of interests or even the appearance of a conflict and maintain a conflict of interest policy for board members and employees.
  - Require each member to file an annual written disclosure of any business involvement with the institution or related parties.
  - Assess the need for liability insurance to protect board members and officers from legal liability.
  - Ensure their processes for selecting new members result in diversity of viewpoints and seek out individuals with commitment, skills, life experience, background, and other characteristics that will serve the institution and its needs.

NOTE: Reimbursement for expenses in the ordinary course of business does not constitute compensation. Trustees/board members who also serve as officers may receive compensation in their role as an officer (e.g., treasurer, secretary).

## Top Ten Warning Signs for Boards

1. Lack of available documentation on the organization - by-laws, charter, mission statement, organization chart, prior year financial statements.
2. Lack of independent attitude or excessive conflict among trustees/board members.
3. Infrequent board meetings. Absence of board minutes.
4. Poor board attendance at meetings.
5. Lack of access to key information, fiscal, budget, program, and operations.
6. Lack of access to the chief financial officer. Existence of conflict of interest relationships or less than arm's length transactions between the institution's board members and organizations that conduct business with the institution.
7. Lack of internal financial controls and written policies and procedures to safeguard, promote, and protect the organization's funds and other assets.
8. Lack of fidelity bonds.
9. Lack of involvement in the hiring of key employees.
10. Failure to file documents with key control agencies such as the NYS Education Department, Internal Revenue Service, and NYS Department of Taxation and Finance.

---

### Appendix D

The University of the State of New York  
The State Education Department

### Links to Web Sites

#### Government Agencies

Internal Revenue Service: [www.irs.ustreas.gov](http://www.irs.ustreas.gov)

NYS Attorney General: [www.oag.state.ny.us](http://www.oag.state.ny.us)

NYS Education Department: [www.nysed.gov](http://www.nysed.gov)

NYS Office of the State Comptroller: [www.osc.state.ny.us](http://www.osc.state.ny.us)

#### Education Associations

American Association of School Administrators: [www.aasa.org](http://www.aasa.org)

Education Commission of the States: [www.ecs.org](http://www.ecs.org)

Educational Research Service: [www.ers.org](http://www.ers.org)

National Association of State Boards of Education: [www.nasbe.org](http://www.nasbe.org)

National School Boards Association: [www.nsba.org](http://www.nsba.org)

New England School Development Council: [www.nesdec.org](http://www.nesdec.org)

New York State School Boards Association: [www.nyssba.org](http://www.nyssba.org)

#### Not-for-Profit Associations

Center for Non-Profit Corporations: [www.njnonprofits.org](http://www.njnonprofits.org)

Guidestar (IRS Form 990 database): [www.guidestar.org](http://www.guidestar.org)

Internet Nonprofit Center: [www.nonprofit-info.org](http://www.nonprofit-info.org)

Law about Nonprofit Organizations: [www.law.cornell.edu/topics/nonprofits.html](http://www.law.cornell.edu/topics/nonprofits.html)

National Center for Nonprofit Boards: [www.ncnb.org](http://www.ncnb.org)

Nonprofit Evaluation Tools: [www.innonet.org](http://www.innonet.org)

Nonprofit Resource Center: [www.not-for-profit.org](http://www.not-for-profit.org)

Nonprofit Risk Management Center: [www.nonprofitrisk.org](http://www.nonprofitrisk.org)

Urban Institute – Center on Nonprofits: [www.urban.org](http://www.urban.org)

#### Museums/Art Associations

American Association for State and Local History (AASLH): [www.aaslh.org](http://www.aaslh.org)

American Association of Museums (AAM): [www.aam-us.org](http://www.aam-us.org)

New York State Museum-Chartering Program: [www.nysm.nysed.gov/charter](http://www.nysm.nysed.gov/charter)

The International Council of Museums (ICOM): [www.icom.org](http://www.icom.org)

### **Library Associations**

American Library Association's Association for Library Trustees and Advocates: [www.ala.org/alta](http://www.ala.org/alta)

New York Library Association: [www.nyla.org](http://www.nyla.org)

New York State Association of Library Boards: [www.nysalb.org](http://www.nysalb.org)

New York State Library: [www.nysl.nysed.gov](http://www.nysl.nysed.gov)

**DISCLAIMER:** These sites are provided for the user's convenience. The State Education Department (SED) does not control or guarantee the accuracy, relevance, timeliness or completeness of web sites not maintained by SED. Further, the inclusion of such sites on this list is not intended to reflect their importance, nor is it intended to endorse views expressed, or products or services offered, on these outside sites, or the organizations sponsoring the sites.

---

Appendix E  
The University of the State of New York  
The State Education Department  
**Contact Offices in SED by Type of Institution**

To obtain further guidance about the governance role of a trustee or board member, you may contact the following addresses, telephone numbers, and web sites for your respective institution.

<b>Institution</b>	<b>Contact Office</b>
<b>Public schools, Boards of Cooperative Educational Services</b>	<b>Facilities, Management and Information Services</b> <b>Office of Elementary, Middle, Secondary and Continuing Education</b> <b>Room 885 EBA</b> <b>Albany, New York 12234</b> <a href="http://www.emsc.nysed.gov">www.emsc.nysed.gov</a> <b>518-474-2238</b>
<b>Nonpublic schools</b>	<b>Office for Nonpublic School Services</b> <b>Room 481 EBA</b> <b>Albany, New York 12234</b> <a href="http://www.emsc.nysed.gov/rscs/nonpub/nonpublichomepage.htm">www.emsc.nysed.gov/rscs/nonpub/nonpublichomepage.htm</a> <b>518-474-3879</b>
<b>Museums, historical societies, public broadcast stations, and other cultural agencies</b>	<b>Chartering Program</b> <b>NYS Museum</b> <b>Room 3090 CEC</b> <b>Albany, New York 12230</b> <a href="http://www.oce.nysed.gov">www.oce.nysed.gov</a> <b>518-473-3131</b>
<b>Libraries and library systems</b>	<b>Division of Library Development</b> <b>NYS Library</b> <b>NYS Education Department</b> <b>Room 10C50 CEC</b> <b>Albany, New York 12230</b> <a href="http://www.nysl.nysed.gov">www.nysl.nysed.gov</a> <b>518-474-7196</b>
<b>Public and private colleges and universities, licensed private and registered business schools</b>	<b>Office of Higher Education</b> <b>NYS Education Department</b> <b>89 Washington Avenue</b> <b>Room 979 EBA</b> <b>Albany, New York 12234</b> <a href="http://www.highered.nysed.gov">www.highered.nysed.gov</a> <b>518-474-5851</b>
<b>Independent living centers</b>	<b>Office of Vocational and Educational Services for Individuals with Disabilities</b> <b>One Commerce Plaza</b> <b>Albany, New York 12234</b> <a href="http://www.nysed.gov/vesid">www.nysed.gov/vesid</a> <b>518-474-2925</b>
<b>Psychotherapy institutes</b>	<b>Executive Secretary to the State Boards for Psychology and Massage</b> <b>Office of the Professions</b> <b>89 Washington Avenue</b> <b>Albany, New York 12234</b> <a href="mailto:psychbd@mail.nysed.gov">psychbd@mail.nysed.gov</a> <b>518-474-3817 ext. 150</b>

