# Frequently Asked Questions (FAQ) on PERMISSIVE & NON – PERMISSIVE USES OF SPECIAL EDUCATION FUNDS PERMISSIVE & NON – PERMISSIVE BILLABLE COSTS (Including costs for non-IEP students) Related to Districts, AEA Service Providers, Private Facilities, Private Service Providers, and Consortia

***Note:*** *The FAQs in this document are a compilation of questions asked and answers provided to various entities regarding these topics. The Department anticipates this document will expand as it works through additional implementation issues. These represent the most current official position of the Department related to these questions. The Department will continue to review previous and new FAQs to include here and to ensure complete alignment with these responses.*

## Contents


Tuition Questions .......... 2
- Itemized Tuition Billings Required .......... 2
- Per Diem not Permitted .......... 2
- Tuition for General Education Students .......... 2
- Tuition for Students with IEPs is Actual Costs .......... 4
- Instructional Costs not on IEP for Students with IEPs .......... 5
- Rent Generally Unallowed Cost .......... 6
- Other Unallowed Costs of the Facility’s Operation .......... 7

Specific Cost Questions .......... 8
- Teachers and Other Staff .......... 8
- Transportation .......... 9
- Capital Projects .......... 10
- Supplies .......... 10

Billing and Payment Cycle .......... 11

Program Delivery .......... 11

Consortia .......... 13

Private Service Providers/Contracted Services .......... 15

AEA as the Service Providers/Contracted Services .......... 16

Questions on Guidance Documents .......... 16
- Grace Period .......... 17
- Compliance with Law .......... 17
- Clarification on Districts’ Chart of Accounts .......... 18
- Other State Agencies .......... 21

# Tuition Questions

## Itemized Tuition Billings Required

**Question:** Can resident districts request an itemized bill from other districts?
**Answer:** Yes. Iowa Code section 282.20 requires that tuition statements/bills be itemized. For a district to meet the requirements of Iowa Code section 279.29, it must have sufficient itemization to determine if the bill is a just claim against the school corporation for purposes of audit and allowance.

## Per Diem not Permitted

**Question:** Is there any exception to allow a per day amount for an out-of-state placement?
**Answer:** No. Allowable costs are the actual costs for special education, and the district will need to have an itemized billing.

**Question:** The guidance states that tuition for day programs operates just like any other program offered by the district for which tuition is charged to resident districts. So does this mean that whether residential or day, cost per day for education would be the same rate?
**Answer:** There will not be a set daily rate on students. For students with individualized education programs (IEPs), the calculation of tuition is the actual cost of special education instruction pursuant to the IEP developed by the IEP team. The costs are individualized by each student with an IEP, and the costs for each student would be expected to be different than the cost for any other student. For students without IEPs, the calculation of tuition is a per day amount of the district cost per pupil (DCPP) of the district of location for each day of enrollment.

**Question:** We are a private service provider rather than a private facility. Can our service simply bill the district for the 1.0 funding plus the special education weighting for each student, and consider that the cost of providing special education actual costs?
**Answer:** No. Set rates are not appropriate. Placement of each child in the classroom in which a contracted service provider is providing instruction and services must be a decision of the IEP team and must not be based on weighting assigned to the child.

## Tuition for General Education Students

**Question:** What amount should the resident district of a non-IEP student receiving an educational program while residing at a facility be billed by the district of location?
**Answer:** The tuition bill for a non-IEP student is limited to the maximum tuition rate in Iowa Code, which is the DCPP. If the facility is licensed as a psychiatric medical institution for children (PMIC), the resident district is billed by the district of location. If not a PMIC, the district of location would use the foster care provisions in Iowa Code chapter 282 and would not billed the resident district on a non-IEP student.

**Question:** It would be difficult to educate a general education student (i.e., sex offender) in an instructional program provided at the location of a facility for the cost of serving a student at the district cost per pupil (DCPP). Is there an exception?
**Answer:** Iowa Code does not currently allow for exceptions. The Department is discussing how to assist school districts with the cost in excess of the DCPP for providing instruction to non-adjudicated students without IEPs who have behavioral issues that require an alternative setting within the district.

**Question:** Part of the dilemma for facilities stems from the determination of who qualifies for special education services. We maintain that most of our placed students require special education services whether or not they have an IEP or if the IEP lists those services. Based on the language in 281 IAC 41.309, especially when focusing on prior failure to meet grade-level expectations, intellectual disability, emotional disturbance and environmental or economic disadvantage, a much higher percentage of our students should qualify as special education students, in our opinion.

**Answer:** That is a determination for a school district and area education agency (AEA) to make with their IEP teams. If the private facility has concerns about any students, it needs to discuss the situation with the district of location. IEPs and student identification for instruction is a public school district/AEA responsibility rather than a facility option. Eligibility determination is a complex consideration and must take a number of factors into account, including those in 41.306(2). This section of Iowa Administrative Code states that eligibility cannot be determined if the factor is lack of appropriate instruction which mitigates prior failure to meet grade-level expectations. This would also not alter the statutory rule about appropriate uses of special education funds.

**Question:** Why can't a private facility charge the district of location the actual costs on students that do not have IEPs and the district bill that cost on to the resident districts?
**Answer:** Iowa Code limits the tuition that can be charged by a serving district on a nonresident student that does not have an IEP to the maximum tuition rate. The maximum tuition rate is equal to the district cost per pupil (DCPP) of the serving district. Charging more is not permitted by law.

**Question:** Has the Department changed the interpretation of DCPP/maximum tuition rate from the directive previously given to private facilities that they were allowed to bill an additional 27% of the DCPP?
**Answer:** There has been no change in law on maximum tuition rate. The guidance on this is directly from law and is not an interpretation. The question is mixing special education and general education. The first part about maximum tuition rate is straight from law and has to do with general education students. The 27 percent of the DCPP is only related to IEP services at a level III, and refers to the general purpose percentage (GPP) under Iowa Code. The 27 percent is the portion of the DCPP which is considered general purpose, leaving the remaining 73 percent to be considered special education funding in the same way as the special education weightings. It is a complicated calculation related to the school finance formula. There are different percentages for levels I and II.

**Question:** How can local school districts and private treatment providers be denied full access to the DCPP when so many costs are to come from the DCCP?
**Answer:** The serving school district (district of location) is not denied full access to the DCPP on general education students and full actual costs of special education instruction on students with IEPs. However, it is the district that negotiates with the facility how much of the amount the district charged to the resident district will be used for the contracted education program at the facility and how much will be used for services provided directly by the district of location (such as billing, IEP meetings, and contracts)

The maximum tuition rate on students without IEPs and the maximum GPP on students with IEPs are legal maximums. As such, the district cannot charge more DCPP or GPP even if general purposes costs exceed that amount.

**Question:** Can the district of location bill the student's district of residence for general education costs, or do they have to pay these costs out of their own general education budgets?
**Answer:** It depends on how the student gets into the educational program at the facility; whether or not the student has an IEP; if the unit in which the child is placed is or is not a PMIC; and whether or not the child was parentally placed. Tuition is very complicated, and districts learn what criteria applies and how to bill through training and experience.

The question appears to be asking about the situation where the student is placed at the facility for something other than PMIC (i.e., custodial care or foster care) but not placed by the parents, and the student does not have an IEP. In that situation, the district of location counts all of those students who fit in that scenario on the certified enrollment just like any other resident student present on October 1. The district of location does not bill the resident district. At the end of the year, the district of location will file a claim for aggregate days of service—but it is limited to the DCPP on a daily basis for each day served. The district of location could have costs in excess of the DCPP that it cannot recoup through tuition or state claim. However, that is exactly the same situation for every resident student in the district. Many have costs that exceed the DCPP, and the district pays those costs from other state foundation revenues and other general fund revenues such as instructional support levy, donations, and grants.

In a similar situation, if the resident district contracted with the serving district to provide an education to a student sent daily to the serving district, and the student does not have an IEP, the serving district is limited to the DCPP on a daily basis for each day served. Costs in excess of the DCPP are handled the same as in the scenario above.

These are two of many possible scenarios.

