

**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

**NOTICE OF SECOND PROPOSED RULEMAKING**

The State Superintendent of Education, pursuant to the authority set forth in sections 3(b)(8) and (11) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2602(b)(8) and (11)) (2010 Supp.); sections 101 *et seq.* of the Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-269; D.C. Official Code §§ 38-2561.01, *et seq.*) (2010 Supp.); Mayor's Order 2007-149 (June 28, 2007); and Article II of An Act to provide for compulsory school attendance, and for other purposes, approved February 4, 1925 (43 Stat. 805; D.C. Official Code §§ 38-20,2 *et seq.*) (2001 & 2010 Supp.), hereby gives notice of her intent to revise chapter 28, subtitle A, of Title 5 of the District of Columbia Municipal Regulations (DCMR), entitled "Certificates of Approval for Nonpublic Special Education Schools and Programs Serving Students with Disabilities Funded by the District of Columbia and Special Education Rates."

The proposed rules revise current provisions seeking to clarify student attendance and invoicing requirements for payments to nonpublic schools and programs providing special education services to students funded by the District of Columbia. The proposed rules establish rate setting formulas and rates for tuition and related services including the use of rates approved in other states or political subdivisions within a state.

This is the second rule proposal to establish special education tuition and related service rates. Office of the State Superintendent of Education previously published for comment proposed rates on June 18, 2010, in the D.C. Register (DCR) at 57 DCR 5263, including public hearings. Consistent with the comments received on the earlier proposal requesting earlier notification about proposed changes affecting educational tuition and related service fees, the proposed rulemaking does not affect the current school year, but is proposed to be effective July 1, 2011. OSSE welcomes written comments on this proposed rulemaking and participation at public hearings scheduled for Wednesday, April 6, 2011, and Wednesday, April 13, 2011. Notices of the public hearings will be published in future editions of the *D.C. Register*.

**Chapter 28, "Certificates of Approval for Nonpublic Special Education Schools and Programs Serving Students with Disabilities Funded by the District of Columbia and Special Education Rates," subtitle A, title 5 of the DCMR is proposed to be amended as follows:**

**The title of chapter 28 is amended to read as follows:**

**CHAPTER 28           NONPUBLIC SPECIAL EDUCATION SCHOOLS AND  
PROGRAMS SERVING STUDENTS WITH DISABILITIES  
FUNDED BY THE DISTRICT OF COLUMBIA AND SPECIAL  
EDUCATION RATES**

**Section 2821 is amended to read as follows:**

**2821 ATTENDANCE AND TRUANCY**

- 2821.1 Consistent with An Act To require the payment of tuition on account of certain persons who attend the public schools of the District of Columbia, and for other purposes, approved September 8, 1960 (74 Stat. 854; D.C. Official Code §§ 38-201, *et seq.*), a nonpublic special education school or program shall require that a District of Columbia student enrolled in its school or program shall attend every regular instructional school day and remain in school until the official closure of the school day, unless otherwise excused.
- 2821.2 A nonpublic special education school or program shall maintain a policy to allow a student to enter and attend school when the student arrives late for school and shall record the student's tardiness or partial absence if a student fails to attend school for the entire day.
- 2821.3 A nonpublic special education school or program shall adhere to and maintain policies and procedures in conformance with the attendance and truancy policies and procedures of each sending LEA (except as provided in subsection 2821.4(b)) and the District of Columbia as set forth in chapter 21 of subtitle A of title 5 of the DCMR.
- 2821.4 If a nonpublic special education school or program serves students placed in its school or program from multiple LEAs, it is the responsibility of the nonpublic school or program to have and make available upon request, a written copy of each respective LEA's attendance and truancy policy. In consultation with each sending LEA, the nonpublic school or program shall either:
- (a) Apply the sending LEA's policy to each student enrolled in that LEA; or
  - (b) Select one (1) sending LEA's attendance policy to apply to all students attending the nonpublic school or program and provide a written notification of such designation to each LEA and OSSE.
- 2821.5 The designated attendance policy shall meet the minimum requirements of chapter 21 of subtitle A of Title 5 of the DCMR and each LEA served by the nonpublic school or program.
- 2821.6 A nonpublic special education school or program shall file with OSSE a copy of the LEA attendance policy governing a student whose services are funded by the District of Columbia and shall provide an attendance report to OSSE or an LEA upon request.

