

NEW MEXICO SCHOOL SUPERINTENDENTS' ASSOC.
COLLEGE OF EDUCATION, MANZANITA HALL
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phone 277-6986/ fax 277-5496 / nmcsa@unm.edu
Dr. Gloria O. Rendón, Executive Director

Friday, June 17, 2016

Los Lunas, New Mexico

**Legislative Education Study Committee Presentation
Special Education Ancillary FTE Data Validation
Executive Summary**

Presentation Focus: A high level overview of the financial impact the ancillary FTE audit/review and changes will have on the general budget for school districts for FY17 and FY 18 (both negative and positive).

Responses Received

Small Districts - (1000 students or less) - 4
Medium Districts (2000 students or more) - 7
Large Districts – (5000 students or more) - 3

Budget Impacts

Small Sized District Findings

- Decreases ranged from \$11,000 up to \$60,000
- Increase of \$23,000 one district
- One district also had to lower its FTE by one, but it was due to a district error

Middle Sized District Findings

- Many medium sized school districts reported being held harmless, but only after refuting information from SpEd Bureau.
- \$61,000 decrease - due to district recording error
- \$60,000 decreases reported
- One Medium sized district under-reporting – received \$700,000 increase

Large Sized District Findings

- Decreases in budgets range from \$2,500,000 to \$100,000 in two different districts.
 - In one of those two districts they were still working with the Special Education Bureaus appealing their audit findings so this amount may be less as of the time of this report.

Process Concerns:

When the audit/review happened there was great concern from the Superintendents. I sent a letter on behalf of our Association to the Secretary of Education on February 26, 2016, outlining concerns and possible solutions listed below:

Concerns

- Superintendents were never informed about the audit of special education ancillary staff, and in fact, a training Powerpoint used at a meeting advised people to not involve superintendents
- The methodology for counting ancillary staff appears to be changing midstream
- Districts have had no input in these changes
- Budgets will be severely impacted for the SY 16-17
- The sudden audit appears to be a "money grab" at this point in the budget process
- Districts are receiving conflicting information from PED staff
- There are no clear definitions or standards for how ancillary staff should be counted
- How will this change impact MOE?

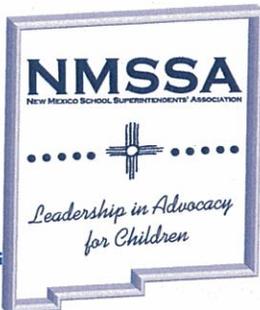
We hope you will consider the following suggestions for assuaging people's fears and for better planning for the future:

- Meet with the superintendents to explain the how and why of the current audits including the process for conducting future audits (as several districts have been told that more are coming)
- Set up a working group (made up of superintendents, special education directors and REC directors) during SY 16-17 to identify issues and problems and to determine the methodology and process to be used for counting ancillary staff and for accounting for services
- Ask the work group to define direct services so all districts are using the same methodology
- Share the information with all districts so that everyone has a common understanding of definitions
- Implement the new methodology in the SY 17-18 school year so all districts have time to make changes and make the appropriate budget adjustments.

In Conclusion

The Superintendent's Association fully understands that the Public Education Department and the Special Education Bureau has full authority to conduct the audit/reviews. We simply ask to be informed when changes are going to occur and we ask to be at the table to help improve the process and help when the calculation of FTE's are changed.

The working group that was put together met one time and a lot of good work came from the group, however, this is only a starting point and it is imperative that this group continue to meet over the course of the 2016-2017 school year. These Practitioners must continue to refine the work they started and ensure equity across the state so that all districts' diverse issues are represented. In addition if districts are required to justify FTE's, it would be beneficial if the work group could develop a common form. Such a form could be used state-wide so we have reporting in justification of FTE's for Special Ed. Ancillary staff that is consistent across all districts.