**Question:** Our district has a PMIC facility/hospital located within our boundaries. Our last day of school was June 12. The student's resident district completed its school year in May. Between the time that the resident district completed its school year and our district completed our school year, we provided education for this student at the PMIC. Do we bill the resident school district?
**Answer:** Yes. The district of location is obligated to provide the educational program and the resident district is obligated to pay for regular session without regard to its local schedule. The district of location is billing for its regular school session, not summer session. The dates for regular session are based on the regular school session of the serving district.

## Tuition for Students with IEPs is Actual Costs

**Question:** Where in the guidance is the need of the students placed at a higher priority than "cost containment" when it comes to the special education of student residents?
**Answer:** The district is required to provide what is in the IEP as determined by the IEP team. That does not say the district must provide the service one way over another. The district never escapes its stewardship responsibility for public funds.

**Question:** Do educational dollars allotted to a school district follow the student when enrolled in another school district?
**Answer:** No, educational dollars generated on a per pupil basis do not follow students. Tuition billed for special education students is the actual cost of the special education instructional program. The actual costs could be more than or less than the amount generated by the district through counting that student.

**Question:** What qualifies for actual cost? i.e., cost of a one-to-one paraprofessional? Can the facility charge more for providing a special education program under contract than what the resident district actually generates for counting that student? i.e., more than what a 3.74 weighting generates?
**Answer:** Actual costs are those costs necessary to provide what is specified in the IEP and is necessary to provide for the costs of the special education instructional program above the costs of a general education student in a general curriculum. Special education programs are funded on a per pupil basis, but the funding is pooled at the resident district level to provide the programming necessary to deliver the program required by each of the IEPs. Actual costs could be more than or less than the amount the resident district generates for counting that student.

**Question:** Does this guidance on tuition as actual costs apply to an approved out-of-state facility?
**Answer:** Yes; actual costs have the same definition without regard to where the facility is located. Iowa districts have the same responsibilities regarding determining that the bill is a just claim for audit and allowance. This guidance does apply to the cost of instructional programs at out-of-state facilities.

There is no tuition paid to out-of-state facilities if the student placed there does not have an IEP.

**Question:** How is payment made to place a student out-of-state, for example in Wyalusing Academy?
**Answer:** No payment is made to any out-of-state facility from any Iowa school district for instruction of any student without an IEP. For students with IEPs, whether or not payment for instruction is made is based on who made the placement and other factors. If it is determined that payment for instruction of students with IEPs is required of a school district, districts follow the same guidance as has been presented in the guidance document regarding which costs are allowable and which are not.

**Question:** What is the definition of actual costs of special education in state facilities? If it is different than the definition of actual costs of special education in private facilities, why is there a difference?
**Answer:** There is no difference in the definition of actual costs of public special education, regardless of location. "Actual costs" refers to the cost of instruction in special education above the cost of instruction in the general curriculum. It does not mean all the costs that a district, or a provider, or a facility incurs to operate.

### Instructional Costs not on IEP for Students with IEPs

**Question:** If the IEP calls for a one-to-one paraprofessional, is it true that the district of location pays for that one-to-one paraprofessional no matter what the cost is, but the district can't charge the resident districts for that paraprofessional?
**Answer:** If the IEP requires a one-to-one paraprofessional, the serving district must provide that service, and the cost would be part of actual costs (itemized) billed to the resident district by the serving district. It is an individualized cost. However, if the student does not have an IEP, or the IEP does not require a one-to-one paraprofessional, then the serving district is not required to provide one, and the resident district cannot be required to pay that cost which is beyond the IEP requirements.

**Question:** If education is compulsory, then why is the private agency responsible for costs necessary to educate special education students when they require extra supervision during their school day that may not have been specifically identified in the IEP but is required by the serving school district?
**Answer:** Compulsory attendance says that students of a certain age must attend school. There is no extra supervision requirement in Code related to compulsory attendance law. This question is not clear as to what extra supervision is being required by whom for what purpose. If additional supervision is required for the education of a particular special education student, the student's IEP team should be convened.

**Question:** Would any mental health treatment be covered as an educational expense if required within the IEP, since many of the students placed in our facility are in special education related to their mental health diagnosis?
**Answer:** If the necessary treatment is not already a contractual obligation of the facility for that student under its plan with its placement agency, then the cost could be a special education cost IF it is in the IEP. The facility does not choose which entity (i.e., Department of Human Services (DHS) or district) will cover the cost. Instead, it will first look at its care plan, then look at the IEP. If it is on the care plan, it would not be billed to any school district. If it is not on the care plan but is in the IEP, then it would be billed by the district of location to the resident district as an individualized cost for that specific student.

**Question:** Our district has a special education student placed at a private facility located in another Iowa district. In order to participate in the program at that private facility, students are required to also participate in a treatment program. Is that treatment program cost a billable cost to our district from either the private facility or the public school district in which the private facility is located?
**Answer:** The private facility is not an accredited public school by itself and therefore cannot bill any district. That facility, and similar residential facilities, are licensed by DHS to provide custodial care and treatment programs to students, but not educational programs. The educational program at a private facility is provided by the public school district in which the facility is located. If the treatment program is listed in the IEP for the student as necessary for the student to benefit from an educational program, the cost of the treatment program would be part of the actual costs of special education for that student and would be billed to the resident district.

If the treatment program is not listed in the IEP as necessary for the student to benefit from an education program, even though the student is required to participate in the treatment program by the private facility if residing there, the cost of the treatment program would not be billed to the resident district. The cost of the treatment program, in this case, would be paid from the private facility's regular funding streams pursuant to its licenses and agreements with DHS and Juvenile Justice.

Likewise, if the student is a non-IEP student, the cost of the treatment program would not be billed to any public school district.

### Rent Generally Unallowed Cost

**Question:** When can a district pay rent from special education weighting?
**Answer:** Rent would never be paid from special education funding. Special education funding is entirely General Fund money, and a rental agreement or lease is not a General Fund expenditure.

**Question:** When can a district pay rent from non-special education funding, such as the physical plant and equipment levy fund (PPEL), to a facility?
**Answer:** The decision on when rent is appropriate depends on whether or not the students in the educational program have been placed in a facility and if those students have a treatment/care plan beyond room and board. There are generally two situations where fair rental value of the classroom space (only) could be appropriate:

(1) The district, by itself or with a group of districts in a consortium, establishes an off-site program that does not include students that have been placed in a facility. The district may rent classroom space that meets the fire and building code requirements for a classroom, from any entity having such space available, which is located within the district's boundaries. That could be the facility located within the district. However, if those students will simply be assigned to the same classrooms that already exist or are required at the facility for students placed at the facility, then no rent or prorated rent would be charged.

(2) Students at the facility do not require any treatment per their care plans; they only require room and board (custodial care), but the district of location does not have classroom space to enroll those students in the classrooms of the school district. The district may request space for a classroom from the facility to educate those children at the facility as long as free appropriate public education (FAPE) is not violated in doing so. If those students will be educated in the same classroom/s that already exist or are required at the facility for students placed at the facility, then no rent or prorated rent would be charged.

If it is the facility which has determined that it does not want the students to leave the facility site for the educational program, and that decision is not a violation of FAPE, then no rent or prorated rent would be charged.

**Question:** When a district determines it will educate students at the facility location and the facility does not have any treatment responsibilities under its contract with the placement agency, the guidance states the school would pay rent for the classroom space. However, it also states that accommodations or rooms outside of the classroom which are not exclusive to the educational program shall not be included in the rental agreement. Would the district be able to rent the gymnasium?
**Answer:** Is the gymnasium exclusively used for the educational program and otherwise not available to staff or students outside of school hours, during vacations, weekends, summer? If exclusively used for education and never used otherwise; then yes, as the guidance states.

**Question:** How does the Iowa Department of Education determine "fair rental value"?
**Answer:** The board of education of the district of location is responsible for this determination. Fair rental value (FRV) is an IRS and accounting concept. The best way for a district to determine FRV is to ask a real estate agent what is the going rate in the same area per square foot, excluding bathrooms and similar "common" or non-classroom areas.

In the edit process, any rent paid by a district will be compared to other districts within the AEA and could be questioned if there is much variance.

**Question:** Why are facility-related costs denied to private facilities but rent is allowed under some of the Delivery Models?
**Answer:** The difference is whether (1) the district is requiring students to remain at the facility for instruction when they do not require treatment and could be in public schools, or (2) if the students do

require treatment by the facility during the school day and therefore need to stay where the staff are who will provide that treatment.

