IOWA DEPARTMENT OF EDUCATION

Three Models for Providing Educational Programs at Licensed Facilities

December 20, 2013

Overview

As an accompaniment to the recent guidance on permissive and nonpermissive uses of special and general education funds, the Iowa Department of Education is also releasing this document describing three ways that districts can work with private facilities within the school district's borders to structure the delivery of educational programming to students in those facilities. All three models work within existing law and place the district in an oversight or direct delivery position related to educational programming. For more information related to the instructional program for students with IEPs, contact the Department of Education, Division of Learning and Results.

Iowa Code establishes the education program as the responsibility of the district in which the facility is located in Model 1 and Model 2.

In Model 3, the Code does not specifically assign the responsibility of the education program to the district of location beyond the fact that the board has authority over ALL educational programs, which are not accredited nonpublic schools, private schools, or state facilities, offered within the boundaries of the school district.

In all three models, the school district is responsible to determine on a student basis what is the best educational setting for each student, as well as to ensure LRE and FAPE on every student. This means that in some cases, the students should attend the public school district, and in other cases, the students have needs that determine FAPE would best occur at the facility location. Some students could meet FAPE in the public school district, however, due to legal issues, cannot be enrolled in the public school setting, or having the student in a public setting would be harmful to the student or to fellow students, or if the students require treatment during the school day. Each of these factors, as well as others, must be considered in determining the best model and best setting for each student. Educating the student at the facility location as a matter of convenience is NOT an appropriate placement decision criterion.

Transportation of students to the facility for treatment, custodial or rehabilitation services is a cost of the facility. Transportation of students from the facility to the public school district of location for the educational program, where appropriate, follows the law and the policies on transportation of the public school district of location.

All three models are substantially the same except:
Model 1 = Teachers are employees of the district of location and students are served at the private facility.
Model 2 = Teachers are employees of the private facility and students are served at the private facility.
Model 3 = The program is jointly administered by districts and is not associated with any private facility.

Model 1

Some students, if appropriate, will be transported to the public school district for the educational program. Other students may be better served to have their education provided at the location of the facility. The program located at the facility must be FAPE for each student educated at that location, or the student must have a legal or personal issue where placement in the public school district would not be in the best interest of the student or of the fellow students, or the student requires treatment provided simultaneously with the educational program or periodically during the school day.

Model 1 is as follows:

- The district sends teachers who are employees of the district to the facility to provide the educational program to students. The teacher teaches, but does not provide treatment or other responsibilities of the facility.
- The instruction is a program of the school district of location.
- The curriculum is determined by the school district of location.
- The facility provides all staff that are needed to provide treatment, rehabilitation, custodial, or other services that are in the court, DHS, or other agreement for that student being placed at the facility. These responsibilities cannot be transferred to the teacher.
- The district must be actively involved in the same things as in district-housed programs, such as:
    - Management, direction, supervision, and evaluation of the program.

    - Evaluation of the students.
    - Staff development and evaluation of teachers.
    - Conducting background checks and verifying appropriate licensure.
    - Monitoring instructional hours/days.
    - Obtaining a copy of the DHS or court treatment/care plan agreement as soon as each child is placed or in the case of a PMIC, the written document created of the reasons for the admission.
    - Being actively involved in all IEP meetings and ensuring all districts of residence have the same opportunity to be actively involved.
    - Ensuring that the program adheres to all pertinent state and federal laws, including, but not limited to, testing requirements, NCLB provisions, IDEA provisions, teacher licensure, professional development expectations, and core curriculum implementation.
    - Billing other districts.
- Generally, the district will not pay any rent to the facility for the space necessary to provide the educational program to students, where the students must remain at the facility to receive treatment, rehabilitation, custodial, or other services for which the facility has an agreement with the placing agency.
- However, if the district is educating the students at the facility, when it is not necessary for FAPE because the district does not have sufficient space to educate the students in the regular school buildings, then the district will pay the fair rental value for the space, and that space shall not be used by the facility for other purposes outside of school hours unless the rent is adjusted for only school hours. Accommodations or rooms outside of the classroom which are not exclusive to the educational program shall not be included in the rental agreement. Rent, if allowed, is paid from the PPEL or SAVE Fund.

