

**PART XII. BASIC EDUCATION**

**Chap.**  
**171. STANDARDS FOR APPROVED PRIVATE SCHOOLS ..... 171.11**  
**181. MENTALLY RETARDED EXCEPTIONAL CHILDREN ..... 181.1**

**CHAPTER 171. STANDARDS FOR APPROVED PRIVATE SCHOOLS**

**Subchap.**  
**A. GENERAL PROVISIONS ..... 171.11**  
**B. [Reserved] ..... 171.40**  
**C. INTERIM AUDIT STANDARDS ..... 171.201**

**Cross References**

This chapter cited in 22 Pa. Code § 342.43 (relating to approved private schools).

**Subchapter A. GENERAL PROVISIONS**

**Sec.**  
171.11. Definitions.  
171.12. Educational plans.  
171.13. Program responsibility.  
171.14. Identification of handicapped persons.  
171.15. Evaluation.  
171.16. Assignment.  
171.17. Reevaluation.  
171.18. Withdrawal.  
171.19. Funding.  
171.20. Operating programs and services.  
171.21. Curriculum.  
171.22. Personnel.  
171.23. Application for approved private school status.

**Authority**

The provisions of this Subchapter A issued under sections 1371, 1372, 1376 and 1377 of the Public School Code of 1949 (24 P. S. §§ 13-1371, 13-1372, 13-1376 and 13-1377), unless otherwise noted.

**Source**

The provisions of this Subchapter A adopted July 16, 1976, effective July 17, 1976, 6 Pa.B. 1665, unless otherwise noted.

**Notes of Decisions**

*Retroactivity*

An approved private school cannot violate the provisions of 22 Pa. Code § 171.11 et seq (relating to standards for approved private schools), since they were nonexistent at the time the school was evaluated, in the absence of the appearance of a clear and unequivocal intent on the face of the regulations that they apply retroactively. *Community Country Day School v. Department of Education*, 414 A.2d 428 (Pa. Cmwlth. 1980).

The Department of Education did not err in applying audit regulations, Subchapters A and B, which became effective after commencement of fiscal year being audited, since the institution's right to compensation was conditional (subject to audit) rather than vested and the rule is that administrative agencies may adopt retroactive regulations so long as their application does not interfere with a vested right to compensation. *Ashbourne Educational Services, Inc. v. Department of Education*, 499 A.2d 698 (Pa. Cmwlth. 1985).

### § 171.11. Definitions.

The following words and phrases, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Ancillary costs*—Those costs, as approved by the Department, that are reasonably necessary to establish, sustain, administer and operate an approved private school for the purpose of providing a program of instruction and maintenance.

*Approved private school*—A private school licensed by the State Board of Private Academic Schools when the specific special education program for certain exceptional handicapped persons is approved by the Secretary and is thereby eligible to receive payments for tuition, or tuition and maintenance, from funds of the school district or the Commonwealth, or both.

*Board*—The State Board of Education of the Commonwealth.

*Charges for optional services*—Those charges for programs and services offered directly to parents which are not part of the program of instruction and maintenance appropriate to the needs of the child or not part of the normal school year.

*Department*—The Department of Education of the Commonwealth.

*Maintenance*—Board, lodging, supervision and other activities that are reasonably necessary to sustain the physical well-being of the child while in residence.

*Persons of school age*—Persons aged 6 to 21 and persons below the age of 6 who are of the age at which regular education programs are provided in their school district of residence.

*Program of instruction and maintenance appropriate to the child's needs*—A program in an approved private school which meets the individual special educational needs of the child in accordance with the special education standards of the Department and the agreement by a parent, the school district and the approved private school; which is ordered by a hearing officer; or which is ordered by the Secretary on appeal.

*School year*—The period within the fiscal year of July 1 to June 30 of at least 180 instructional days or, if approved by the Secretary, a period of less than 180 instructional days in which a meritorious educational program of at least 900 hours at the elementary level and 990 hours at the secondary level is offered.

*Secretary*—The Secretary of the Department.

