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## MEMORANDUM

**TO:** Members, Utah State Board of Education

**FROM:** Glenna Gallo, State Director of Special Education

**DATE:** November 3-4, 2016

**ACTION:** R277-752 *Special Education Intensive Needs Fund Formula (New)*

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### **Background:**

The Special Education Intensive Needs Fund Amendments (S.B. 242; 53A-17a-112.1), requires that "on or before February 1, 2017, the board shall...make rules establishing a distribution formula to allocate money appropriated to the board for Special Education Intensive Services that allocate to an LEA 50% of the appropriation based on the highest cost students with disabilities and 50% of the appropriation based on the highest impact to an LEA due to high cost students with disabilities." The Finance Committee requested that USBE staff draft a rule that follows statutory requirements, with distribution of highest impacted LEA funds utilizing a step down approach, and caps LEAs at their total eligible reimbursed costs.

### **Board Strategic Plan:**

This item supports the following imperative(s) and strategies in the Board's Strategic Plan:

- System Values
- Educational Equity
- Quality Learning

### **Anticipated Action:**

It is proposed that the Finance Committee consider approving R277-752 on first reading and, if approved by the Committee, the Board consider approving R277-752 on second reading.

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Dr. Rich Nye, Deputy Superintendent of Student Achievement, 801-538-7550

1 **R277. Education, Administration.**

2 **R277-752. Special Education Intensive Services Fund.**

3 **R277-752-1. Authority and Purpose.**

4 (1) This rule is authorized by:

5 (a) Utah Constitution Article X, Section 3, which vests general control and  
6 supervision over public education in the Board;

7 (b) Section 53A-1-401, which allows the Board to make rules to execute the  
8 Board's duties and responsibilities under the Utah Constitution and state law; and

9 (c) Section 53A-17a-112.1, which requires the Board to make rules  
10 establishing a distribution formula to allocate money appropriated to the board for  
11 the special education intensive services fund.

12 (2) The purpose of this rule is to establish:

13 (a) an application process for the special education intensive services fund;  
14 and

15 (b) a formula to distribute the funds.

16 **R277-752-2. Definitions.**

17 (1) "Highest impacted LEA cost ratio" means the quotient of, for a fiscal year:

18 (a) an LEA's unreimbursed expenses remaining after allocations are made  
19 from the high cost student fund described in R277-752-3; and

20 (b) an LEA's total state special education revenues from the prior fiscal year.

21 (2) "Local education agency" or "LEA" includes, for purposes of this rule, the  
22 Utah Schools for the Deaf and the Blind.

23 (3) "Special education intensive services fund" means funding available to  
24 offset the costs of students whose educational program exceeds three times the  
25 state average per pupil expenditures.

26

27 **R277-752-3. Application Process - Distribution Formula.**

28 (1) To receive an annual allocation from the special education intensive  
29 services fund, an LEA shall annually submit to the Superintendent an application  
30 claiming:

31 (a) expenses that:

32 (i) are associated with providing direct special education and related services  
33 identified in a student's IEP; and

34 (ii) exceed three times the state average per pupil expenditures using data  
35 from the most recently published State Superintendent's Annual Report; and

36 (b) any reimbursements received for the expenses described in Subsection  
37 (1)(a)(i) from private insurance or Medicaid.

38 (2) From the special education intensive services fund, the Superintendent  
39 shall allocate:

40 (a) 50% of the appropriation to the high cost student fund to be distributed to  
41 LEAs based on the highest cost students with disabilities:

42 (i) as described in Section 53A-17a-112.1; and

43 (ii) in accordance with Subsection (3); and

44 (b) 50% of the appropriation to the highly impacted LEA fund to be distributed  
45 to LEAs based on the highest impact to an LEA due to high cost students with  
46 disabilities:

47 (i) as described in Section 53A-17a-112.1; and

48 (ii) in accordance with Subsection (4).

49 (3) (a) The Superintendent shall distribute funds to LEAs from the high cost  
50 student fund using a step down reimbursement process as described in this  
51 Subsection (3).

52 (b) The first step is to reimburse for the highest cost student equal to the  
53 difference between the highest cost student and the second highest cost student.

54 (c) The second step is to reimburse for the highest cost student and second  
55 highest cost student equal to the difference between the second highest cost student  
56 and the third highest cost student.

57 (d) Except as provided in Subsection (3)(e), the Superintendent shall continue  
58 the step down reimbursement process described in this subsection until funds are  
59 exhausted.

60 (e) If funding is insufficient to fully reimburse the cost for all students in a step,  
61 the Superintendent shall reallocate the remaining funds to the highly impacted LEA  
62 fund.

63 (f) In determining student cost under this Subsection (3), the Superintendent

64 shall sum expenses described in Subsection (1)(a)(i) less:  
65 (i) the state average per pupil expenditures using data from the most recently  
66 published State Superintendent's Annual Report; and  
67 (ii) reimbursements from private insurance or Medicaid.  
68 (4)(a) The Superintendent shall distribute funds to LEAs from the highly  
69 impacted LEA fund by providing a reimbursement equal to the difference between:  
70 (i) an LEA's unreimbursed expenses remaining after allocations are made  
71 from the high cost student fund; and  
72 (ii) the product of:  
73 (A) an LEA's total state special education funding from the prior fiscal year;  
74 and  
75 (B) the median of the highest impacted LEA cost ratios.  
76 (b) The Superintendent shall provide a reimbursement described in  
77 Subsection (4)(a) starting with the LEA with the highest impacted LEA cost ratio until  
78 funds are exhausted.

79 **KEY:**

80 **Date of Enactment of Last Substantive Amendment: 2017**

81 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401;**

82 **53A-17a-112.1**