**Question:** Further explain the statement, "Rent is a PPEL or SAVE expenditure, not General Fund" and what is the implication for school districts and private facilities?
**Answer:** In the case that rent is allowed to establish a consortium (does not include students placed at a facility residential or day program), the cost would come from each of the districts' capital projects funds (PPEL or SAVE). Rent is not a General Fund expenditure. It is an accounting issue for districts to ensure they use various funds appropriately. The cost of rent would never be a special education cost that could be paid from either weightings or modified supplemental amount. This is not different than current requirements, but is included in the guidance because every object code category was discussed in the guidance for the benefit of the districts and their auditors.

**Question:** How was the judgment made that it would be nearly impossible for the private facility to have any area that is specifically and exclusively used only by the school district or AEA?
**Answer:** It would be a waste of space and inefficient for any good steward of funding to never use the rented space at any time outside of the school day—think summer months, holidays, weekends, and evenings. The assumption is that a nonprofit, like a public school district, would try to be efficient.

**Question:** Why is it considered impossible to accurately reflect these rental costs when the intricacies of handling staff costs are deemed possible?
**Answer:** Staff costs may be allowable educational costs, are necessary for multiple purposes, and are required in costing models under federal regulations to be accurately allocated to programs, where rent is not an allowable cost of instruction.

**Question:** Iowa law allows AEAs, according to the State Auditor's letter of January 2013, to charge school districts for occupancy and administrative costs. Why then is such a practice not allowed between private residential providers and school districts?
**Answer:** We would need to see a copy of the letter. The statement that AEAs are allowed to charge districts for occupancy and administrative costs would be incorrect. After seeing the letter, the Department could determine what the auditor meant. The auditor might be referring to a consortium. Also, an AEA is a public agency that can provide special education support services as authorized by Code—these services are not the instructional services that a school district is required to provide. A private residential facility is not a public agency and cannot provide instruction or special education services under its own authority.

**Other Unallowed Costs of the Facility's Operation**

**Question:** When does one funding source (placement agency) stop and another (instructional contract) start?
**Answer:** This is determined from the contracts and the legal guidance document previously provided. As a general rule of thumb, if a service is covered in the contract between the facility and the placement agency, then none of that cost can be paid from education funding, even if the costs the facility incurs for that service exceed what it generated from the placement agency.

**Question:** If the placement costs fall under DHS or the court system rather than being the responsibility of the district, will the private facility be separating costs and billing DHS for some expenditures?
**Answer:** Education costs and placement costs are different costs, and the facility will have separate contracts for education and for placement with separate agencies. Education costs must be separated from costs that are part of the licensure held by the facility, and its agreement or care plan with the placing agency. School districts have no part in the operation or costs of other services the private facility provides in its business structure. As we understand DHS payments, it is a rate payment up front without subsequent billings—however, that question should be asked of DHS or another placement agency.

**Question:** The guidance states that the general purpose percentage (GPP) amount is for the general program component and for administrative oversight. Can a private agency also access these funds for its administrative costs?
**Answer:** No. GPP is a percentage of the DCPP, so it has already been included in the billings from the district of location to all resident districts on all students, both those with IEPs and those without. For students with IEPs, the percentage of the DCPP that is not GPP must be used for special education instruction exclusively. Administrative costs allowed through the SBRC are exclusively those for providing the district's school level administration (i.e., principal) and would not be available for the administration of the facility's various programs and enterprise operations.

**Question:** If a district has a private facility located within its district, and that district is charged non-permissible expenditures from the private entity, is the guidance stating that the costs cannot be billed to other districts? Does that mean the serving district is responsible for the costs that it can't bill to the resident district even though the facility is a private facility, and the serving district has no say in the program's existence within its boundaries?
**Answer:** The district of location/serving district is normally not responsible to pay any non-permissive expenditures. Since the district of location is the entity responsible for all educational programming and oversight, and it is that district of location which would decide if it wants to provide the program directly or to contract for that instructional program, then the district of location should be ensuring that any educational costs it will implement would be permissive costs. The district should not establish or sign a contract that would include non-permissive expenditures.

However, if the district of location voluntarily hosts a day program for students from other districts where those students are not adjudicated, and the district of location does not create a consortium for that program, and the district of location is purchasing non-instructional services or is renting classroom space, the district of location would be responsible for those costs and cannot bill those costs to other districts. This is one of the reasons that it is very important for districts to work together on jointly administered programs for non-adjudicated students who need special programming.

**Question:** The guidance states that 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. At whose expense are all these staff?
**Answer:** These listed costs are not education costs. School districts have no part in the general operation or any services the private facility contracts with other individuals or agencies to provide. Those costs would be included in the payment related to the licensure, contract/agreement, and/or care plan with the placement agencies (i.e., DHS, courts). Direct questions to the placement agencies to determine what funding opportunities are available from sources other than school districts. This will help to determine if the private facility needs to generate other resources or to reduce costs related to those enterprise activities.

## Specific Cost Questions

### Teachers and Other Staff

**Question:** Our district has always coded special education teacher substitutes to special education funding, but it does not appear that any of our substitutes have any endorsements, let alone a special education endorsement. Can the cost of these teacher substitutes be coded to special education weighting funding?
**Answer:** If the short-term substitute has an appropriate substitute teacher license issued by the BOEE and is the teacher who is providing the IEP services as directed by the absent classroom teacher in the lesson plan, then the substitute teacher would be coded to special education funding to the extent that the substitute teacher is exclusively providing the IEP services. The substitute teacher would not be developing or adjusting IEP instruction or services—but is directed by the absent classroom teacher through the lesson plan. The absent classroom teacher would also be coded to special education funding

as long as the teacher is on normal leave under the contract. But, the classroom teacher would not be coded to special education funding during his/her absence if that classroom teacher is actually on a re-assignment rather than on paid time off (PTO)/sick leave.

**Question:** Our district has several special education para-educators with substitute teacher authorizations issued by the Board of Educational Examiners (BOEE) that our district utilizes for up to five consecutive days as substitute teachers in the classrooms within which they regularly work. Can the cost of those para-educators be coded to special education funding as special education substitute teachers?
**Answer:** Please see the answer above.

**Question:** In Model 1, where the district is choosing to provide the instruction at the facility location when the facility does not have any treatment responsibilities in its contract with the placement agency, teachers are employees of the district and treatment staff are employees of the facility. But in Model 2, where the instruction is provided at the facility location because the students must remain at the facility to receive treatment by the facility as required in its contract with the placement agency, both teachers and treatment staff are employees of the facility. What is included in determining the cost of the teachers?
**Answer:** Salary, basic group benefits (employer's share of FICA, IPERS equivalent, health insurance), and the private facility's profit margin would be included in costs on the same percentage basis as the teacher works directly and exclusively on instruction with students. It would not include items such as housing allowances, moving allowances, or similar individualized benefits, costs to become appropriately licensed, unemployment, and worker compensation. It would also not include any percentage costs/rates that do not represent time actually devoted exclusively to instruction (such as administrative duties or work related to the facility or its contract/plan with the placing agency). Ask the district of location for help in determining the separation of billable costs from other costs.

It should be noted that "teaching" is a service purchased by the school district from the private agency in this Model. The district has the responsibility to determine if purchasing the services of teaching staff is cost-effective. So the facility may need to carefully consider its staffing levels, and the level of salary and benefits it provides to its employees within its business model so that it does not price itself out of the market. The district is not obligated to use staff that are employees of the private facility—the district has a choice.

**Question:** How will the residential provider or the day treatment provider and the local school district document the distinction between teachers', substitute teachers', paraprofessionals', and professional employees' costs when sometimes they are working on IEP issues and at other times there are non-IEP issues?
**Answer:** Office of Management and Budget (OMB) circular A-87 covers time records. Districts follow that procedure even for state funding. You can ask the local district how its policy and procedures operate because the district is already required to maintain such records for Medicaid, special education, and all other categorical funding streams.

**Question:** If the above documentation is required of the private residential provider or the day treatment provider, is this than an allowable administrative cost billed to the school district?
**Answer:** No. Without documentation of cost, no payments should be made. A provider would already be required to maintain time records as a Medicaid provider, so the principles would be similar.