*Tuition and maintenance*—The charges made to the Commonwealth by an approved private school to cover the instructional and ancillary costs of operating that school as well as the charges for the maintenance of a child in residence at that school.

#### Cross References

This section cited in 22 Pa. Code § 171.40 (relating to standards for determining allowable expenses and costs incurred by approved private schools); and 22 Pa. Code § 171.41 (relating to general standard of reimbursability).

### § 171.12. Educational plans.

(a) *Plan.* The plan for special education required by section 1372 of the Public School Code of 1949 (24 P. S. § 13-1372) shall recognize approved private schools as a resource of the State school system in providing for the education of certain exceptional persons of school age.

(b) *Approval.* The Secretary may approve, as necessary, additional private school programs to provide an appropriate education in areas of this Commonwealth when the programs cannot be provided by the school district, intermediate unit or other Commonwealth agency.

(c) *List.* The Secretary will furnish annually to each intermediate unit a listing of all approved private schools and the types of programs approved for each. Intermediate unit planning shall include provisions for use of approved private schools when appropriate, especially for multihandicapped persons of school age for whom the school district or intermediate unit cannot efficiently provide an appropriate program.

### § 171.13. Program responsibility.

The primary responsibility for providing an appropriate program of education or training, or both, shall be that of a school district. Where the school district cannot provide an appropriate program effectively and efficiently, it shall use the services of the intermediate unit. The services of approved private schools, State schools and out-of-State institutions may be used where school districts and intermediate units cannot provide effective and efficient services for handicapped persons of school age because of the nature or incidence of the handicapping condition.

#### Notes of Decisions

##### *Appropriate Program*

Placement of a child at the Vanguard School was proper, since she was not attaining her intellectual potential in a public school, but her behavior had dramatically changed for the better after her placement at Vanguard. *Levy v. Department of Education*, 399 A.2d 159 (Pa. Cmwlth. 1979).

Since the parents of a deaf child did not establish that a vocational education was preferable to an academic education for their child and did not establish that the district or intermediate unit could not

provide such vocational education, placement of the child in the Pennsylvania School for the Deaf was not justified. *Fitz v. Intermediate Unit # 29*, 403 A.2d 138 (Pa. Cmwlth. 1979).

*Identifying Exceptional Children*

The primary responsibility for identifying all exceptional children and developing educational programs to meet their needs rests with the local school district. *Veschi v. Northwestern Lehigh School District*, 772 A.2d 469 (Pa. Cmwlth. 2001).

Placement in a private school, with the district bearing the responsibility for the attendant tuition, will only be approved if neither the local school district nor its supporting IU can provide an appropriate education for the child in question. *Veschi v. Northwestern Lehigh School District*, 772 A.2d 469, 1037 (Pa. Cmwlth. 2001); appeal denied 788 A.2d 382 (Pa. 2001).

**§ 171.14. Identification of handicapped persons.**

The approved private schools shall assist in the identification of persons thought to be handicapped by:

- (1) Notifying, with permission of the parents, the school district of residence and the intermediate unit case manager when the persons are brought to the attention of the approved private school.
- (2) Informing the parents of their right to a free educational evaluation of the school aged person by the school district or intermediate unit.
- (3) Informing the parents of public or private agencies whose evaluation services are available to them.
- (4) Informing the parents of the cost of evaluation of the person if it is done by an approved private school, and that the school district may require additional data to determine the appropriate assignment if assignment by the school district is requested.

**§ 171.15. Evaluation.**

(a) *General rule.* No person may be recommended for educational assignment or reassignment to an approved private school by a school district until the person has been evaluated in accordance with this chapter.

(b) *School district or intermediate unit evaluations.* A parent may request a complete educational evaluation by the school district or intermediate unit, and the school district or intermediate unit shall provide it in accordance with Chapter 14 (relating to special education services and programs).

(c) *Outside evaluation.* Parents may elect to purchase an outside evaluation. The evaluation may be done by an approved private school and may be supplemented by the school district or intermediate unit to the extent the district or intermediate unit deems necessary to recommend assignment to an appropriate educational program.

