

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC HEARING

May 31, 2023
1:00 p.m. Central Time
Nebraska State Office Building – Lower Level
Meadowlark Conference Room
301 Centennial Mall South, Lincoln, Nebraska
Phone call information: 888-820-1398; Participant code: 3213662#

The purpose of this hearing is to receive comments on the adoption and repeal of the following regulations:

The following chapter is proposed for ADOPTION:

Title 395 NAC 7 – *State Ward Education Fund*

The proposed new chapter will move the relevant portions of the regulations currently found in Title 390 NAC 10, which is proposed for repeal. The adoption of this new chapter will remove duplicative statutory language from the regulations; update definitions; clarify the process in which schools can receive reimbursement for cost of education; establish time frame in which claims must be submitted; clarify which children the eligible entities can request reimbursement; add transportation costs for rates for reimbursement; set requirements for appeal rights; and remove guidance to agency staff and outdated language.

The following regulation is proposed for REPEAL in its entirety. The relevant portions of this chapter are included in the proposed adoption of Title 395 NAC 7.

Title 390 NAC 10 – *Educational Funds for Wards Program*

Authority for these regulations is found in Neb. Rev. Stat. § 81-3117(7).

To encourage participation in this public hearing, a phone conference line will be set up for any member of the public to call in and provide oral comments. Interested persons may provide verbal comments in person or by participating via phone conference line by calling 888-820-1398; Participant code: 3213662#.

Interested persons may attend the hearing and provide verbal or written comments, or mail, fax or email written comments, no later than the day of the hearing to: DHHS Legal Services, PO Box 95026, Lincoln, NE 68509-5026, (402) 742-2382 (fax) or dhhs.regulations@nebraska.gov, respectively.

A copy of the proposed changes is available online at <http://www.sos.ne.gov>, or by contacting DHHS at the mailing address or email above, or by phone at (402) 471-8417. The fiscal impact statement for these proposed changes may be obtained at the office of

the Secretary of State, Regulations Division, 1201 N Street, Suite 120, Lincoln, NE 68508, or by calling (402) 471-2385.

Auxiliary aids or reasonable accommodations needed to participate in a hearing can be requested by calling (402) 471-8417. Individuals who are deaf or hard of hearing may call DHHS via the Nebraska Relay System at 711 or (800) 833-7352 TDD at least 2 weeks prior to the hearing.

FISCAL IMPACT STATEMENT

Agency: Department of Health and Human Services	
Title: 395 (Adopt) 390 (Repeal)	Prepared by: Andrew Keck
Chapter: 7 (Adopt) 10 (Repeal)	Date prepared: 04/03/2023
Subject: State Ward Education Fund	Telephone: 531-207-2770

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(<input type="checkbox"/>)	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)
Increased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Costs	(<input checked="" type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Increased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Indeterminable	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)

Provide an Estimated Cost & Description of Impact:

State Agency:

The proposed rate change would result in a reduction in transportation costs. Currently only 1 school charges transportation (based on the location of the school in the country compared to where the youth are placed). The provider charges the Public Service Commission Rate (300% above the federal mileage rate or currently \$1.875/mile).

The new regulation will change the cost to be in line with the current Department of Education transportation rate (285% above the federal mileage rate or currently \$1.781/mile). This change would mean a 5% reduction in costs.

Because the school does not have consistent placement amounts that require transportation, the full estimate of the cost reduction would vary year to year. In SFY 2022, there was approximately \$100k in total costs billed for transportation. If the regulations are enacted, the costs would reduce by \$5,000 per year.

Political Subdivision: N/A.

Regulated Public: N/A.

If indeterminable, explain why:

N/A

TITLE 395 CHILDREN AND FAMILY SERVICES: PROTECTION AND SAFETY

CHAPTER 7 STATE WARD EDUCATION FUND

001. SCOPE AND AUTHORITY. These regulations govern the reimbursement for the costs of providing educational services to Eligible Children, including associated school transportation costs, as required by Nebraska Revised Statute (Neb. Rev. Stat.) § 79-215(9).

002. DEFINITIONS. The following definitions apply:

002.01 ELIGIBLE CHILD. A child who is a ward of the state of Nebraska or a ward of any court who meets the requirements set forth in Neb. Rev. Stat. § 79-215(9) and who is subject to the compulsory education requirements of Neb. Rev. Stat. § 79-201.

002.02 ELIGIBLE INSTITUTION. Any school district or institution that meets the requirements in Neb. Rev. Stat. § 79-215(9). Except as otherwise specified in this chapter, an Eligible Institution includes a school accredited by the Nebraska Department of Education under Title 92 Nebraska Administrative Code (NAC) 10 or 18. An Eligible Institution does not include:

- (i) A special purpose school accredited by the Nebraska Department of Education under Title 92 NAC Chapter 10;
- (ii) A nonpublic schools accredited by the Nebraska Department of Education under Title 92 NAC 10; or
- (iii) A private or parochial school accredited by the Nebraska Department of Education under Title 92 NAC 14.

002.03 WARD OF THE STATE. A child placed in the custody of the Nebraska Department of Health and Human Services (Department) pursuant to the Nebraska Juvenile Code of the Nebraska Reissued Revised Statutes.