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February 26, 2016

Hanna Skandera, Secretary of Education
NM Public Education Department
300 Don Gaspar
Santa Fe, NM 87501

Dear Secretary Skandera:

This letter is a follow up to the phone conference you and I, and later Paul and I, had regarding the ongoing audits of special education ancillary staff.

Both RRPS and APS have had meetings with PED staff for the purpose of further clarifying information and to gather information on the process of the audits. Your staff may have informed you that Dr. Cleveland indicated she would share with other superintendents the information she gathered during her meeting with PED staff. Several superintendents logged on this morning to listen and to ask questions.

I think it's fair to say that superintendents are very dissatisfied with the manner in which these audits are being conducted. Most superintendents stumbled upon the information by accident or learned about it when their REC directors insisted that the 80th day window needed to be reopened for the purpose of adjusting figures. As you know, any time that numbers are being adjusted in STARS, it's imperative that superintendents know as such adjustments usually mean changes to the budget. Superintendents are questioning the timing of these audits. Although some have been told it is not for the purpose of pulling back money from districts, it appears to many that it is exactly that. Superintendents are concerned that the methodology some are being told to use will mean a reduction of services to children and certainly means major cuts to already austere budgets. In addition, cuts to budgets mean cuts in staffing at a time when our state is already suffering from job losses. Because of this some superintendents have already been fielding questions from their local legislators. Finally, superintendents are bracing themselves for an onslaught of lawsuits from both special education parents and advocacy groups.

As we have done throughout this year, we will not bring forward problems without also offering solutions. As you have heard us say on many occasions, superintendents do not fear accountability and have no problem with audits conducted by the PED. However, they do have concerns about surprise audits, lack of communication and lack of direction.

We offer the following concerns and possible solutions:

- Superintendents were never informed about the audit of special education ancillary staff, and in fact, a training powerpoint used at a meeting advised people to not involve superintendents
- The methodology for counting ancillary staff appears to be changing midstream

- Districts have had no input in these changes
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We hope you will consider the following suggestions for assuaging people’s fears and for better planning for the future:

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Our officers, our executive council and the superintendents as a whole stand ready to meet with you and work together to solve this very important issue. Thank you for your attention.

Sincerely,

Kirk Carpenter, President NMSSA

Cc: School Superintendents
Gloria Rendón, Executive Director NMCEL, NMSSA



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HANNA SKANDERA
SECRETARY OF EDUCATION

SUSANA MARTINEZ
GOVERNOR

June 7, 2016

MEMORANDUM

TO: Superintendents
Business Managers
Special Education Directors
Charter School Administrators
Regional Education Cooperative Directors
Stars Coordinators

FROM: Michael Lovato, Director
Special Education Director, Special Education Bureau, PED

A handwritten signature in black ink, appearing to read "Michael Lovato", written over the printed name in the "FROM:" field.

RE: Calculation of Full-Time Equivalency (FTE) for Staff Providing Special Education Related Services

The purpose of this memorandum is to provide clarification on how Full-Time Equivalency (FTE) is calculated for instructional support providers as defined in 6.63.3, 6.63.4 - 6.63.7 NMAC providing special education related services to students qualified for a student with a disability as defined by 34 CFR Sec 300.8 and Subsection B(4) of 6.31.2.7 of the NMAC. According to 34 CFR §300.34, related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. It is critical that Local Education Agencies (LEAs) accurately calculate FTE of staff providing special education related services for reporting in the Student Teacher Accountability Reporting System (STARS) in order for the Public Education Department (PED) to appropriately fund LEAs in providing special education services.

