





December 2008

**TO:** District Superintendents  
Superintendents of Schools  
Presidents of Boards of Education  
New York City Board of Education  
Principals of Public Schools  
Directors of Pupil Personnel Services  
Administrators of Nonpublic Elementary and Secondary Schools  
Organizations, Parents and Individuals Concerned with Special Education  
Impartial Hearing Officers  
Commissioner's Advisory Panel for Special Education Services  
Commissioner's Advisory Panel for Nonpublic Schools  
SETRC Professional Development Specialists  
Regional School Support Centers  
School Business Officials

**FROM:** James P. DeLorenzo   
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Office of Operations and Management Services

**SUBJECT:** Addition of Section 177.2 of the Regulations of the Commissioner of Education  
Relating to Disputes of Reimbursement Claims for Special Education Services  
Provided to Nonresident Parentally-Placed Nonpublic School Students with  
Disabilities

This memorandum provides information on the addition of a new section 177.2 to the Regulations of the Commissioner of Education. These regulations prescribe the dispute resolution mechanism regarding claims for reimbursement of costs for special education provided to a nonresident student with a disability, who is parentally placed in a nonpublic school located in a school district other than the school district in which the student legally resides. Section 3602-c of Education Law, as amended by Chapter 378 of the Laws of 2007, required the Commissioner to adopt regulations for a claim dispute process. These regulations became permanently effective on November 13, 2008.

A summary of section 177.2 follows and the form prescribed by the New York State Education Department (NYSED) for submitting an application for administrative review is attached. A copy of the regulations may be found at <http://www.regents.nysed.gov/2008Meetings/October2008/1008vesida2.doc>.

Summary of Section 177.2 of the Regulations of the Commissioner of Education:

- Section 177.2(a) provides definitions (for purposes of this section) of the terms “nonresident student”, “school district of residence” and “school district of location.”
- Section 177.2(b)(1) establishes the procedures for a district of location to recover from the district of residence reimbursement for the special education services costs, evaluation costs and committee on special education (CSE) administrative costs where the parent has provided written consent to the sharing of special education personally identifiable information concerning the student.
- Section 177.2(b)(2) establishes the procedures by which the district of location can recover its costs from the district of residence when the parent has refused consent to the sharing of special education personally identifiable information concerning the student between the district of location and the district of residence. This process includes submission of the claim to NYSED.
- Section 177.2(b)(3) establishes that the costs attributable to providing special education services to a parentally-placed nonpublic school student, costs of conducting evaluations and CSE administrative costs cannot exceed the actual costs incurred by the district of location, after deducting costs attributable for such student from federal and State funds.

Additional guidance on these two processes can be found in the June 2008 memo *Guidance on Reimbursement Claims for the Cost of Providing Special Education Services to Parentally-Placed Nonresident Students Pursuant to Education Law Section 3602-c* at <http://www.vesid.nysed.gov/specialed/publications/policy/reimbursement608.htm>.

- Section 177.2(b)(4) establishes the procedures for administrative review of a claim by NYSED when the school district of residence disputes the amount of the claim by the district of location as follows:
  - A school district of residence that disagrees with the amount of costs charged by the district of location may submit a request to NYSED for administrative review of the claim only after documented efforts to resolve the dispute with the district of residence.
  - The request for administrative review must be submitted by the district of residence must be on a form prescribed by the Commissioner (see attachment) and include:
    - the specific reason(s) the district of residence disagrees with the amount of costs charged by the district of location; and

- documentation of its attempts to resolve the dispute prior to submission of its application for administrative review by NYSED.
- The application for administrative review must be submitted not later than one year from the date of receipt of the claim or 30 days after final residency determination, whichever occurs later.
- Upon receipt of an application for administrative review of a claim, NYSED will require the district of location to provide the following information, where it is relevant to the disputed claim:
  - certification that the costs attributable to the student represent actual costs to the district of location;
  - a detailed accounting of such costs, including when the costs were incurred and their relationship to the reimbursable activities; and
  - upon request, applicable source documents to verify the claim.
- A school district of residence should not withhold any payment to the district of location for any portion of a claim that is not being disputed.
- A school district of residence may submit an application for administrative review of a claim, even if the claim has been paid, but is still disputed.
- The determination by NYSED shall be limited to whether the claimed costs were attributable to the non-resident student and reflect the actual costs to the district of location.
- The amount of the claim may be modified by NYSED to reflect the actual cost to the district of location.
- The district of residence must pay the costs to the district of location in accordance with the determination of NYSED.

A copy of the Application For Administrative Review of a Claim For Payment for a Nonresident Parentally-Placed Nonpublic School Student with a Disability is attached and can also be accessed at <http://www.oms.nysed.gov/stac/>.

- A school district of residence may not submit an application for an administrative review by NYSED of a claim for purposes of disputing:
  - a student's residency; or
  - the type or amount of special education services provided pursuant to the student's individualized education services program (IESP) developed by the district of location.
- Section 177.2(b)(4)(i)(a) establishes requirements for residency determination in addition to the requirements in section 100.2(y) when a district of residence disputes the residency of a parentally-placed student with a disability pursuant to section 100.2(y) of the Regulations of the Commissioner of Education as follows:

- The school district that is disputing the student's residency must:
  - provide the district of location with the opportunity to provide evidence of the student's residence and must consider such evidence in its residency determination; and
  - within two business days of its determination, submit a written notice to the district of location.
  
- The district of location may seek review of the residency determination pursuant to the procedures in section 100.2(y) and may submit an appeal of the residency determination to the Commissioner pursuant to Education Law section 310.

Questions regarding this memorandum may be directed to the Special Education Policy Unit at (518) 473-2878. Questions regarding applications for administrative review may be directed to the STAC, Special Aids and Medicaid Unit (518) 474-7116. Questions regarding the calculation of State Aid may be directed to the Office of Fiscal Services, State Aid Unit at (518) 474-2977.

#### Attachment

c:     Rebecca H. Cort  
       Patricia J. Geary