- 2821.7 The nonpublic special education school or program shall submit to the sending LEA and OSSE the same attendance report at the time an invoice is submitted to OSSE for payment. The attendance report shall accurately reflect each student's attendance for every regular instructional school day, or portion thereof, for the respective billing cycle, identifying excused and unexcused absences. All absences shall be presumed to be unexcused unless otherwise marked as excused in an attendance report.
- 2821.8 A nonpublic special education school or program shall notify the sending LEA in writing no later than two (2) instructional school days after the accrual of five (5) unexcused absences by a District of Columbia student in a marking period or similar time frame.
- 2821.9 A nonpublic special education school or program shall notify the sending LEA, in writing, not later than two (2) instructional school days after the accrual of ten (10) unexcused absences at any time within the school year. In each such case the:
- (a) Nonpublic special education school or program shall consult with the sending LEA regarding whether or not the current placement or location assignment is appropriate; and
  - (b) Sending LEA shall convene an IEP team meeting as soon as possible to review the student's absences, to make recommendations as appropriate with regard to intervention strategies, and to make a determination regarding the continued appropriateness of the current placement.
- 2821.10 A copy of each notice required by section 2821.9 shall be submitted with the nonpublic school or program's next invoice submission to OSSE.
- 2821.11 Failure by a nonpublic special education school or program to comply with the attendance requirements of an LEA, or the attendance documentation required in this chapter, shall limit payment for tuition and related services to the instructional school days that the student was in attendance.
- 2821.12 A nonpublic special education school or program shall obtain written authorization from the responsible LEA to hold a placement open and to continue billing for tuition if a student has accrued:
- (a) Ten (10) unexcused absences at any time during the school year; or
  - (b) Seven (7) consecutive unexcused absences.
- 2821.13 A nonpublic special education school or provider shall not invoice OSSE and OSSE will not pay for tuition or services beginning the fifteenth (15<sup>th</sup>) consecutive day of a student's unexcused absence.

- 2821.14 In its discretion, and upon written request from an authorized official of a sending LEA, OSSE may continue to pay educational tuition to a nonpublic special education school or program in order to ensure that a student will be allowed to return to the school or program after an excused absence and receipt of written confirmation that the student was unable to attend due to a medical disability, hospitalization, incarceration, detention, or placement in a residential facility.
- 2821.15 Except as provided for in subsection 2821.14 above, if a student has accrued an extended period of excused absences, a nonpublic school or program may not charge fees for that student's placement for more than fourteen (14) school days; except, that holds of not more than thirty (30) days may be negotiated on a case-by-case basis, upon written request to OSSE from the responsible LEA, with a written explanation of exceptional circumstances. OSSE may, in its discretion, accept or deny a written request from the sending LEA to extend the period of time payments shall continue to be made to a nonpublic school or program.
- 2821.16 Upon notification from any source that a District of Columbia student placed at a nonpublic special education school or program has been hospitalized, incarcerated, detained, placed at a residential facility, or placed at any other school or program, the nonpublic special education school or program shall:
- (a) Notify the sending LEA immediately in writing and request written information regarding the student's status and whether or not the student is to be withdrawn from the nonpublic special education school or program;
  - (b) Comply within two (2) business days to a request from the receiving facility or the sending LEA for records or other input for the purpose of providing appropriate academic instruction and related services to the student at the new placement; and
  - (c) Inform OSSE, in the attendance report accompanying its next invoice, of the student's status, the date on which the nonpublic special education school or program learned of the new placement and, if known, the date on which the new placement was made.
- 2821.17 Unless payment has stopped under any of the provisions above, the final date for which OSSE shall provide payment is the date on which the nonpublic special education school or program was notified of a student's changed placement status consistent with provisions of this chapter or the last instructional school day prior to the date a subsequent placement begins billing for educational expenses, whichever date is earlier.
- 2821.18 OSSE, in its discretion, may seek a credit or refund for a payment made to a nonpublic special education school or program after the appropriate end date specified in this chapter.

2821.19 Unless a detailed written plan has been submitted to and approved by OSSE in advance, no nonpublic special education school or program shall implement a system of rewards or incentives that provides monetary awards to students for attendance.

**Section 2833 is amended to read as follows:**

**2833 INVOICING**

2833.1 A nonpublic special education school or program shall submit to OSSE invoices for special education services in conformance with the service rates established in this chapter and consistent with policies and procedures applicable to payments to nonpublic special education schools, programs, and providers.

2833.2 Payments by OSSE of invoices shall be limited to the services specified and authorized by an IEP, HOD, or court order resulting from an IDEA due process hearing. Multi-Disciplinary Team (MDT) meeting notes, IEP meeting notes, or notes taken in any other type of meeting will not be accepted as authorization for services.