002.04 WARD OF ANY COURT. A juvenile described in Neb. Rev. Stat. § 43-247 (1), (2), (3)(b), or (4) who is in out-of-home care by order of the Court, including pre-adjudication, post-adjudication and dispositional orders.

003. REIMBURSEMENT. To receive reimbursement for the cost of education, the Eligible Institution must meet all the provisions in this section.

003.01 SUBMITTING A CLAIM. Any Eligible Institution must submit a written request for reimbursement. Each written request must include the following:

- (1) The Department's approved claim form;

- (2) The Eligible Institution's school calendar as prescribed by the Nebraska Department of Education;
- (3) The school attendance records for the Eligible Child for the reimbursement period; and
- (4) When the Eligible Child is a ward of any court, verification from the court of the date the child became a ward of the court.

003.01(A) SPECIAL EDUCATION REQUIREMENTS. If an Eligible Institution is submitting a claim for the costs of providing special education services, the Eligible Institution may be required to submit additional documentation in order for the Department to verify claim.

003.02 TIMEFRAME. An Eligible Institution must submit a claim for reimbursement no later than 30 days after the end of each semester for which the services were delivered.

003.02(A) EXCEPTION. The Department in its discretion may grant an exception to the 30 day requirement. Requests for an exception must be submitted by the Eligible Institution in writing along with the request for reimbursement.

003.03 INELIGIBLE CLAIMS. Eligible Institutions may not submit claims for the following:

- (A) A child who is attending pre-school;
- (B) A juvenile who has run away or absconded from another state and is being held under the Articles and Rules of the Interstate Compact for Juveniles; or
- (C) A juvenile charged as an adult who is being held in a detention or correctional facility.

004. REIMBURSEMENT RATE. The Department will reimburse claims that meet the requirements of this chapter pursuant to rates established by the Nebraska Department of Education. When the Nebraska Department of Education does not have an established rate for the Eligible Institution, payment will be made as a cost reimbursement for the actual allowable education costs. The Eligible Institution must, upon request, provide the Department with documentation, such as invoices and payroll expenses, verifying the actual allowable education costs incurred.

004.01 TYPE OF EDUCATION. If an Eligible Institution has both a special education rate and a regular education rate, reimbursement will be made at the appropriate rate based on the educational services provided to the child.

004.02 OFFICIAL SCHOOL DAYS. An Eligible Institution may only be reimbursed for educational services provided on a school day as shown on the Eligible Institution's school calendar as prescribed by the Nebraska Department of Education.

004.03 SCHOOL TRANSPORTATION COSTS. An Eligible Institution may be reimbursed for the transportation costs associated with the student's education at the mileage reimbursement rate set by the Nebraska Department of Education.

004.04 SPECIAL EDUCATION SERVICES. An Eligible Institution will be reimbursed for the costs of the special education services provided to a student if those services are documented

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in the students Individualized Education Plan. Reimbursement for these services will be at the rate established by the Nebraska Department of Education.

005. APPEAL. An Eligible Institution may appeal the denial of a claim in accordance with the Nebraska Administrative Procedures Act. The appeal must be submitted to the Department in writing no later than 30 calendar days after the date printed on the notice of denial.

TITLE 390 - Child Welfare and Juvenile Services

CHAPTER 10 - (Repealed)

CHAPTER 10-000

EDUCATIONAL FUNDS FOR WARDS PROGRAM

The authorized costs associated with the education of wards of any court or department of the State of Nebraska will be paid under specific circumstances.

This chapter contains the policy of the Department regarding eligibility for payment and types of services paid for by the Department. This information is available as a reference for workers and support staff.

Worker Responsibility

This program is administered centrally to pay for education services for state wards. The worker will assist Finance and Accounting by completing a verification form for bills received by Central Office for education services for designated wards. (See Education Funds Guidebook for verification form.)

10-001 LEGAL BASIS

The basis for these policies is Neb. Rev. Stat. 79-215, 83-108.04, and 43-2. Statutes, 1943. The scope and legal authority is found in section 001 of the proposed regulations.

10-002 ELIGIBILITY

Children and youth between the ages of five and 18 who are wards of any court or department of the State of Nebraska are eligible for state ward education funds in the following settings: Eligible child is defined in proposed 002.01

SETTING:	ELIGIBLE IF:	PAYMENT FOR:
Public School	A. Ward resides in a licensed group home Center for Developmental Delays or Licensed child care agency, AND, B. The facility isn't in the school district where: 1. The ward resided at the time of wardship; and 2. The ward's parent(s)	Regular or special education based on formula; transportation. (See 390 NAC 10-004 and Education Funds Guidebook.)

reside.

Note: Wards in foster family homes aren't eligible for State Ward Education Funds.

10-003 DEFINITIONS

10-003.01 DEFINITION OF INSTITUTION

An institution is a public or private facility, not owned or operated by the public school district, that operates a residential and special education program with an approved special education rate established by the Nebraska Department of Education.