## Transportation

**Question:** Is there a difference in transportation costs from the facility to the public school district depending upon whether it is a residential program or a day program?
**Answer:** There is no difference based on whether it is residential versus day program. The difference is based on whether the purpose of traveling to the facility is primarily for treatment or primarily for education. Since the question refers to "day treatment program," that indicates placement in the program is primarily for treatment rather than education.

**Question:** Why is there a difference on the payment of transportation to school for children in a private residential facility program than there is for other residents of the school district?
**Answer:** There is no difference. The guidance states that the primary purpose for the student coming to the facility is the determinant of whether the transportation is a treatment cost or an education cost.

## Capital Projects

**Question:** Our district is doing some remodeling in our middle school to make a locked time out room to accommodate four students that have this specifically written into their IEPs. This will entail jack hammering out doorways and purchasing a special door and removal of windows.....the estimated cost is about $10,000. How should this be coded to include it as a General Fund special education expenditure as the special education director has said it has been approved by the IEP team?
**Answer:** This is not a cost that can be paid from General Fund or from special education funding. Construction, repairing, or remodeling of facilities is not allowed with General Fund money. Simply placing a cost in the IEP does not make it a General Fund cost or even a cost that can be covered with special education funding. IEPs cannot override law. Placing such a cost in the approved IEP does obligate the district to provide the item—but the cost must come from the appropriate source as allowed by Iowa Code. The cost would be from PPEL, a bond issue, or from the Secure an Advanced Vision for Education (SAVE) fund.

## Supplies

**Question:** As a service provider, can we bill all of our classroom supply costs, such as books and periodicals to the district as a special education cost?
**Answer:** Books, periodicals, and textbooks that become the property of the school district (sold to the district) could be billed if included in the contract. In the written contract, the district would decide if it wants to purchase these items through a purchased service provider or whether it wants to purchase these items with similar items that the district purchases from its normal suppliers. Books, periodicals, and textbooks that were modified pursuant to an individual student's IEP would be a special education cost. Those which do not require modification (perhaps a textbook normally used at a lower grade level) would be a general education cost.

**Question:** As a service provider, can we bill all of our professional supply costs to the district as a special education cost?
**Answer:** Simply because the teacher receiving the supplies is a special education teacher does not mean the supplies are a special education cost. If the supplies are "special" or are exclusively used by and applicable to teachers of students with IEPs, then they would be special education costs. If they are generic in that any teacher could use and benefit from such supplies, they are general education. Again, providing supplies needs to be agreed to by the district in the written contract as the district may prefer to purchase its own classroom and teacher supplies bulk through its normal suppliers.

**Question:** As a service provider, we provide a technology component to our service. We require this technology be used for each student, and it is designed specifically for individualized special education instruction in support of the IEPs. Can we bill all of our technology costs to the district as a special education cost?
**Answer:** The fact that "all students" have this required in each of their IEPs makes the cost suspect as a special education cost. That is because each IEP is to be based on an individual student's actual needs. If all students have the same item in their IEP, that doesn't sound individualized, even if the software is used by the teacher in an individualized way. If not actually based on an individual need specific to a student, then it is a general education cost. If the software is tracking such things as attendance or similar items that are a district responsibility to track on all students, that portion of the cost would be general education even if another portion was allowable as a special education cost.

## Billing and Payment Cycle

**Question:** If a district doesn't pay the private facility for the billings until the funds from those billings are received from the resident districts and costs must be actual costs and cannot be a per pupil or per-diem amount, how would a private agency receive payment in a timely manner?
**Answer:** Ask the district of location what its billing schedule is; this is not determined at the state level. The statutory minimum for local districts to bill, per Iowa Code, is twice per year. The facility may need to work with the district of location to see if the district would establish a more frequent billing cycle. However, no district may pay for services prior to those services being rendered or pay for supplies prior to those supplies being received.

**Question:** What specific payroll records will be needed for the private treatment center to provide to the school districts?
**Answer:** The private facility must provide sufficient records for the district and its auditor to determine that the costs are just claims against the school corporation and unallowed costs have not been included. Ask the district of location what it will need.

**Question:** If facilities cannot bill prior to services being rendered, it would create significant cash flow difficulties for providers. What Iowa Code reference directed this language in the guidance?
**Answer:** Iowa Constitution, Iowa Code section 279.29, and numerous other law and rules.

**Question:** As a private service provider, do we show profit as a separate item on the invoice?
**Answer:** The guidance may have given the impression that profit is shown separately, but really it is a built in percentage mark up on each invoiced item. The teacher salary and allowable benefits on the invoice would already include the profit; the profit is just a part of the cost that the district is paying, whether from special education funding or general education funding. Same with supplies and other items billed according to the contract. Profit should not be a method to hide unallowed costs within an allowed cost item, but rather should be an integrated rate increase for each allowable item on the invoice. Of course, the private service would use that profit to operate its business which would include any unallowed costs it may have that could not be billed.

## Program Delivery

**Question:** Under the guidance, if a private facility sent students residing in the facility to the public school district for classes, it also would be required to send residential staff to monitor the student's behavior in the public school setting and that staffing cost would come from the fees paid by the placement agency. The public school district also has students who come from a family foster care setting. Will those foster parents be required to attend school with their wards as well?
**Answer:** Sending facility staff along with students educated in the public school buildings only is required in those situations where the facility was required to provide that treatment for that student, but during the school day the facility required the students to be educated off site—the private facility cannot transfer to the public school district any responsibility for which the facility has a contract to provide through its care plan. In this case, the facility would still be required to provide those contracted services wherever the students are educated. For families with foster care children, the parents are not licensed or under contract with the placing agency to provide treatment.

**Question:** If a public school student is physically attacking a residential student during the school day, how does the residential staff intervene? Who at that point is responsible for the safety and well-being of the residential child?
**Answer:** Review the contract between the private facility and the placement agency and the contract between the private facility and the school district. These issues should be worked out within those documents. If not, discuss with the district of location how each will provide any required services or interventions prior to those interventions being needed.

**Question:** Has consideration be given to the potential re-traumatization of the residential students who are subjected to going to a public school with a private facility staff member all day?
**Answer:** A district would not assign students into the public school buildings away from the treatment center if those students required treatment during the daytime unless the facility required the district to provide education off-site. The actual situation we have encountered that would cause this to occur is where a facility that is required to provide treatment during the daytime, intentionally makes space unavailable in order to force the AEA/district to move the children to another site in an attempt to transfer the contractual responsibilities of the facility onto the AEA/district, or to force the AEA/district to pay rent. The guidance states if such a situation should occur, the facility shall not abdicate its contractual obligations.

**Question:** Who is responsible for worker compensation injuries, and what entity bears responsibility during the school day?
**Answer:** The facility and district of location should each consult with its insurance agent on coverage. Normally, employees are covered under their employer's insurance contract.

**Question:** Where is it stated that non-state facilities cannot offer an instructional program in Iowa?
**Answer:** Iowa law requires that the instruction of students at the facilities shall be provided by the public school district. All education is public in those situations (both state and non-state). Non-state facilities are not public schools or public school districts. Nothing in law authorizes or licenses non-state facilities to operate as if they were accredited public schools. Authorization would be required in Iowa to provide public education in Iowa.

**Question:** If the above is the case, then why did the Department of Human Services allow this practice at our private facility for 25 years and in other facilities for longer?
**Answer:** DHS did not authorize any private facility to provide public education and did not contract with any private facility to do so. DHS does not make educational decisions; those decisions are made by the Department of Education and local school districts. The Department of Education has not authorized nor contracted with the facility at any time to provide education. It is, by law, the responsibility of the district, and the Department of Education assumes that districts follow the law unless proven otherwise by their auditor or other notifications. All districts with facilities have been notified periodically, over at least the past 30 years, about their responsibilities for the educational programs at private facilities.

**Question:** The guidance states in the section on "Responsibility for Instruction" that facilities/institutions, even though subject to the compulsory attendance law, have no choice in how the educational program is provided. Then why does Model 2 allow the agency to hire the teachers?
**Answer:** In Model 2, it is not a choice of the facility, it is a choice of the school district. In Model 2, the instructional program remains entirely the public school district's instructional program. It is provided by properly licensed individuals who are obtained through a contract with the facility rather than employed directly by the district.