2833.3 An invoice shall include the following information for each student:

- (a) Student name, date of birth, and the unique student identification number if one has been assigned;
- (b) The name of the District of Columbia agency responsible for placing the student at the nonpublic special education school or program. The responsible agency for:
  - (1) Day nonpublic special education schools and programs is the LEA that placed the student under IDEA; and
  - (2) Residential nonpublic special education schools and programs there may be more than one (1) responsible agency, which may include the Department of Youth Rehabilitation Services (DYRS), the Child and Family Services Agency (CFSA), or the Department of Mental Health (DMH).
- (c) The name of the LEA responsible for ensuring FAPE;
- (d) The tuition rate per diem consistent with this chapter;
- (e) The number of tuition days billed for on the invoice;

- (f) Specific itemization of related services provided, including the frequency of each service and the unit of service provided on a per hour or per diem basis as appropriate;
- (g) The student's Medicaid number, if provided by the parent or the sending LEA; and
- (h) An attendance report including specific days of attendance and absence (identified as excused or unexcused). All absences will be presumed to be unexcused unless otherwise marked.

2833.4 Policies and procedures related to invoicing shall be published and made available by OSSE.

2833.5 A nonpublic special education school or program or related service provider shall obtain from OSSE a written rate confirmation prior to submission of an invoice.

2833.6 A nonpublic special education school or program or related service provider shall not submit an invoice based upon a bundled or packaged rate methodology when invoicing the District of Columbia government, unless:

- (a) OSSE has accepted the per diem rate established by another state, or political subdivision within a state, based upon a rate setting methodology that has been deemed reasonable by OSSE; and
- (b) The bundling of related services within the rate submitted to OSSE is permitted or required by that state or political subdivision.

2833.7 If a rate OSSE has previously confirmed is modified, written notification shall be given to OSSE, including copies of any related documents and communications with the rate-setting state or political subdivision regarding budget adjustments, rate adjustments, staffing vacancies, or other rate related matters.

2833.8 OSSE shall not accept for payment invoices submitted more than six (6) months after the date the services were provided, unless such payments are specifically mandated by an HOD or court order resulting from a due process hearing under IDEA.

2833.9 OSSE shall apply a debit to the account or seek a refund from a nonpublic special education school or program determined to have charged a duplicative fee or a fee in excess of a rate approved under this chapter.

2833.10 If a nonpublic special education school or program subcontracts with another individual or entity to deliver some or all of a student's services, the subcontracted service provider may not bill OSSE directly. The nonpublic special education school or program must incorporate any such legitimate costs into its

invoice for the student in accordance with approved rates and applicable invoicing requirements.

- 2833.11 OSSE shall not pay for services associated with any form of homebound instruction without proof of prior written approval from the responsible LEA and approval from OSSE. OSSE shall determine the applicable rates for such services on case-by-case basis for each individual student.
- 2833.12 A nonpublic special education school or program may not invoice OSSE for non-educational costs unless specified in a student's IEP or in an HOD or court order resulting from a due process hearing under IDEA. OSSE shall not be responsible for non-educational costs for students placed into a nonpublic school or program by non-educational District of Columbia agencies including without limitation placements made by the District of Columbia Department of Youth Rehabilitation Services (DYRS), the Child and Family Services Agency (CFSA), and the Department of Mental Health (DMH).
- 2833.13 The first billing day for a student shall be the first full day of attendance at the nonpublic special education school or program.
- 2833.14 A nonpublic school or program shall provide a copy of any invoice submitted to OSSE, to an LEA upon request.

**Section 2834 is amended by amending subsection 2834.6 to read as follows:**

- 2834.6 An LEA shall give placement preference to a Psychiatric Residential Treatment Facility (PRTF) that meets the District of Columbia Department of Health Care Finance (DHCF) standards and requirements specified in 29 DCMR § 948. It is the responsibility of the LEA, with the consent of the child's parent pursuant to 34 C.F.R. § 300.154, to contact DHCF to determine whether the child is eligible or entitled to Medicaid benefits and to obtain a certification from the District of Columbia Department of Mental Health (DMH) stating that admission to a PRTF is medically necessary under 29 DCMR § 948.7.

**The following new sections are added to read as follows:**

**2844 NONPUBLIC SPECIAL EDUCATION SCHOOL OR PROGRAM  
PLACEMENT AND LOCATION ASSIGNMENT PRINCIPLES**

- 2844.1 Consistent with section 3 of the Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-269; D.C. Official Code § 38-2561.03), unless the placement of a student has been ordered by a District of Columbia Court, federal court, or hearing officer pursuant to IDEA and after the required findings have been made, no student

whose education, including special education or related services, is funded by the District of Columbia government shall be placed in a nonpublic special education school or program that:

- (a) Allows the use of aversive intervention in its policy or practice; or
- (b) Has not received and maintained a Certificate of Approval in accordance with D.C. Official Code § 38-2561.03 and its implementing regulations.

