

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; 3.9 defines “related services” consistent with the federal definition contained in the Individuals with Disabilities in Education Act 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 contained in an Individualized Education Program (IEP) for a student placed in an APSSD?

For students placed in APSSDs, the cost of related services required by an IEP must be included in the tuition rate charged by the APSSD to the sending district with limited exception. If the related service required by an IEP is beyond what is typically provided during the school day, or the nature of the related services requires that it be provided beyond the school day/operating hours (e.g., home-based program), the APSSD may address the costs and provision of such related services through a separate agreement with the sending district. As indicated above, however, the cost of all other related services shall be included in the tuition rate set forth in the mandated tuition contract, and the APSSD is also responsible for the provision of such services. See N.J.A.C. 6A:23A-18.2(a)1, 18.2(a)5 and 18.4(e)1.

By way of example, if a student enrolled in an APSSD has an IEP that requires counseling services twice per week and attends an APSSD that specializes in offering an educational program to students with behavioral disabilities, the APSSD must implement the IEP to ensure that the required counseling services are provided and the cost for the provision of the counseling services shall be included in the calculation of the certified actual cost per student and final tuition rate charged to sending districts. If, however, the IEP requires weekend or home-based counseling services, in addition to counseling provided during the school day, the cost(s) related to these services and/or provision of same may be addressed via agreement with the sending district. In summary, the APSSD shall include in the tuition rate the costs related to the counseling services that are typically provided during the school day, and may work with a sending district on an agreement relating to the provision of and cost(s) associated with providing the home-based or weekend counseling services.

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4. 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 or appropriate to the nature of the related service.

If the unique related services required under the IEP, or via a settlement or mediation agreement incorporated into an IEP, is at a level typically provided during the school day, the cost of same shall be included within the tuition rate charged to the sending district. An example of this includes applied behavior analysis services, if such services are part of a comprehensive program; the cost of same shall be included in the tuition rate charged by the APSSD.

If, however, the related service required by the IEP is not intended to or exceeds the level typically provided during the school day or school hours of operation (e.g., home-based program), or is considered to be so unique that the provision of same by the APSSD is impracticable, the APSSD must immediately notify the sending district; the APSSD must make the appropriate arrangements with the sending district to provide the related service(s) which may include billing separately outside of the tuition rate or working with the sending district to ensure the student receives the services from an appropriate provider.

5. 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 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. The APSSD and sending district shall then comply with the guidance contained in paragraphs three (3) and four (4) above.

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

If the APSSD cannot implement the IEP as written, it must immediately notify the sending district. The sending district and the APSSD shall work together to ensure that the student receives the required services consistent with the guidance provided in paragraphs three (3) and four (4) above.

7. What if after accepting and admitting a student, the APSSD advises a sending district that it cannot 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. This may include engaging a service provider outside of the APSSD and/or making arrangements to ensure the APSSD provides the required related services outside of the APSSDs charged tuition rate in accordance with the guidance contained in paragraphs three (3) and four (4) above.

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8. Can an APSSD remove or otherwise amend 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 and/or notify the sending districts of any concerns related to the provision of such services as indicated in the guidance above. The APSSD does not have authority to amend IEPs. If the APSSD has concerns regarding the provision of related services, it must contact the sending district and take action consistent with the guidance contained in this FAQ. Any agreement entered into by an LEA and an APSSD regarding the provision of related services as described in this FAQ must not prevent the implementation of any student's IEP.

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

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

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

An APSSD can pay staff members or consultants more than the maximum salary for related services, but the amount of salary(s) and associated benefits in excess of the maximum salary amount for that job title cannot be included in the certified actual cost per student pursuant to N.J.A.C. 6A:23A-18.5(a) 8 and 9.

11. 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).

12. 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. However, the above guidance serves as clarification of the concerns related to the June 16, 2015 memo.

13. 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. See New Jersey Budget Law 2015-2016.

Based upon the above, costs for services provided by the Commission shall not be included in the APSSD tuition rate.