(d) *Procedure.* An evaluation shall include a review of existing cumulative data and documentation. An evaluation shall include, and a reevaluation may include, comprehensive psychoeducational testing.

- (1) The evaluation shall be performed by a certified school psychologist and any other expert needed to determine the nature and degree of the exceptional condition of the person.
- (2) The nature of the behavioral characteristics of the individual shall determine uniqueness in procedures which may be necessary in the evaluation of a person thought to be exceptional.
- (3) Prior to the administration of an individual testing, the parent shall be informed of, and given an opportunity to discuss with the appropriate school official:
  - (i) The tests to be administered.
  - (ii) The reasons for the testing.
  - (iii) The right to review and discuss the test results and receive a copy of the test results.
- (4) Testing and evaluation materials and procedures used in classifying exceptional persons shall be selected, administered and interpreted so as not to be racially or culturally discriminatory.

#### Cross References

This section cited in 22 Pa. Code § 171.19 (relating to funding).

### § 171.16. Assignment.

- (a) *General rule.* There may be no assignment of a handicapped person of school age to an approved private school by a school district until the provisions of this chapter have been followed.
- (b) *District.* The school district shall recommend an assignment based on its review of the data and evaluations and program possibilities.
- (c) *Priority.* When recommending an assignment in an approved private school, the district superintendent and intermediate unit director of special education shall certify to the Secretary that the following priority order of educational placement has been followed or shall explain why deviation is needed to meet the appropriate needs of the person:
  - (1) A regular class in a regular school with supporting services.
  - (2) A school district special education program in a regular school, including homebound instruction.
  - (3) A school district special education program in a special facility.
  - (4) An intermediate unit program in a regular school.
  - (5) An intermediate unit program in a special facility.
  - (6) An approved private school program.
- (d) *Notice.* When a handicapped person of school age is recommended for assignment to an approved private school by a school district, the superintendent of schools of the school district of residence shall give the person and parents written notice as specified in Chapter 14 (relating to special education services

and programs). With the permission of the parents, a copy of the notice and evaluations shall be given to the approved private school to which assignment is being recommended.

(e) *Notice of charges.* The notice shall inform the parents that there may be no charge to the parents or person for a program of instruction and maintenance appropriate to the needs of the person provided during the normal school year if they are residents of this Commonwealth and if the assignment is approved by the Department. The notice shall also give the name, telephone number and address of the intermediate unit information manager to whom the parent may address questions.

(f) *Notice of charges for optional services.* The approved private school to which assignment is recommended shall send notice to the parents in writing. The notice shall include:

(1) The programs or services offered which are not part of the instruction and maintenance program or not part of the normal school year.

(2) The statement that these services are optional and that enrollment in the approved private school is not contingent on the acceptance by the parents of the optional programs or services.

(3) The cost of each and every optional service.

(4) The statement that these services may be available elsewhere, including at the MH/MR center, on a sliding charge basis and that the private schools will cooperate with any outside agency providing the services.

(g) *Application for Department approval.* When approval of an assignment to an approved private school is sought, the school district shall forward to the Department an application for approval. The application shall include the certification or explanation required by subsection (c) and a copy of the notices sent to the parents by the school district.

(1) *Approval.* The Department will approve or disapprove the assignment within 15 days of receipt of the application for approval. If the application is not acted upon within 15 days, it shall be deemed approved.

(2) *Disapproval.* The Department may disapprove of an assignment even if the parents and school district agree to the assignment. If the Department disapproves of an assignment, it will provide the reasons for that disapproval to the parents of the child involved. The parents, if they lodge a request with the Department within 15 days of their receipt of the reasons for disapproval, will be granted a hearing. The hearing will be conducted in accordance with § 14.64 (relating to impartial due process hearing) to determine the appropriateness of the proposed assignment and its conformity with subsection (c). There may be no change in assignment pending the hearing.

(h) *Preschool.* The Department may assign to approved private schools handicapped persons who are below school age but at least 2 years of age at the time of assignment. The intermediate unit case manager shall submit applications for assignment to the Department. The application shall contain an evaluation of

the handicapped person and the recommended assignment. The Department will review the evaluation and will only assign deaf, blind, muscular dystrophic, cerebral palsied and severely brain damaged preschool-aged persons to approved private schools.