2844.2 The group of people determining the educational placement of a child with a disability shall make the placement decision in conformity with requisite provisions of District and federal laws and rules.

2844.3 The group of people determining the educational placement of a child with a disability shall ensure that the child's placement is determined annually, is based on the child's IEP, and is located as closely as possible to the child's home.

2844.4 Decisions regarding student placement shall give preference to appropriate special education schools or providers located in the District of Columbia. Special education placements deemed appropriate for the student shall be made in the following order of priority:

- (a) District of Columbia LEA, including DCPS or a District of Columbia public charter school;
- (b) Another District of Columbia public school outside the student's enrolled LEA pursuant to an agreement between the LEA placing the student and the LEA accepting the student;
- (c) Private or residential facility located in the District of Columbia; or
- (d) Facility located outside the District of Columbia.

2844.5 A recommendation for a special education placement at a residential school or program shall assure that priority is given to a facility that:

- (a) Meets the District of Columbia Department of Health Care Finance (DHCF) requirements for a Psychiatric Residential Treatment Facility (PRTF), consistent with 29 DCMR § 948; and
- (b) Is located in the District of Columbia.

2844.6 If a PRTF placement within the District of Columbia is not deemed to be appropriate for a student, the appropriate PRTF selected outside of the District of Columbia shall be located at a distance as close as possible to the child's home.



- 2844.7 In order to place a student in a PRTF, the LEA shall obtain prior written consent from a student's parent or guardian authorizing the LEA to contact:
- (a) The District of Columbia Department of Mental Health (DMH) for a certification that admission to a PRTF is medically necessary; and
  - (b) DHCF to determine whether the child is eligible or entitled to receive Medicaid benefits.
- 2844.8 If a student placement is made at a residential facility that does not meet DHCF requirements for classification as a PRTF consistent with 29 DCMR § 948, a decision for placement shall first give preference to an appropriate residential facility located in the District of Columbia; and if an appropriate facility cannot be found within the District of Columbia, the residential facility selected for the student shall be located at a distance as close as possible to the student's home.
- 2844.9 At each annual meeting to determine a student's educational placement, the group of people determining the placement shall consider the student's transportation needs. Consistent with IDEA requirements and policies issued by the Office of the State Superintendent of Education, preference shall be given to an appropriate school that is located at a distance as close as possible to the student's home.
- 2844.10 A student placement decision shall give preference to an appropriate school that is accessible by public transportation. If a student's IEP includes a provision to include bus transportation for a student as a related service, preference shall be given to an appropriate school that is on an existing bus route serviced by the District of Columbia.
- 2844.11 LEAs or a representative of a group making placement decisions may contact OSSE's Division of Transportation (OSSE DOT) for information about special education schools and providers and respective bus routes.
- 2844.12 To ensure placement decisions are made on an appropriate and individual basis, no student shall be placed in a:
- (a) Nonpublic school or program that requires all students to attend Extended School Year (ESY) programming regardless of need or as a condition of enrollment;
  - (b) "Year-round" school unless the student's IEP team would otherwise require ESY service in a school with a traditional calendar or the team has determined that there is no other school or program with a COA that can implement the student's IEP; or
  - (c) Nonpublic school or program that requires all students to attend

programming that is offered outside the time frame of the regular instructional day and is not included in the school or program's per diem educational rate.

**2845 RATES – GENERAL**

- 2845.1 OSSE shall establish and publish on an annual basis, or more frequently as needed, maximum rates to be paid for tuition and related services to nonpublic special education schools and programs providing special education and related services to students funded by the District of Columbia.
- 2845.2 Nothing in this chapter shall prohibit OSSE from entering into contracts with nonpublic special education schools or programs for competitive rates or prohibit OSSE from recognizing competitive rates negotiated by District of Columbia LEAs or other District of Columbia agencies.
- 2845.3 A nonpublic school or provider shall not submit for approval or charge the District of Columbia at a rate higher than a rate charged to other jurisdictions or to the private-paying general public for the same or a comparable service.
- 2845.4 A nonpublic special education school or program shall provide, upon request, a copy of all tuition and fee schedules provided to or charged to the private-paying general public.
- 2845.5 A nonpublic special education school or program shall not require the parents of a student enrolled in its school or program and funded by the District of Columbia, to sign a contract or agreement making the parents responsible for tuition and related services costs.