Model 2

Some students, if appropriate, will be transported to the public school district for the educational program. Other students may be better served to have their education provided at the location of the facility. The program located at the facility must be FAPE for each student educated at that location, or the student must have a legal or personal issue where placement in the public school district would not be in the best interest of the student or of the fellow students, or the student requires treatment provided simultaneously with the educational program or periodically during the school day.

Model 2 is as follows:

- The facility hires certified teachers that it believes are well suited to the types of students residing at the facility, and the district purchases the educational program for students from the facility (at cost). The teacher teaches, but does not provide treatment or other responsibilities of the facility during the school day.
- The instruction is a program of the school district of location.
- Curriculum is determined by the school district of location.
- In addition to the instructional staff, the facility provides all staff that are needed to provide treatment, rehabilitation, custodial, or other services that are in the court, DHS, or other agreement for that student being placed at the facility. These responsibilities cannot be transferred to the teacher during the school day.
- The district must be actively involved in the same things as in district-housed programs, such as:
    - Management, direction, supervision, and evaluation of the program.
    - Evaluation of the students.
    - Ensuring staff development and evaluation of teachers occurs in compliance with district procedures/policies.
    - Ensuring background checks are conducted and verifying appropriate licensure.
    - Monitoring instructional hours/days.
    - Comparing accounting detail to allowable costs.
    - Obtaining a copy of the DHS or court treatment/care plan agreement as soon as each child is placed or in the case of a PMIC, the written document created of the reasons for the admission.
    - Being actively involved in all IEP meetings and ensuring all districts of residence have the same opportunity to be actively involved.
    - Ensuring that the program adheres to all pertinent state and federal laws, including, but not limited to, testing requirements, No Child Left Behind (NCLB) provisions, Individuals with Disabilities Education Act (IDEA) provisions, teacher licensure, professional development expectations, and core curriculum implementation.
    - Billing other districts.

- Generally, the district will not pay any rent to the facility for the space necessary to provide the educational program to students where the students must remain at the facility to receive treatment, rehabilitation, custodial, or other services for which the facility has an agreement with the placing agency.
- However, if the district is educating the students at the facility, when it is not necessary for FAPE because the district does not have sufficient space to educate the students in the regular school buildings, then the district will pay the fair rental value for the space, and that space shall not be used by the facility for other purposes outside of school hours unless the rent is adjusted for only school hours. Accommodations or rooms outside of the classroom which are not exclusive to the educational program shall not be included in the rental agreement. Rent, if allowed, is paid from the PPEL or SAVE Fund.

Model 3

In Model 3, the students are not placed at any facility by the court, DHS or other placing agency. A group of districts could form a consortium to jointly administer an educational program that they jointly establish and for which each of them had legal authority to provide separately. This would generally happen when there are a small number of students needing a specific educational program, and it is not cost effective for each member district to offer the program separately, or when there are students that cannot attend school in the public school for legal or safety reasons but who do not need placement in a facility (i.e., registered sex offenders). If students in the program need treatment as identified on their IEPs, but do not need placement, the consortium could purchase those services from an entity licensed to provide that particular treatment at the site of the consortium's educational program.

[This does not apply to an educational program at a treatment facility or day program where Iowa Code assigned the educational program to the district of location. Districts cannot transfer this legal responsibility to others.]

Some students, if appropriate, will be transported to the public school buildings of one of the member districts for the educational program. Other students may be better served to have their education provided away from the regular public school buildings. This location must be within the boundaries of one of the member districts, but could be in a separate building owned or leased by a member district or could be space rented from another appropriate entity or facility. The program location must be FAPE for each student educated at that location, or the student must have a legal or personal issue where placement in the public school district would not be in the best interest of the student or of the fellow students.