The Public Education Department conducts reviews of data to ensure that LEAs report their special education and related services data accurately. The Public School Finance Act, Section

22-8-13 NMSA 1978, mandates that each local school board require each public school in its school district to keep accurate records concerning membership in the public school including special education membership as defined in Section 22-8-21 NMSA 1978. For instructional support providers providing special education services, the number of FTE certified or licensed ancillary service and diagnostic service personnel must be reported in order to determine the number of special education program units needed under Section 22-8-21(C)(5) NMSA 1978. Section 22-8-13(C) NMSA 1978 provides that "all information required pursuant to this section shall be on forms prescribed and furnished by the department which are the staff assignment templates in STARS. A copy of any report made pursuant to this section shall be kept as a permanent record of the school district and shall be subject to inspection and audit at any reasonable time." That provision gives PED the basis for requiring LEAs to justify their related services FTE and to maintain documentation to support their justification. In addition, 34 CFR §300.211 requires LEAs to provide PED with the information necessary to carry out its duties under Part B of Individuals with Disabilities Education Act (IDEA). This provision allows the PED to collect whatever information it deems is necessary, as long as it is related to carrying out its duties under IDEA. As a result, requiring LEAs to provide justification and supporting documentation for their related services FTE would be consistent with the requirements set out in 34 CFR §300.211 because it relates to providing accurate information needed for determining reimbursement from IDEA funds for related services. In each case when calculating related service FTE, all LEAs must always consider "other therapy services" in order to meet a student's educational needs as the primary variable. These additional therapy services include, but are not limited to initial evaluations, re-evaluations, collaborative services, etc.

The above calculations for related service FTE should include the following: direct related service time for students with related services needs identified in accordance with 34 CFR §300.304 through 300.306 and stated on the student IEP; "reasonable" prep time, and; travel time, within the districts or if related service personnel is a contract employee and compensation is allowed per the contract. For reporting staff whose time is divided between students with disabilities and children in the general population, base this FTE on only the percentage of time that the related service provider works specifically with students receiving or being evaluated for special education related services. Time spent with students in the general population, including students in tier 2 interventions or in the Student Assistance Team (SAT) process, does not count as special education related services and must be reported under a separate staff assignment code in STARS and OBMS.

34 CFR §300.34(a) states that related services include other supportive services that are required to assist a child with a disability to benefit from special education. This may include other developmental, corrective, or supportive services if they are required to assist a child with a disability to benefit from special education and have been documented as a required need in the student's IEP as the related service they have qualified for consistent with 34 CFR §300.34. Supportive services include, but are not limited to evaluations, collaboration, and preparation for therapy time, participation in IEPs, etc. If compensated, this time should be included in FTE calculations and will be accepted as justification for FTE for instructional support providers. Services that are not indicated in the IEP, not related to the students IEP, and direct services as per the IEP should not be considered a related service and are therefore not covered by IDEA funding.

34 CFR § 300.156 (b)(2)(iii) does not allow special education instructional support provider assistants, this includes Certified Occupational Therapy Assistants (COTA), Speech/Language Apprentices, SLP Clinical Fellows, and Physical Therapy Assistants, therefore these personnel are not allowed to carry a caseload; these related service hours should be reported under the licensed mentor who is monitoring and working with the assistant in question. Please refer to guidance provided in December 2010 <http://ped.state.nm.us/seo/guide/edu%20asst%20Paraprof.pdf>. The combined FTE of the instructional support provider and their assistant should be proportionate to the total time spent providing a related service to their students, as reported in STARS. These assistant positions, though critical and essential for providing services, are not funded through the State Equalization Guarantee Act. In order to assure that LEAs are receiving appropriate funding, they are required to list the direct services under the supervising instructional support provider. If the LEA reports FTE in excess of 1.10 due to supervision of an assistant, documentation must be submitted to the Education Administrator assigned to the LEA in order to justify the excess of 1.10 FTE.

If you have any questions regarding the how to calculate FTE for staff providing special education related services, please call the Special Education Bureau at (505) 827-1457 and ask to speak with the staff member assigned to your district or charter.

ML/wlc

cc: Paul "Hipolito" Aguilar, Deputy Secretary, Finance and Operations
Eileen Marrujo, Director, School Budget & Finance Analysis Bureau
Denise Koscielniak, Division Director, Federal Programs Division