**2846 NONPUBLIC SPECIAL EDUCATION SCHOOL OR PROGRAM RATE ESTABLISHED IN ANOTHER STATE**

- 2846.1 Pursuant to the following sections, a nonpublic special education school or program may request that OSSE recognize and accept a rate approved in another state, or political subdivision within a state, based upon a rate-setting methodology OSSE deems to be reasonable.
- 2846.2 A nonpublic special education school or program shall submit to OSSE documentation that supports the rate established in another state in an appropriate electronic format, within five (5) business days after the date a student is enrolled at the nonpublic special education school or program. The documentation submitted to OSSE shall include the following information:
- (a) A complete set of all documents submitted to the rate-setting state or political subdivision;

- (b) Copies of all communications and notices received from the rate-setting state, or political subdivision within a state, describing all limitations to the rates including, without limitation, the effective dates;
- (c) Information relating to bundling related service(s) in the per diem education rate; and
- (d) The number of regular school days in the year for which the rate(s) will be paid.

**2847 DAY AND RESIDENTIAL PROGRAM TUITION RATE ESTABLISHED BY THE DISTRICT**

2847.1 Effective July 1, 2011, the maximum annual per student tuition rate to be paid by the District of Columbia to a nonpublic special education school or program shall be based on the funding established by the Uniform Per Student Funding Formula (UPSFF) for students with disabilities enrolled in a District of Columbia public school.

2847.2 The maximum per diem tuition rates for non-ESY school days shall be derived by dividing the maximum annual per student tuition rate by one hundred and eighty (180).

2847.3 If the District's annual budget for the next fiscal year (beginning October 1) has not been approved by Congress by July 1, OSSE shall use the UPSFF rate set forth in the supplementary material (Budget Books) provided to Congress with the District's Budget Request Act, until such time as the District's annual budget has been approved by Congress.

2847.4 If the final version of the UPSFF enacted into law for a fiscal year differs from the UPSFF submitted to the U.S. Congress, OSSE shall reconcile payments consistent with the final UPSFF. Within sixty (60) business days after the effective date of the final UPSFF, the amounts paid to a nonpublic special education school or program or related service provider shall be reconciled in the following manner:

- (a) A debit or a credit shall be posted to the account of each school, program, or provider as appropriate;
- (b) Cash reimbursement for a credit may be considered only in exceptional circumstances based upon a written justification from the nonpublic special education school or program or related service provider, and accepted by OSSE.

**2848 MAXIMUM ANNUAL AND PER DIEM PER STUDENT TUITION RATES**

2848.1 The Maximum Annual Per Student Tuition Rate to be paid by the District of Columbia for a school year of one hundred eighty (180) regular instructional days shall be calculated according to the following formula:

$$\frac{\text{UPSFF Special Education Schools per Pupil Allocation} + \text{UPSFF Level 4: Special Education per Pupil Supplemental}}{\text{Maximum Annual Per Student Tuition Rate}}$$

2848.2 The Maximum Per Diem Tuition Rate to be paid by the District of Columbia for regular instructional days shall be calculated according to the following formula: Maximum Annual Per-Student Tuition Rate divided by one hundred eighty (180) days.

2848.3 Unless the requirements of paragraph (a) of this subsection are met, a school day, including Extended School Year (ESY) programming, that does not meet the six (6) hour minimum instructional school day requirement shall be billed on a pro rata hourly basis based on the per diem tuition rate established in this chapter. OSSE shall apply a debit to the account of or seek a refund from any nonpublic special education school or program found to have overcharged OSSE in violation of this section.

(a) A nonpublic special education school or program that seeks to incorporate a school day that does not meet the six (6) hour minimum into the academic calendar shall submit a verification that other instructional days have been lengthened in order to ensure that the average number of instructional hours over the course of the school calendar meets or exceeds six (6) hours per day. This includes, but is not limited to, a routine early release day held in order to provide documented professional development or other mandatory faculty co-planning.

2848.4 The Maximum Per Diem Tuition Rate does not apply to homebound instruction as described in this chapter.

2848.5 The maximum annual and per diem tuition rates shall be published on the OSSE website at [www.osse.dc.gov](http://www.osse.dc.gov) at least annually.

**2849 RATE SETTING – PER DIEM TUITION RATES FOR NONPUBLIC SPECIAL EDUCATION SCHOOLS AND PROGRAMS**

2849.1 Except as described in subsection (b), the per diem tuition rate to be paid by the District of Columbia to a nonpublic special education school or program shall be the lowest of the:

(a) Maximum Per Diem Tuition Rate as calculated consistent with this chapter;

- (b) Per diem rate the nonpublic school or program charges to the private-paying general public, derived by dividing the total annual tuition by the actual number of school days if necessary; or
- (c) Educational per diem rate set by another state, or political subdivision within a state, as the result of a rate-setting methodology that has been deemed to be reasonable by OSSE.

