

Frequently Asked Questions Regarding the Provision of Related Services for Students Placed by Local Education Agencies in NJ Approved Private Schools for Students with Disabilities

On June 16, 2015 a memorandum (memo) was issued from the Department of Education to local education agencies (LEAs or sending districts) and approved private schools for students with disabilities (APSSDs) regarding the provision of related services for students placed in APSSDs. This FAQ serves to clarify questions that have been raised by LEAs, APSSDs, and parents concerning the implementation of the code requirements following the issuance of the June 16, 2015 memo.

1. What are “extraordinary services?”

Extraordinary services are defined by regulation as “the services of a one-to-one aide for a student.” See N.J.A.C. 6A:23A-18.1. This also includes the provision of one-to-one nursing. No other service qualifies as extraordinary services.

2. What are related services?

The N.J.A.C. 6A:14-1.3 and 3.9 defines “related services” consistent with the federal definition contained in the Individuals with Disabilities Education Act (IDEA) and its implementing regulations. Specifically, N.J.A.C. 6A:14-3.9(a), provides that, “[r]elated services including, but not limited to, counseling, occupational therapy, physical therapy, school nurse services, recreation, social work services, medical services and speech-language services shall be provided to a student with a disability when required for the student to benefit from the educational program.”

3. Who pays for the cost of related services in an Individualized Education Program (IEP) for a student placed in an APSSD?

For students placed in APSSDs, the cost of all related services within an IEP must be included in the tuition rate. See N.J.A.C. 6A:23A-18.2(a)1 and 18.2(a)5. The APSSDs shall not charge sending districts separately for related services that are required by a student’s IEP. An APSSD shall only charge separately for extraordinary services, which are defined by code in FAQ #1 above. All other services shall be included as part of the tuition rate.

By way of example, if a student enrolled in an APSSD has an IEP that requires counseling services twice per week individually, the APSSD must implement the IEP to ensure that the required counseling services are provided. The cost for the provision of the counseling services, pursuant to N.J.A.C. 6A:23A-18.5(a), shall be included in the calculation of the certified actual cost per student and final tuition rate charged to sending districts. The APSSD cannot separately bill the sending district for any IEP required services other than extraordinary services, as defined in FAQ #1 above.

4. Are the costs associated with services provided by the NJ Commission for the Blind included in the APSSD tuition rate?

No. The sending district contracts separately with the NJ Commission for the Blind and Visually Impaired (“Commission”) for the services provided by the Commission. The cost is then deducted from the sending district’s state aid payments. Based upon the above, costs for services provided by the Commission shall not be included in the APSSD tuition rate.

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5. What if the related service(s) contained in a student's IEP are unique and/or need to be provided after school hours?

Given the nature of related services and the broad definition within the IDEA, it is possible that an IEP may require the provision of uncommon or unique related services. The type of related service must be clearly delineated in the IEP. Additionally, some related services may need to be provided after hours if required by a student's IEP.

The APSSD must determine whether it can provide the related service(s) detailed in the student's IEP. If it can, the cost of same must be included within the tuition rate for the sending district. If the APSSD cannot provide the service, the APSSD must immediately notify the sending district that the student will need to be placed elsewhere because it cannot provide the required service(s).

6. What if a settlement or mediation agreement entered into by a sending district and the student's parent/guardian requires related services that the APSSD cannot or does not provide?

Upon receipt of the settlement or mediation agreement, or the IEP which incorporates the related services delineated in such an agreement, the APSSD must immediately notify the sending district if the APSSD cannot implement the IEP as written, or provide the services required under the settlement or mediation agreement.

7. What if the APSSD cannot implement the IEP as written?

If the APSSD cannot provide the service(s) in the IEP, the APSSD must immediately notify the sending district that the student will need to be placed elsewhere because it cannot provide the required service(s).

8. What if after accepting and admitting a student, the APSSD refuses to provide the related services as required in a student's IEP)?

The sending district must take action to ensure that the student receives his or her program and/or services immediately upon effectiveness of the IEP, which may include changing the student's placement and/or providing compensatory services.

9. Can an APSSD eliminate the related services in an IEP and/or not provide them?

No, pursuant to N.J.A.C. 6A:14-7.5(b)1, the APSSD must provide educational and related services as specified in students' IEPs. The APSSD does not have authority to amend IEPs.

10. Can the APSSD amend IEPs to eliminate related services or programs?

No, an APSSD has no authority to amend an IEP pursuant to N.J.A.C. 6A:14-7.5(b)1. See FAQ #9 above.

11. Who can provide the related services required by the student's IEP?

The APSSD's staff members can provide related services or the APSSD can contract with approved clinics or agencies and/or certified individuals, in accordance with N.J.A.C. 6A:14-5.

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12. Can the APSSD pay more than the maximum salary for related service providers?

No, pursuant to N.J.A.C. 6A:23A-18.5(a) 8 and 9, staff members or consultants cannot be paid in excess of the applicable maximum allowable salary.

13. What can an APSSD do if the cost of providing the related services creates a financial difficulty?

An APSSD that is experiencing financial difficulty providing the related services(s), should contact the Department of Education - Office of School Finance immediately to discuss the matter. The Office of School Finance may require additional information and/or documentation to offer appropriate solution(s).

14. Will the Department of Education provide a "stay" on enforcing the guidance contained in the June 16, 2015 memo?

There is no legal authority that permits selective enforcement of laws or regulations. Accordingly, there will be no stay on enforcement of N.J.A.C. 6A:23A-18.2(a)1 or N.J.A.C. 6A:23A-18.2(a)5. These regulatory provisions have been in existence for several years. Moreover, the Department reminded schools in the past of the need to comply with these provisions.