**Question:** Does the private residential facility have the option to not provide the program on its campus? If not on its campus, then are all non-permissive special education and regular education costs going to be allowed costs in residential rates?
**Answer:** The school district of location makes the determination of location. If the facility has a contract to provide treatment for its clients and is trying to transfer contractual obligations by making suitable space unavailable, the facility would still be responsible to provide that treatment throughout the school day as necessary. The facility would still incur costs to send its personnel to the off-site location of the school program but could not bill those costs to any school district.

If the facility does not have a contract for treatment of students (for example, all students are custodial care/foster care only), then the facility has no instructional costs that it could bill to any school district, and it would cover all costs from its own resources, such as residential rates, fundraising, or other enterprise operations.

**Question:** Why do the three delivery models speak only to the teachers and not to those other staff that are required by the student's IEP?
**Answer:** The guidance was written for school districts and AEAs. Various Iowa Code sections and account coding have a broader definition of "teacher" than would be obvious to those outside education. For this purpose, "teacher" would include such staff as counselors, social workers, and sometimes registered nurses or similar non-administrative individuals working directly with students (individuals under a continuing contract pursuant to Iowa Code section 279.13).

**Question:** Why is the AEA model of providing educational programs, like the one that exists between AEA 267 and Bremwood in Waverly, not included in the delivery models?
**Answer**: It is included as a delivery model. Bremwood is a licensed facility where the educational program is required to be provided by the public school district of location. The arrangement is Delivery Model 2, where the AEA is a vendor/contracted service to the school district of location. Of course, the AEA is also a public agency rather than a private entity.

## Consortia

**Question:** To clarify, if a district is part of the consortium, and does not have any students served by the consortium, that district would pay nothing for that year?
**Answer:** The only entities that can form and participate in a consortium are the school districts that are required to meet instructional programming needs of resident students and the district in which the consortium is located. It is correct that if a school district is not sending a student into a consortium program, it would pay nothing. Area education agencies (AEAs) and private facilities are contracted service providers in these situations, so they would not be members of the consortium.

**Question:** In Model 3, where multiple school districts are establishing a jointly administered program (consortium) for non-adjudicated students, all teachers and staff are employees of one district. Students will participate in graduation and testing requirements of their sending/resident district. How would this be achieved?
**Answer:** In a consortium, all of the teachers and staff are employees of one of the districts within the consortium—but they may not necessarily all be employees of the same district. Consortia exist throughout the state. If the district of location needs help in setting up its consortium, it has resources available. The private facility or AEA would not be a party to the consortium. Either could be a contracted service as determined by the member districts of any consortium.

**Question:** In a consortium, the member districts share the actual costs of providing the jointly administered program (not limited to maximum tuition rate). What is included in "jointly administered" program costs?
**Answer:** "Jointly administered" is a description of a program model—it does not have specific costs. In a jointly administered program, all the districts are offering the program at a single location. It is no different than each district offering the program within its own district boundaries, except that a consortium allows them to work together to save costs and improve programs. In a consortium, every party must have the same legal authority to offer the instructional program to public students by itself. Private facilities and AEAs do not have that authority and would not be parties to a consortium.

It should be noted, that in the case of a district of location (one that has a private facility within its boundaries), if it decided to establish a consortium for the students that are not placed at the private facility, the district would still be required to have another program under Delivery Model 1 or Delivery Model 2 for all the students that are placed at a private facility.

**Question:** In a consortium, member districts can do cost sharing on non-IEP costs, so the written agreement could include time records to allocate administrative and overhead costs. What costs does this include?
**Answer:** In a consortium, all the districts are offering the program at a single location. Their costs are the same as they would have had if the program was offered at different locations (within their own districts). If they want to buy services from each other, they must determine a method to do so that will result in actual costs of providing the service. A private facility or an AEA is not a party to any district consortium.

**Question:** The guidance lists activities in which consortium member districts, as a group, must be actively involved. Our private facility serves students from 38 districts, including the court placed. How would this be achieved?
**Answer:** Any students that are placed at a private facility would not be a part of any consortium. The private facility will not be a party to a district consortium. All students within a district consortium would be in that program as a district building assignment and not as a placement by any entity. The districts which choose to offer their program jointly would meet to discuss what program they will offer and how they will determine whose costs are whose. They would then put those decisions into writing and the school boards would sign the agreement. The consortium will work with an attorney on the agreement to ensure all key issues that could arise have been discussed and agreed upon.

**Question:** In a consortium, the host district prepares accounting records showing the proportionate share of the costs that was agreed to by the consortium members in their written agreement. Our private facility serves multiple districts. Would the district of location need to facilitate agreements with each district prior to students placed by an agency at a private facility? What if there is no agreement? Who pays the costs in that situation?
**Answer:** Students placed at a private facility are not involved in any consortium. The private facility does not serve multiple districts—if the private facility is providing instruction, it has a contract with and serves only one district—the district of location. It is the district of location that serves students from multiple districts and contracts with the facility (if the district chooses) for instruction. The district of location already contracts with each district that has students placed at the private facility that have IEPs or are served in a PMIC unit. That will not change because all students placed at the private facility would have instruction provided under Delivery Model 1 or Delivery Model 2.

**Question:** A consortium agreement could include the sharing of custodial or other operations and maintenance costs of the district's facility that are direct, measurable costs. How is this different from our current method of billing all our private facility's operational costs to school districts?
**Answer:** A consortium is each district offering its own program at a single location. That is not the case for students placed at a private facility. The private facility is its own legally separate, private entity that has become licensed to offer non-instructional services to school-age children within the state of Iowa. Public school districts have no part or responsibility related to any of that. The only way public school districts become involved with private agencies is if there are children placed at that private entity who are school-age and have not completed their education or its equivalent. By law, when children are placed in any licensed facility in Iowa, their education must be public education and must be provided by the public school district of location. The district provides only that one service (instruction) on top of whatever the facility is doing privately under its license and contracts. None of what the facility does under contracts with its placement agencies, or the facilities operations, or any other enterprise activity is a public education responsibility, and districts shall not use public funds for private purposes.

**Question:** If a group of districts form a consortium for the purpose of educating students with IEPs, can students without an IEP placed by the court, DHS, or other placing agency be educated in that same program? If so what would be the ramifications of such a situation?
**Answer:** No. Students placed in a private facility will never be part of a consortium program, whether or not they have IEPs. Within a consortium, the districts must ensure FAPE and LRE exactly the same as they must do when offering the same program separately at a location within their own district boundaries.

## Private Service Providers/Contracted Services

**Question:** How can a private facility not provide its own educational programs, but it can provide teachers and instruction under the Delivery Models on the site of the private facility?
**Answer:** In no situation should the private facility be offering an educational program. Private facilities are not licensed nor accredited to provide public education in Iowa. The private facility could be a vendor of the school district, providing properly licensed staff to offer the district's instructional program.

**Question:** We provide our services to districts at the district's location in a classroom provided for our program. All the students in our classroom have IEPs for behavior. Wouldn't that mean that all of our costs are special education costs?
**Answer:** No. Similar to facilities, private service providers have costs related to being a business enterprise. Those cost are not appropriate to bill to districts. Also, all students are general education students first and are entitled to FAPE and LRE. Students with behavior problems should also be provided general education instruction. Not all instruction will require modification for all students. That portion of the program would be general education rather than special education.

**Question:** We provide the same services to all students, so may we simply divide all costs across all students?
**Answer:** No. Special education must be individualized. If the same services are provided to every student, then there is not an individualized education program (IEP) being provided. It would be expected that costs would vary by student according to each student's needs, as delineated on the student's IEP.

**Question:** Are we permitted to charge a set amount for a classroom without regard to how many students are in the class? Such as a set fee for one classroom, based on capacity, for one school year?
**Answer:** Districts cannot pay for seats or for "phantom students." The billing to the districts must identify the students actually served and associated with the costs.

**Question:** Can we estimate annual costs and bill the district in advance to provide our service with cash flow?
**Answer:** No. Costs for students with IEPs must be actual costs. School districts and AEAs cannot pay for any service prior to the service being rendered or pay for any supplies prior to the supplies being received.

**Question:** Some of our staff are working toward required endorsements to work with these students. May we bill the district for these tuition reimbursement costs?
**Answer:** No. The staff used in school district programs, even if provided privately by a service, must be appropriately licensed. Those costs would either be the costs of the employee or of the service provider, but not billed to districts.