2849.2 OSSE shall accept the educational per diem rate set by the state or political subdivision within the state in which the school or program is located when the per diem rate is derived from a standardized rate-setting methodology deemed reasonable by OSSE.

2849.3 OSSE may accept a rate set by a state or political subdivision within the state other than the state in which the school or program is located that is higher than the Maximum Per Diem Rate as calculated in this chapter, if the higher rate is due to the bundling of related services as permitted by that state.

**2850 EXTENDED SCHOOL YEAR RATES**

2850.1 Rates for extended school year (ESY) services, as defined by 34 C.F.R. § 300.106, shall be prorated hourly, calculated according to this chapter, and based on a prorated instructional day.

2850.2 Each nonpublic school or program shall submit an ESY schedule documenting the amount of daily instruction provided in order for OSSE to approve the ESY rate. Such documentation shall be received, annually, no less than sixty (60) sixty days before the first date of expected ESY invoicing.

2850.3. No invoice for ESY services for a student shall be submitted to OSSE prior to the date OSSE has approved an ESY rate.

2850.4. No invoice for ESY services for a student shall be submitted to OSSE unless eligibility for ESY has been documented in the student's IEP.

**2851 RATE SETTING – RESIDENTIAL COSTS (RESIDENTIAL SCHOOLS)**

2851.1 *Psychiatric Residential Treatment Facilities (PRTFs).*

- (a) The per diem rate for a residential special education school or program that meets the District of Columbia's Department of Health Care Finance (DHCF) requirements for a Psychiatric Residential Treatment Facility (PRTF) under 29 DCMR § 948, shall be determined by DHCF under 29 DCMR § 949 and any other applicable rules and regulations.

- (b) A PRTF shall submit invoices for all non-tuition costs, as directed by DHCF, for Medicaid-enrolled District of Columbia students with a medical necessity determination from DMH.
- (c) A PRTF providing services to District of Columbia students who are not Medicaid-enrolled shall invoice OSSE at the same reimbursement rate applicable to District of Columbia Medicaid enrollees.

2851.2 *All Other Residential Facilities.* Residential per diem rates (excludes all tuition and related services) for all nonpublic residential school or programs that have not been certified as PRTFs by the District of Columbia shall be, at OSSE's discretion:

- (a) The per diem rate set by another state or political subdivision as the result of a rate-setting methodology that has been deemed reasonable by OSSE;
- (b) The residential per diem rate the nonpublic school or program charges to the private-paying general public; or
- (c) The supplemental special education residential add-on rate established by the UPSFF for a student enrolled in a District of Columbia public school.

## 2852 RATE SETTING – RELATED SERVICES

2852.1 The Baseline Hourly Rate used to calculate the Maximum Hourly Rate for each of the following related services, as defined by 34 CFR § 300.34, including the Maximum Evaluation Cost for evaluation services, shall be the mean hourly rate from the United States Department of Labor Bureau of Labor Statistics (BLS) Metropolitan Area Occupational Employment and Wage Estimates for the Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Division that corresponds to each of the following Standard Occupational Classification (SOC) system codes:

- (a) Audiology services, 34 CFR § 300.34(c)(1) – SOC code 29-1181(Audiologist);
- (b) Counseling services, 34 CFR §300.34(c)(2) and, for Psychological services provided by a Psychologist only, 34 CFR §300.34(c)(10):
  1. Provided by a Licensed Mental Health Counselor – SOC code 21-1014 (Mental Health Counselors);
  2. Provided by a Licensed Social Worker – SOC code 21-1021 (Child, Family, and School Social Workers);
  3. Provided by a Psychologist – SOC code 19-3031 (Clinical,

Counseling, and School Psychologist);

4. Provided by a Psychiatrist – SOC code 29-1066 (Psychiatrists);

(c) Occupational Therapy services, 34 C.F.R. § 300.34(c)(6) – SOC code 29-1122 (Occupational Therapists);

(d) Physical Therapy services, 34 C.F.R. § 300.34(c)(9) – SOC code 29-1123 (Physical Therapists);

(e) Speech-Language Pathology services, 34 C.F.R. § 300.34(c)(15) – SOC code 29-1127 (Speech-Language Pathologists).