(1) *Approval.* The Department will approve or disapprove of the assignment within 15 days of receipt of the application for approval. If the application is not acted upon within 15 days, it shall be deemed approved.

(2) *Disapproval.* If the Department disapproves of the assignment because the recommended program is inappropriate or the preschool-aged person does not qualify under this section, it will grant a hearing, if the request is made by the parents within 15 days. The hearing will be conducted in accordance with § 14.64.

#### Notes of Decisions

##### *Placement*

Placement in a private school, with the district bearing the responsibility for the attendant tuition, will only be approved if neither the local school district nor its supporting IU can provide an appropriate education for the child in question. *Veschi v. Northwestern Lehigh School District*, 772 A.2d 469, 1037 (Pa. Cmwlth. 2001); appeal denied 788 A.2d 382 (Pa. 2001).

##### *Priority*

Placement of a child at the Vanguard School was proper, since she was not attaining her intellectual potential in a public school, but her behavior had dramatically changed for the better after her placement at Vanguard. *Levy v. Department of Education*, 399 A.2d 159 (Pa. Cmwlth. 1979).

The order of the Secretary recommending placement in a day school under the mandatory order of priority set forth in 22 Pa. Code § 171.16(c) (relating to assignment) was proper in light of the unfavorable results from a residential treatment program and fear for the physical welfare of the child at a state school, even though the financial position of the district was not good and prior day school experience had been unsuccessful. *West Chester Area School District v. Secretary of Education*, 401 A.2d 610 (Pa. Cmwlth. 1979).

#### Cross References

This section cited in 22 Pa. Code § 171.201 (relating to purpose and applicability).

### § 171.17. Reevaluation.

(a) *General rule.* Persons assigned to approved private schools shall be reevaluated every 2 years or annually at the request of the parents.

(b) *Continuance.* When the reevaluation results in a recommendation for continuance in the same program, notice of the recommendation and the right to request a hearing on the continuance shall be given to the person, the parents and the Department in accordance with § 171.16 (relating to assignment).

(c) *Reassignment to an approved private school program.* When the reevaluation results in a recommendation for a reassignment to another type of approved program in the approved private school or another approved private school, notice of the recommendation and the right to request a hearing shall be given to

the person, the parents and the Department in accordance with § 171.16. For the purpose of this section, the recommendation of additional services because a person is, or is thought to be, multihandicapped or the recommendation of a program of vocational education shall be a reassignment.

(d) *Reassignment to a public school program.* When the reevaluation results in a recommendation for reassignment to a public school program, the person and the parents shall be given notice of the proposed reassignment and the right to a hearing in accordance with § 171.16.

(e) *No change.* There shall be no change in the assignment of a student pending a hearing.

### § 171.18. Withdrawal.

An approved private school may not expel, suspend or disenroll a student assigned to the school by a school district until notice and the opportunity for a hearing have been given in accordance with Chapter 14 (relating to special education services and programs).

### § 171.19. Funding.

(a) *Charges.* Persons who are approved reimbursable residents of this Commonwealth and who are enrolled in an approved private school shall receive a program of instruction and maintenance appropriate to the needs of the person without charge, except that charges for optional services may be made should the parents desire the optional services. There may be no charge made to parents for applications or evaluations of children recommended for assignment in accordance with § 171.16 (relating to assignment) except as provided in § 171.15(c) (relating to evaluation).

(b) *Tuition or tuition and maintenance payment.* The Department will approve tuition or tuition and maintenance payment for handicapped persons assigned to approved private school programs and services in accordance with § 171.16.

(c) *Determination of amount.* The tuition or tuition and maintenance payment will be the approved daily rate for the program of instruction and maintenance to which the person is assigned, multiplied by the number of days the person is assigned to the program, provided that no days will be counted prior to an assignment of the person in accordance with § 171.16. The daily rate for the program will be the quotient of the approved budget of the approved private school for the program divided by the aggregate days of student enrollment in the program. In addition, the tuition payment will include the approved cost of special services provided to the person as a necessary part of the program of instruction and maintenance appropriate to the needs of the person.