**Question:** Our service requires staff to have physicals. Can we bill the district for the cost of physicals?
**Answer:** Not unless the school district is requiring the physical and requires a physical from all of its similarly licensed and employed staff.

**Question:** Our service provides professional development (PD) for our staff. Can we bill the district for the cost of our PD?
**Answer:** The district cannot use its PD funding for non-employees. Whether the district wants to pay a service provider for PD it provides to its own employees, rather than have the service provider's employees participate in the PD that is being offered by the district for its similar employees, should be addressed in the written contract.

**Question:** Our service pays its staff transportation costs to get to the district's building, to go between buildings in the district, and to get between school districts. Can this be billed to school districts?
**Answer:** Ordinary transportation to a work site would not appropriate to be billed to any district. Travel between buildings within a district, if necessary under the contract with the district, would be billable. However, travel between districts would not.

**Question:** Can we bill districts for our operating expenses, worker compensation, unemployment, etc?
**Answer:** No. These are costs of doing business, not classroom costs applicable to specific students and their IEPs.

**Question:** Our service prefers to provide all the special education instruction and related support services. Can we bill the district for these support services as well as the instruction?
**Answer:** The AEA is responsible for providing special education support services from its controlled funding stream. It would not be appropriate for a service provider to provide these services in lieu of the AEA and charging the district.

## AEA as the Service Providers/Contracted Services

**Question:** Does the permissive and non-permissive uses of special education funding apply to AEAs as well as districts?
**Answer:** Generally, yes. However, (1) the AEAs have larger amounts of federal IDEA funding than districts, and that funding must be expended pursuant to the IDEA regulations, (2) the AEAs are state funded to provide special education support services where school districts are state funded to provide special education instruction, and (3) Iowa Code requires the costs for general administration of the AEA be paid proportionately from each of its three controlled funding streams, which would include the special education support services funding. This is required because the AEAs have no general purpose funding as districts do. This means AEAs and districts will have different functions in their accounting records to reflect their different roles in special education.

**Question:** Does the guidance provided for private service providers/contracted services apply to AEAs?
**Answer:** Yes, recognizing that the AEA is a public agency and is not a private enterprise operation. Therefore, the AEA cannot build in a profit margin—AEAs must sell their services at cost.

**Question:** Iowa Code permits AEAs to provide services to districts on request. Does that mean the AEA can use its own funding streams to supplement or supplant instructional, equipment, facility, or similar costs of the school districts?
**Answer:** No. The AEA is a separate legal entity from any school district, and cannot gives its funds or other assets to another entity, or pay the legal obligations of another entity. The AEA can lease or sell at cost to school districts within the limits of Iowa Code. The AEA, just like the school districts, must audit and allow each expenditure of funds to determine that it is a just obligation of the AEA corporation.

**Question:** Can an AEA be a partner or member of a school district consortium?
**Answer:** No. The AEA would not be a partner or a member of the consortium. However, the AEA could provide services to the consortium as a contracted service, as long as those services were not required of the AEA to provide from its own funding streams (i.e., special education support services).

## Questions on Guidance Documents

**Question:** Is this guidance still under discussion?
**Answer:** The guidance is final; it is not a discussion. Implementation is not optional. There is a short grace period for districts to get their finances and programs in order, but those adjustments must be finalized and ready to implement as of July 1, 2015.

## Grace Period

**Question:** These costs the guidance identifies as inappropriate, such as the Administrative Costs/utilities/legal fees that are not approved by the School Budget Review Committee (SBRC), when will that be applied? I am speaking in reference to the private facilities that are housed within a district, whose estimated billing has already been released and several of the expenditures are non-permissible. Will the resident district have to pay them this year?
**Answer:** If districts were already paying these inappropriate expenditures, they are permitted to continue to do so for FY15 only. If districts were not already paying these inappropriate expenditures, they are not to begin doing so. Beginning July 1, 2015, no such expenditures shall be billed or paid.

**Question:** What is the purpose of the Grace Period?
**Answer:** The Grace Period is intended to give districts time to adjust their accounting and billing procedures and program design so they are completely operating within law beginning July 1, 2015. It is not intended to delay the process of getting the district accounting and programs in order until after that date. All the planning and adjustment must be done prior to July 1, 2015, so that all law is implemented as of that date.

## Compliance with Law

**Question:** Is this "guidance" based upon current state law?
**Answer:** Yes.

**Question:** Is Federal Law in conflict with State Law related to financing of special education?
**Answer:** There is no conflict with federal law in this guidance or in Iowa law on instruction or special education. Iowa ensures that its state law is consistent as related to funding. Any change in federal law, regulations, guidance, and court cases are reviewed as they are released and compared to state law, rules, and policies.

**Question:** How would a district or private facility have known the information in Iowa Code prior to this guidance being released?
**Answer:** The guidance is written for school districts and AEAs, not facilities. It is the responsibility of the district of location to provide the special education instructional program, and that district has a choice in how it does so, as long as that is within what is allowed by Iowa Code. A district is expected to know what is covered in Iowa Code and Iowa Administrative Code related to education and be able to apply that law without violating other sections of law. It is within the standards of their administrative licensure/authorization to know the law that applies to school districts and AEAs. To help districts meet this responsibility, the Department considered all pertinent Code and rules to ensure that no guidance conflicted with any other law that applied to school districts and AEAs.

**Question:** May a district appeal the guidance under Iowa Code section 282.32 so that they can generate more funding for placed students?
**Answer:** That Iowa Code section is related to appeal of state claims that districts or AEAs file under section 282.31. Appeal is possible for any claim that is reduced. For AEAs, that would be Juvenile Home claims. For districts, that would be residential care where the parental rights are severed on students with IEPs, but does not include PMIC placements. For districts, Iowa Code limits potential payment on students without IEPs to the DCPP, and they receive that automatically through electronic filing. Since they are already at the maximum possible, an appeal would be of no value.

**Question:** Will enforcement of the guidance affect every residential provider in the State of Iowa?
**Answer:** The document reflects current statutory law. Some residential providers will be impacted while others will have little impact. It all depends on what they were doing before clear guidance was released of what law allows and requires. This guidance applies to all school districts and AEAs and the programs they provide, including those provided through contracts with vendors/private providers.

**Question:** Iowa Code section 17A.34 specifically prohibits the state from competing with private enterprise and requires the administrative rules coordinator to make an initial determination of whether the rule may cause a service or product to be offered for sale to the public by a state agency that competes with private enterprise. Therefore, the private facility requests that the Department take fair market competition into consideration in its guidance as well as appropriate or cost-effective education. These same clients/students can be treated under different standards, which are not allowed by Iowa law, if sent out of the State of Iowa.
**Answer:** No governmental agency is competing with private facilities in the guidance. Private facilities are not licensed, accredited, or otherwise authorized to provide any public instructional program in this state. The law specifically requires the public school district of location to ensure that public education is provided to all students. This Code section does not apply to the situation.

**Question:** Our private facility requests representation on the nonpublic school advisory committee as established in Iowa Code 256.15.
**Answer:** It would not be appropriate for a private facility to advise on nonpublic school matters. A private facility is not a school by definition, and it provides no instructional program at all because it is not licensed nor accredited in Iowa to do so. The instructional program shall be provided by the public school district of location by law, even if the district contracts for staff that are employees of a private facility.

**Question:** 281 Iowa Administrative Code—41.907(2) states an AEA or LEA may make provisions for resident eligible individuals through contracts with public or private agencies that provide appropriate and approved special education. The program costs charged by or paid to a public or private agency for special education instructional programs shall be the actual costs incurred in providing that program. So, why can't our facility bill the district for all of our costs?
**Answer:** All pertinent rules were reviewed including 281 IAC—41. Contracted special education is Delivery Model 2. Nothing in that rule allows non-instructional costs to be included in actual costs of special education instruction or to allow costs of students that have no IEPs or where the services are not on the IEPs. Additionally, 281 IAC 41.1 is the general purpose statement of the special education rules; later in the special education rules, there are specific restrictions on the use of funds. Specific requirements always take precedence over general purpose statements under construction of law principles. "Actual costs" refers to the cost of the instruction in special education above the cost of instruction in the general curriculum. It does not mean all the costs that a district, or a provider, or a facility incurs to operate.