2852.2 The Maximum Hourly Rate for individual related services shall be two and one half (2.5) times the Baseline Hourly Rate. Nonpublic special education schools and programs may not charge OSSE more than the rate charged to any private payer for the same related service. Providers may be required to provide copies of credentials to support any given rate.

2852.3 A nonpublic special education school, program, evaluator, or related service provider shall obtain from OSSE prior written approval for related service rates that are not provided for in this section.

(a) Unless otherwise set by the District’s Medicaid Program for PRTFs, the maximum rate for an evaluation or related service provided to a student enrolled in a nonpublic special education day or residential school or program shall be aligned to the United States Department of Labor Bureau of Labor Statistics (BLS) Metropolitan Area Occupational Employment and Wage Estimates for the geographic area in which the day or residential program is located.

2852.4 Except as provided for below, OSSE shall not pay any nonpublic school or provider for services that do not qualify as related services under IDEA including, but not limited to, tutoring services, extended-day programming and wraparound services.

(a) Where an HOD or court order resulting from a due process proceeding orders the provision of services described in this section, the nonpublic school or program must obtain written authorization from the responsible LEA to provide the services and to invoice the LEA directly.

(b) Where an LEA agrees to authorize any of the services described in this section, the nonpublic school or program must obtain written authorization from the responsible LEA to provide the services and to invoice the LEA directly.

- (c) Where DMH is unable to provide community-based wraparound services and the student's IEP team has determined that they are necessary in order to ensure FAPE while attending a nonpublic school or program, the LEA will be responsible for selecting the wraparound service provider and documenting that decision in the student's IEP. No change in provider may be made by any nonpublic school or program without the express written approval of the LEA.
- (d) In rare circumstances, where an LEA and the DMH are in agreement regarding the student's need for and the unavailability of District agencies to provide wraparound services, OSSE may at its discretion, agree to a cost-sharing arrangement to pay for such services.

2852.5 If the rate of another state or political subdivision has been accepted by OSSE under this chapter is a bundled tuition rate that incorporates related service(s), the nonpublic school or program may not invoice OSSE separately for that service up to the number of bundled hours. OSSE shall apply a debit to the account of or seek a refund from a nonpublic school or program found to have charged OSSE in violation of this section.

2852.6 *Group Rates for Related Services.* The per-student hourly rate for each student in a group shall be based on the following formula:

- (a) Group Size of 2 = (Individual Related Service Rate x 1.25) ÷ 2;
- (b) Group Size of 3 = (Individual Related Service Rate x 1.50) ÷ 3;
- (c) Group Size of 4 = (Individual Related Service Rate x 1.75) ÷ 4; or
- (d) Group Size of 5 or more = (Individual Related Service Rate x 2.00) ÷ 5

2852.7 *Aides.* For IEP-required aides, the baseline annual salary used to calculate the maximum hourly rate will be the mean annual salary from the United States Department of Labor Bureau of Labor Statistics (BLS) Metropolitan Area Occupational Employment and Wage Estimates for the Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Division that corresponds to occupational code 25-9041 (Teacher Assistants). The Maximum Hourly Rate for Aides shall be the mean annual salary divided by one hundred eighty (180) school days divided by six (6) instructional hours.

## **2853 RATE SETTING – EVALUATIONS**

2853.1 The Maximum Evaluation Cost to be paid for each of the following evaluations will be calculated by multiplying the corresponding individual related service rate as described in section 2847 by the maximum number of hours the District of



Columbia Department of Health Care Finance (DHCF) Medicaid Program permits to be billed for each evaluation, as provided in the following chart:

<b>Evaluation</b>	<b>Relevant DHCF Procedure Code Description(s)</b>	<b>Maximum Number of Hours</b>	<b>Corresponding Related Service Rate</b>
(a) Audiology Evaluation	Evaluation of speech, language, voice, communication, auditory processing, and/or aural rehabilitation status	4	Audiology, 2852.1(a)
(b) Comprehensive Psychological Evaluation	Psychological testing (includes psychodiagnostic assessment of emotionality, intellectual abilities, personality and psychopathology, for example, MMPI, Rorschach, WAIS), per hour of the psychologist's or physician's time, both face-to-face time administering tests to the patient and time interpreting these test results and preparing the report	10	Counseling by a Psychologist, 2852.1(b)(3)
(c) Neuropsychological Testing Battery	Neuropsychological testing battery (for example, Halstead-Reitan, Luria, WAIS-R) with interpretation and report	10	Counseling by a Psychologist, 2852.1(b)(3)
(d) Neuropsychological Evaluation	See the descriptions for the Comprehensive Psychological Evaluation and Neuropsychological Testing Battery	See the maximum hours for (b) + (c) above.	Counseling by a Psychologist, 2852.1(b)(3)
(e) Occupational Therapy Evaluation	Occupational therapy evaluation or re-evaluations	4	Occupational Therapy, 2852.1(c)
(f) Psychiatric Evaluation	Psychiatric diagnostic interview examination	10	Counseling by a Psychiatrist, 2852.1(b)(4)
(g) Physical Therapy Evaluation	Physical therapy evaluation or re-evaluation	4	Physical Therapy, 2852.1(d)
(h) Speech-Language Evaluation	Evaluation of speech, language, voice, communication, auditory processing, and/or aural rehabilitation status	4	Speech-Language Pathology, 2852.1(e)