Model 3 is as follows:

- One of the member districts will serve as the fiscal agent for the consortium.
- The facility where the consortium program will be offered must be within the boundaries of one of the member districts.
- The teachers and staff will be employees of one of the member districts. Different districts may be the employer of some of the staff, but not multiple districts for any one employee.
- The instruction is a program of each of the member school districts. Students will participate in the student activity program, graduation, and testing requirements of their sending/resident district. Students are not tuitioned out.
- Districts share the actual costs of providing the jointly administered program (not limited to maximum tuition rate).
- If treatment is necessary for the students to benefit from the education program, and if the main purpose of attendance at the day program is for the instructional program, and if the treatment is not the primary purpose of placement in the program, then the consortium may purchase treatment from a facility that is licensed to provide that treatment.
    - To be a cost of special education, it must be on the student's IEP.
    - Otherwise, it is a purchased service of each district in the consortium having students that require that treatment.
- If the program includes special education, the actual costs of the special education program provided pursuant to the IEP is still a cost of the resident district, but non-IEP costs can be shared proportionately. Non-IEP costs are not costs of the special education program or reported on the SES.
- Cost sharing on non-IEP costs are according to the agreement of members of the consortium with students in the program. The following items should be included:
    - The agreement is based on actual student enrollment.
    - The agreement could include time records to allocate administrative and overhead costs.
    - The agreement could be straight per pupil.
    - The agreement can establish maximum enrollments.

    - The agreement cannot establish minimum enrollment (phantoms).
    - Transportation to program is responsibility of sending district.
    - District of location must be a member of the consortium, even if it has no students enrolled. If it has no students enrolled, it would have no costs.
    - Non-member districts could be allowed to send students on a tuition basis or could be required to participate as a member district in the cost sharing.
    - Employees remain employees of sending district, with other districts purchasing employee services from that district.
    - One member will act as fiscal agent.
        - No fee or indirect costs to do so.
        - Can maintain time records to establish an actual cost to be shared pursuant to the written agreement.
        - Will settle up at end of fiscal year.
        - Will provide accounting records to each district so that each district can enter its costs into its accounting records at the level of the CAR-COA.
- The districts, as a group, must be actively involved in the same things as in district- housed programs, such as:
    - Management, direction, supervision, and evaluation of the program.
    - Evaluation of the students.
    - Curriculum development.
    - Ensuring staff development and evaluation of teachers occurs in compliance with district procedures/policies.
    - Ensuring background checks are conducted and verifying appropriate licensure.
    - Monitoring instructional hours/days.
    - Being actively involved in all IEP meetings and ensuring all districts of residence have the same opportunity to be actively involved.
    - Ensuring that the program adheres to all pertinent state and federal laws, including, but not limited to, testing requirements, NCLB provisions, IDEA provisions, teacher licensure, professional development expectations, and core curriculum implementation.
- Host district must prepare the accounting records and provide to each sending district that is a member of the consortium the information for its proportionate share of the costs that was agreed to by the consortium members in their written agreement. Member districts will enter the accounting information into their own accounting records, as if each were individually incurring the costs. The function, object, and program will be dependent on what the service was which was purchased.
- The districts will not pay any rent to the host district if the district's facility is a district school building for the space necessary to provide the educational program to students unless the host district is itself leasing the facility. The consortium agreement could include the sharing of custodial or other operations and maintenance costs of the district's facility that are direct, measurable costs.
- However, if the consortium program is located at a private facility, then each member district will pay its proportionate share of the fair rental value for the space, and that space shall not be used by the facility for other purposes outside of school hours unless the rent is adjusted for only school hours. Accommodations or rooms outside of the classroom which are not exclusive to the educational program shall not be included in the rental agreement. Rent, if allowed, is paid from the PPEL or SAVE fund.