**Question:** Where is the legal source for the school district being the funding stream of last resort?
**Answer:** That statement in the guidance references the Individuals with Disabilities Education Act (IDEA), which provides that special education funds are the funds of last resort. For districts to pay costs that were the responsibility of the private facility under contract with another entity would violate Iowa Code section 279.29, which states that districts shall audit and allow all just claims against the school corporation. It would also violate general accepted accounting principles, uniform financial accounting principles, and stewardship of public funding—all requirements of the school district, as well as the Iowa Constitution regarding public funds for private purpose.

**Question:** Could the principle of local control and the principle throughout the chart of allowable costs, "as contracted and authorized by the school board" justify the current practice as long as there is an end of the year adjustment between final costs and payments?
**Answer**: No. Local control is a principle of levying and program; not finance, accounting, or requirements of law.

### Clarification on Districts' Chart of Accounts

**Questions:** How would private facilities follow the chart of accounts?
**Answer:** All of the information in the Chart of Allowable Costs document is strictly applicable to a district/AEA. It does not apply to any private facility. This chart follows the accounting structure of a school district or AEA at the individual object level and covers all special education costs, not just cost related to students placed in private facilities. No such document had been provided previously to

districts, or to their auditors who are required to review accounting records for improper expenditures from categorical funds. In a review of records at the chart of account level, many such miscoding/mistakes/misuse were identified. This document is to help districts and AEAs code expenditures properly and for their auditors to have a reference for the annual audit.

**Question:** Is our private facility required to follow the chart of accounts provided in the guidance? What does it mean "as determined by the board"?
**Answer:** No. The chart of accounts provided in the guidance is based on the accounting structure that districts are required to follow at the object-detail level. This information is relevant to the district of location and is what it should already be doing. This has little relevance to a private for-profit or not-for-profit facility, because the facility would follow different GAAP accounting guidance. Districts use modified accrual, have expenditures rather than expenses, etc. All references to "as determined by the board" refer to their written agreement with other districts within a consortium and do not apply to a private facility in any way.

**Question:** Would teachers do time studies for allocation of special education and general education costs? Would districts set up two separate cost centers?
**Answer:** Districts do not need separate cost centers for this because they have project coding within their chart of accounts that identifies special education costs by level. The district must have a method to separate costs to the appropriate funding stream that results in auditable documentation. Districts and AEAs already have that responsibility regarding categorical funding streams.

**Question:** Would maintenance staff or kitchen staff providing meals on-site be paid by general education funding of the district?
**Answer:** Maintenance staff employees of the school district would be a General Fund expenditure, but maintenance staff of the facility would not be a public expenditure from any school district fund. Nutrition staff employees of a school district would be paid from the Nutrition Fund and not the General Fund. However, the facility generally will have a contract with the placement agency for custodial (room and board), so meals for those placed students is the responsibility of the facility per its contract.

**Question:** Would staff billed to the district also have their benefits paid by the district?
**Answer:** It depends on what the benefits are. If they are basic group benefits, such as health insurance, plus the employer's share of FICA and the IPERS equivalent, then benefits would be included in the total cost of services sold to the district in the same proportion as the salary is an allowable cost (same percentage basis as the teacher works directly and exclusively on instruction with students). Items like housing or moving allowances, or similar individualized benefits would not. Any percentage of costs/rates that do not represent time actually devoted exclusively to instruction (such as administrative duties or work related to the facility or its contract/plan with the placing agency) would be excluded. Sometimes when people mention benefits they mean early retirement incentives, unemployment, and worker compensation insurance. Those are not General Fund expenditures and can never be a cost from special education funding. Districts are not allowed to separate costs by fund in order to get some of those covered as special education costs; this would be prohibited supplanting by the district.

It should be noted that "teaching" is a service purchased by the school district from the private agency in this example. The district has the responsibility to determine if purchasing the services of teaching staff is cost-effective. The facility may need to carefully consider its staffing levels, and the level of salary and benefits it provides to its employees within its business model so that it does not price itself out of the market. The district is not obligated to use staff that are employees of the private facility—the district has a choice.

**Question:** Social workers are an allowable special education expenditure to the extent written into the IEP. But social workers would be an unallowed cost because their services are part of our private facility's contract with a placement agency. Do staff employed by the private facility have to track this time to bill the district since it is also on the IEP?
**Answer:** School districts are the payers of last resort. First, the private facility would review its licensure, contract/agreement, and care plan to see if those services were included. If so, those costs would not be

billed to any school district. If none of those services are a part of its licensure, contract/agreement, or care plan with the placing agency, then it would bill the portion of time that was exclusively for providing the services listed in the IEP for students with those services in their IEPs. Additionally, social workers are sometimes AEA employees; in those situations, there would be no billing for social worker time to school districts.

**Question:** Cleaning service, snow removal, lawn care, and pest control are General Fund costs of a school district. Does the private facility bill those expenditures to the school district if there is no rent agreement?
**Answer:** No. These are costs of the private facility's operation, and the district has no part in the operations of a private facility. The guidance document sent to school districts and AEAs is not limited to situations involving facilities. The guidance covers all objects a district or AEA could have for any purpose and defines where those costs would come from. The guidance is not intended to be used by or for any private facility in determining what additional items it might bill.

**Question:** The chart of accounts show that repair and maintenance for assistive technology and other special education equipment is allowable. Does our facility bill our costs for repairing our equipment to the school district if we don't have a rent agreement?
**Answer:** Assistive technology is not a building-related expenditure, so would not be part of any rental agreement. The facility's building-related or operations-related repair costs would not be billed to any school district. The assistive technology and other special education equipment referenced in the chart of accounts would be on the IEP of students who require that specific type of equipment. The chart of accounts is written from a district perspective, not a private facility, so the assumption is that the district owns its assistive technology and is repairing its own equipment.

**Question:** The costs for remodeling, custodial, and utilities would be included in an approved rental agreement, and are classified as costs of "capital projects" funds, not General Fund. Are these costs at our facility a capital project cost of the school district?
**Answer:** No. Districts cannot make improvements on property they do not own. The owner would make all improvements, and it is assumed the fair rental value would be higher if the facility were improved than the fair rental value would have been before any improvements. Facility rent is a capital project cost in a school district, and not a General Fund cost. It also is not a special education cost.

**Question:** Insurance (property, building, and general liability) and Errors and Omissions (E & O) are management fund expenditures. Would our facility bill the district for our insurance costs if we don't have a rent agreement?
**Answer:** A private facility would not bill for such items to any school district. These are costs of the facility itself, and the school district would have no part in the facility's operational costs or potential errors and omissions committed by facility staff or directors.

**Question:** Communications, postage, advertising, and printing are listed as allowable if authorized by the school board. Does our facility bill the school district for our costs for telephones, Internet access, postage, printing and advertising?
**Answer:** No. These costs within a school district are administrative costs and would not be billed by a private facility to any school district. The costs of the facility to operate are not education costs and are not the responsibility of school districts. School districts cannot use their public funds for private purposes. "Authorized by the board" could occur in a consortium (even though not a special education cost) but would not involve any private facility.

**Question:** Food service management is an allowable cost in the district's School Nutrition Fund. Does our facility bill the school district for this cost?
**Answer:** No. The private facility is responsible for any room or board costs (including meals) for its clients. If the districts formed a consortium to provide their own program, for children that are not placed, the food program would be the districts' food program.

**Question:** General office supplies, instructional supplies, books, and reference materials are allowable costs within a school district as authorized by its school board. How would our private facility bill these costs to the district?
**Answer:** Instructional costs, if the district has contracted with the private facility to provide instruction, would be itemized in the billing. However, these costs would already be included in DCPP or GPP, if that is part of the contract, so would not be billed again separately. General office supplies would be the responsibility of the facility and would not be billed to any school district.

**Question:** Depreciation and amortization are listed as a proprietary fund expense. Would our facility bill the school district for these?
**Answer:** No. Depreciation and amortization would never be billed to any school district. Proprietary funds are exclusively district operations and would not have any connection to a private facility.