2853.2 A nonpublic special education school, program, evaluator, or related service provider shall obtain from OSSE prior written approval for an evaluation or

related service rate that is not provided for in this section. OSSE shall not pay for such a related service unless the rate is specifically approved by OSSE as part of the most recent certificate of approval process or through a separate rate review process.

**2854 RATE-SETTING – ADMINISTRATION AND APPEALS**

2854.1 OSSE shall publish and maintain on its website a list of nonpublic special education schools and programs providing special education services to District of Columbia students.

2854.2 OSSE shall be responsible for processing all payments for services provided to students attending nonpublic special education schools or programs paid for by the District of Columbia and shall:

- (a) Issue written guidance with regard to OSSE’s payment policies and procedures;
- (b) Issue written guidance for dispute resolution with regard to payments made under the Placement Act and this chapter;
- (c) Publish rate and payment related guidance on the OSSE website; and
- (d) Publish the components of the annual rate calculation formula on the OSSE website.

2854.3 The exclusive means for a nonpublic special education school or program to appeal a rate established by OSSE under the Placement Act or this chapter is the reconsideration review process before the rate reconsideration panel established by the Placement Act.

2854.4 The rate established by OSSE shall remain in effect pending a final decision of the rate reconsideration panel.

2854.5 A rate shall be eligible for reconsideration only for matters that relate to the ability of the nonpublic special education school or program to meet the requirements of an IEP for a student placed by a District government agency. In order to be heard and considered, a nonpublic special education school or program’s written request for reconsideration of a rate established under this chapter shall:

- (a) Be filed with OSSE within thirty (30) calendar days after the school or program receives notification of the rate established by OSSE under this chapter;
- (b) State with specificity the relief requested;

- (c) Include documented data and analysis to justify the request for a specific rate and an explanation why the special education services required by the District student's IEP could not be met at the established rate; and
- (d) Provide any other information deemed appropriate by the rate reconsideration panel to allow an analysis of the claim.

2854.6 The rate reconsideration panel may in its discretion review individual exceptions for a student the panel determines has unique or highly specialized needs that cannot be properly addressed and funded through the aggregate rate. In the case where reconsideration is being requested for an individual exception to an aggregate rate, the requesting party shall:

- (a) Justify with specificity the necessity to pay for services at a rate in excess of an established rate;
- (b) Demonstrate the existence of the student's unique or highly specialized needs;
- (c) Include documented data and analysis to justify the request for a specific rate and an explanation why the special education services required by the District student's IEP could not be met at the established rate; and
- (d) Provide any other information deemed appropriate by the rate reconsideration panel to allow an analysis of the claim.

2854.7 Upon receipt of a timely request for reconsideration that conforms with the requirements of the Placement Act and this chapter, OSSE shall convene and provide administrative support to the rate reconsideration panel in conformance with the Placement Act. OSSE shall establish guidance with regard to the panel hearing process and member conduct, including:

- (a) Confidentiality requirements;
- (b) Member duties, responsibilities, and prohibitions against representations or public statements related to panel membership;
- (c) The rate reconsideration hearing procedures, including a requirement to issue a panel decision within forty-five (45) days after the date of the receipt of a request for reconsideration; and
- (d) Specifications regarding the official record.

2854.8           The rate reconsideration panel may require a nonpublic special education school or program requesting reconsideration of a rate to provide the panel with further documentary evidence required to make a decision and may establish deadlines for the submission of such evidence.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be submitted by email to [osse.publiccomment@dc.gov](mailto:osse.publiccomment@dc.gov) or by postal mail or hand delivery to the Office of the State Superintendent of Education, Attn.: Elisabeth Morse re: Rate Proposal, 810 First Street, NE 5<sup>th</sup> Floor Washington, DC 20002. Additional copies of this rule are available from the above address and on the Office of the State Superintendent of Education website at [www.osse.dc.gov](http://www.osse.dc.gov).