This definition of institution includes school programs with an approved rate run by psychiatric hospitals and group homes and child care agencies. It doesn't include parochial schools or Youth Rehabilitation Treatment Centers.

Statutory Reference: Neb. Rev. Stat. 79-445.

10-003.02 DEFINITION OF COUNTY DETENTION CENTERS

To be eligible for payment, county detention homes or centers must meet the following criteria:

1. Be selected by the county board with jurisdiction over a detention home,
2. Have agreed or contracted with the county board to provide educational services, and
3. Have been approved by the State Department of Education.

Statutory Reference: Neb. Rev. Stat. 43-2,110.

This section is included within the definition of Eligible Institution found in proposed 002.02.

10-004 PAYMENTS FROM THE DEPARTMENT FOR EDUCATION FOR WARDS

1. Payments for Education Services Provided by Public Schools

Wards in their own homes and in foster family homes are not eligible for state ward education funds.

When the eligibility criteria for public schools are met, the school district will receive payment as follows:

a. Non-Disabled Students

(1) Regular Education

If an eligible ward isn't disabled and doesn't receive a special education program or special services, payment for regular education will be based on a formula. (See Education Funds Guidebook for Formula.)

The reimbursement rate is established in proposed 004.

~~(2) Regular Program with Special Services~~

~~If an eligible ward is in a full-time regular program, but does receive other services such as speech therapy or physical therapy, those services will be paid based on the approved rate established by the Department of Education. Payment will be based on the percentage of time the youth receives these services. (See Education Fund Guidebook for process.)~~

~~The reimbursement rate for special education services is included in proposed 004.04.~~

~~b. Disabled Students~~

~~If an eligible ward is disabled and requires educational programming or other special services, payment will be authorized for costs relating to the youth's special educational programming.~~

~~Special services such as speech therapy or physical therapy will be paid based on the approved rate established by the Department of Education. Payment will be based on the percentage of time the youth receives these services. (See Education Fund Guidebook for process and formula.)~~

~~The reimbursement rate for special education costs is included in proposed 004 and the reimbursement rate for special services is included in proposed 004.04.~~

~~c. Transportation~~

~~Transportation costs will be reimbursed when necessary and according to guidelines established by the Department of Education.~~

~~The reimbursement rate for transportation is included in proposed 004.03. The proposed regulations change this provision from deferring all Department of Education guideline's and instead will require the use of the Department of Education's mileage rate.~~

~~2. Payments to Class I School Districts~~

~~When a ward from a Class I school district is placed outside of that district but continues to or will attend the school she/he would have attended if she/he had remained in the resident school district, the ward isn't eligible for state ward education funds.~~

~~3. Payments to **County Detention Homes or Centers**~~

~~County Detention Centers continue to be eligible for reimbursement under the definition of Eligible Institution in proposed 002.02.~~

~~Payment for wards placed in a county detention home or center as defined in statute will be authorized based on all actual costs related to the ward's educational programming, regardless of the ward's county of residence.~~

~~Statutory reference: Neb. Rev. Stat. 43-2,110.~~

4. ~~Payments to Institutions~~

a. ~~Inpatient Psychiatric Hospital Settings~~

~~Inpatient Psychiatric Hospital Settings continue to be eligible for reimbursement under the definition of Eligible Institution in proposed 002.02.~~

(1) ~~Evaluation or Assessment~~

~~If an eligible ward enters a psychiatric hospital for an assessment or evaluation, payment of the ward's educational program will be based on the approved rate from the Department of Education if the ward is eligible for special education. If the ward isn't eligible for special education, the regular education rate will be paid.~~

(2) ~~Treatment~~

~~If the primary purpose of the hospitalization becomes treatment or, in any case, if the hospitalization extends beyond 30 days, the ward will be referred to the school district where the ward lived prior to hospitalization for verification of the ward's disability and eligibility for special education. If the ward is eligible for special education, the approved rate from the Department of Education will be paid by the Department. If the ward isn't eligible for special education, within three months of placement the facility will be reimbursed for those days the ward attended until the verification was made plus the three-month period after the placement. The ward will then be moved into an appropriate education program. (See Education Funds Guidebook.)~~

b. ~~Residential Treatment Program with a School~~

~~Residential Treatment Programs with a school continue to be eligible for reimbursement under the definition of Eligible Institution in proposed 002.02.~~

~~If the criteria for residential psychiatric facilities described in 390 NAC 10-002 are met, and the child is eligible for special education, the approved rate from the Department of Education will be paid to the facility.~~

~~If the criteria described in 390 NAC 10-002 are met and the child isn't eligible for special education, a re-evaluation will be done to determine if the child is eligible for special education. A determination of the child's eligibility for special education will be made within three months of placement in the residential facility in order for the program to be eligible for state ward education funds. If the child is determined to be ineligible for special education, state ward education funds will be paid for those days the child attended until the verification decision was made not to exceed three calendar months. The Department will continue to pay up to one month while the ward is moved into an appropriate education program.~~

~~Children in an emergency shelter facility, attending the facility operated school, must be eligible for special education in order to receive this funding. The short-term nature of the placement does not allow time for a special education verification. The child should attend public school if s/he is not verified for special education.~~