**Question:** The chart of account lists various expenditures/expenses as applicable to the Capital Projects Fund, School Nutrition Fund, Management Fund, Proprietary Funds, and Special Education funding. Would the district of location need to have an itemized bill of all our costs to facilitate the billing to the school districts to include the breakdown for each fund?
**Answer:** The district of location would need an itemized breakdown of every billing it receives for payment, whether or not it bills the costs on to other districts. The district is expected to know by the nature of the expenditure, from what fund it must be expended. None of the fund references applies to a private facility. Generally, no costs that a district would account for in those funds would be any items billed by a private facility. Refer to the guidance documents and talk with the district of location to be sure the costs are billable and appropriate, and exclusively related to classroom instruction and/or IEP services.

### Other State Agencies

**Question:** Where are the Juvenile Courts in this guidance?
**Answer:** The Juvenile Courts are a placement entity, just like the Department of Human Services (DHS). Allowable and unallowed costs for education are the same regardless of the placement entity.

**Question:** Is the Department of Human Services planning on adjusting the residential maintenance and service rate to cover these new costs associated with the supervision of students during the school day?
**Answer:** This is an issue to discuss with the placing agency. That is the agency that has contracted with the facility to provide those services, and the Department of Education is not involved in costs of those services or the rate payments. The Department of Education is only involved with the instructional program, which is the responsibility of the school district of location, and therefore, not a program of the private agency. Even if the district of location contracts with the private facility for properly licensed staff and instruction, that never makes the instructional program the private facility's program—it remains the district's program.

**Question:** Has the Department of Human Services or the Department of Education consulted with Juvenile Court Services, local law enforcement agencies, and/or county attorney's offices on the potential new influx of legal charges etc. associated with these model changes?
**Answer:** Iowa law has not changed, and the guidance is taken from existing law and rules. There is no evidence that other state agencies do not already know this information from Iowa Code.

**Question:** Has the Department of Education or Department of Human Services looked into the potential continuum of care concerns with the public schools and private facilities? For example, if the district of location uses CPI and the private facility uses the Mandt system, Collaborative Problem Solving, and a Trauma Informed Care Approach? If a teacher, who is not informed on these approaches, sets a child down a destructive path during the instructional time period, and the private facility staff gets hurts as a result, who is responsible for this lack of continuity between providers?
**Answer:** The instructional program is the program of the public school district, and is never the instructional program of the private facility. The facility does not choose the instructional program. It would be the decision of the district of location if the district approves, within its instructional program,

more than one approach to the instruction/curriculum. The district would also be responsible for conveying its instructional requirements to the teachers or to their employing entity if they are not employees of the school district. The facility should discuss its instructional concerns with the district of location. For those students with IEPs, the IEP team determines the services most appropriate for the individual to receive a free appropriate public education (FAPE) in the environment least restrictive (LRE) for the individual to make educational progress.

**Question:** Has the Department of Human Services thought of the fact that providers could look at changing the profiles of who they take into their residential programs to control costs and liabilities created if this legal guidance is enforced?
**Answer:** There has been no change in legal responsibilities. The guidance serves as notification of what the law says and that the law will be enforced and that information has been provided to auditors to assist in that enforcement.

Private facilities, of course, need to make decisions regarding their services and operations based on sound business principles like any other business enterprise or contracted service provider. Each facet of the private facility's operation is independent of the other facets (i.e., custodial, treatment, and rehabilitation versus any services sold to districts such as instructional programs). The facility would need to consider if it needed to generate more legal revenues to cover operations or reduce costs to fit within its legal revenues.

**Question:** Are the Department of Education and the Department of Human Services prepared for the potential impact the delivery models might have on the State Bullying and Harassment policies for the residential students?
**Answer:** Concerns in this area need to be addressed with the district of location to ensure its policies are implemented.

**Question:** Has the Department of Education and Department of Human Services looked into the idea of a foster care youth educational outcomes study?
**Answer:** Discuss the concerns with the district of location. The educational outcomes for students in the facility would not decline simply by the district ensuring its instructional program is implemented and law is adhered to. The Department of Education has studied, and will continue to study, the educational outcomes of students in care; however, the law provides real and reasonable constraints on uses of funds, which must be honored.

**Question:** Has the Department of Education consulted with the private facilities to see if they garner or gain any insight on how to improve educational outcomes for these disadvantaged youth?
**Answer:** Discuss insights with the district of location to maximize outcomes within the district's instructional program.

**Question:** Has the Department of Education looked into what is best practice on a national level for students like this?
**Answer:** Yes; the Department reviewed studies, audits, and other documents available from other states on the finance issues. On program issues, the Department has consultants that continuously review best practices on a national level for at-risk students.

**Question:** Has the Department of Education asked for assistance from a national support group such as the Coalition for Residential Education?
**Answer:** That assistance would apply to program issues with at-risk students. This guidance does not address any program issues; those are issues to discuss with the district of location. On the accounting side (chart of accounts), that is a national standard, and GAAP is a national and international standard.

**Question:** In the guidance it states, "This guidance does not look at whether the costs are necessary for the private facilities to operate …" Did the Department look at whether the costs are necessary to provide the compulsory education?
**Answer:** Yes.

**Question:** In the Guidance for School Districts on Permissive and Non-permissive Special Education costs it states that the Department of Education is willing to participate in the discussion of how those additional non-educational costs could be covered. If facility operational costs are not paid by education funds, what funding source does the Department foresee will cover these essential costs?
**Answer:** This is a question for the private facility to address to its placement agencies. Facilities are under the jurisdiction of the Department of Human Services (DHS). The Department of Education is willing to assist DHS if it requests us to do so.

**Question:** More students with mental health issues are enrolled in school but have no IEPs. As important as it is to separate costs, facilities oversee the child's welfare as a whole. How do facilities best serve the child's total needs as a priority without just focusing on who is paying for what?
**Answer:** If the facility has a contract with a placement agency for treatment services, treatment costs are paid from the rate under that contract or sources the facility has available other than school districts. Questions related to treatment services should be addressed to the placement agency. If the facility has been contracted by the district of location to provide an instructional program, permissive instructional costs would be covered pursuant to that contract. Questions related to serving the children's instructional needs should be addressed to the district of location.

**Question:** Are the Department of Education and the Department of Human Services willing to advocate for a change in state law so that private facilities can bill school districts for administrative and occupancy costs of private providers? We believe Federal law allows administrative and occupancy costs to be paid from IDEA funds to private providers.
**Answer:** Iowa law is already consistent with federal law. Federal law does not allow non-education costs (private administrative and occupancy costs) from education funding. Federal funds expressly prohibit supplanting and double dipping. The costs discussed are items included in the contracts with the placement agencies. Federal law does allow administrative and fixed costs through the indirect cost recovery rate because the federal government has not paid any other funding to school districts to cover these administrative costs. Iowa, however, has already provided each district with general purpose funds within the funding formula to cover its own administrative costs. For a school district to use its public funds to pay non-education costs of a private facility violates the Iowa constitution.

Placements that are primarily for education and not for treatment/rehabilitation/care have been addressed in the guidance.

The Department is discussing how to assist school districts with the cost in excess of the DCPP for providing instruction to non-adjudicated students without IEPs who have behavioral issues that require an alternative setting within the district.

**Question:** Does the Department of Education or Department of Human Services have evidence that any private facility or other providers provided required treatment within the school program that was required per the residential treatment plan and that was also charged to the school district?
**Answer:** The guidance document states there is a risk of the same contractual obligation being in the care plan and in the IEP. Therefore, it is the responsibility of a district to ensure it does not pay anything that is not an audited and allowed just claim against the school corporation, without regard to whether or not the Department or state auditors found evidence.

**Questions:** Does the Department of Human Services or the Department of Education have information that any private facility has made a profit on instructional programs or that costs for residential treatment and for the educational program are not "completely separate"?
**Answer:** This issue is not relevant to the guidance to school districts. However, the billings for education that were provided to the Department for review included non-education costs which should not have been billed to any school district.

**Question:** Has the Department of Human Services and the Department of Education projected statewide the amount of "Unallowed Expenditures" there are throughout the state in all residential treatment centers and day treatment providers that will need to be paid through the Department of Human Services or absorbed by the private providers?
**Answer:** The Department of Education has not. The answer to this question is heavily dependent on the program delivery model used by the district. Education program costs are the only costs that any education funding can legally cover.

**Question:** Has there been an evaluation of the cost difference for the private residential providers to provide special education administration versus the costs of public school districts to do so?
**Answer:** Records would be related to instructional programs. Only public school districts have instructional programs. Districts file accounting detail annually with the Department, covering all financial transactions.