(d) *Budget submission.* No tuition or tuition and maintenance payment will be made until the school has submitted its budget in a form prescribed by the Secretary.



(e) *Audit.* The Department may audit the budgets and expenditures of the approved private school for the school year 1975-76 to determine what increases over the 1974-75 tuition rate should be approved. For the school year 1976-77 and each year thereafter, the Department will preaudit the budgets of the approved private schools in order to establish tuition rates.

(1) *General.* The Department will complete the preaudit within 45 days of receipt of the budget submission. If the Department has not completed the preaudit of a school within the allotted time, it will make payments to that school based on the budget submission until such time as an audit as otherwise prescribed in this chapter is completed. Adjustments in payment required as a result of the audit will be made in the final payment to that school in that fiscal year.

(2) *Criteria.* The Department will review the budget submission and may disallow any charges or portion of a charge to the extent that it is excessive or inappropriate. To determine whether an item is excessive, the Department will review the financial records of the school and may compare the item with the cost of a similar item in similar approved private and public school programs.

(3) *Access.* In order to perform the audit, the Secretary or his designee will have access to financial data relative to the school, including access to the Federal income tax forms of the school.

(f) *Adjudication.* Disapproval of a tuition or tuition and maintenance charge below the maximum authorized in sections 1376 and 1377 of the Public School Code of 1949 (24 P. S. §§ 13-1376 and 13-1377) will be considered an adjudication under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to practice and procedure of Commonwealth agencies and judicial review of Commonwealth agency action), and notices, hearings and appeals will be conducted in accordance with the statute.

#### Notes of Decisions

##### *Audit*

The audit criteria set forth in 22 Pa. Code § 171.19(e)(2) (relating to funding) are general, but they are not unreasonable, since 24 P. S. § 13-1376 and the definitions in 22 Pa. Code § 171.11 (relating to definitions) provide sufficient guidance for conducting audits and taking subsequent administrative actions regarding reasonable costs. *Ashbourne School v. Department of Education*, 403 A.2d 161 (Pa. Cmwlth. 1979).

##### *Charges*

As the approved private school failed to establish a basis for an allocation of allowable costs alternative to the equivalent full-time student reimbursement entitlement formula which the auditor applied in concluding that the Department of Education has overpaid the school, the Court properly determined that the school must reimburse the Department for overpayments which the school received for tuition and maintenance of approved special education pupils enrolled at the school. *Community Country Day School v. Department of Education*, 641 A.2d 1282 (Pa. Cmwlth. 1994).

*Fiscal Year*

The phrase “in that fiscal year” subsection (e)(1) refers to the year in which the audit was performed and not to the year to which the audit pertains. *Ashbourne Educational Services, Inc. v. Department of Education*, 499 A.2d 698 (Pa. Cmwlth. 1985).

**§ 171.20. Operating programs and services.**

(a) *General rule.* Approved private schools shall operate in accordance with this chapter. Failure to do so may result in disapproval of the program. Disapproval will be considered an adjudication under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to practice and procedure of Commonwealth agencies and judicial review of Commonwealth agency action), and notices, hearings and appeals will be conducted in accordance with the statute.

(b) *Reevaluation.* Approved private schools shall be subject to periodic evaluation by the Department. Approved private schools will be reevaluated at least once every 3 years.

(c) *Submissions.* Each approved private school shall submit annually to the Department:

- (1) A line item budget for the operation of the approved private school.
- (2) An itemized list of special services, if any, provided for each student for which tuition or tuition and maintenance payments are requested, and the cost of each service.
- (3) A school calendar listing the days and hours that the school is open for instruction.
- (4) A list of optional services available and their cost to parents.

**§ 171.21. Curriculum.**

The program of education or training or both for exceptional persons enrolled in approved private schools shall conform to the appropriate special education program standards and meet the individual needs of the person, as agreed to by the parents, school district and approved private school, as ordered by a hearing officer, or upon appeal as ordered by the Secretary.

**§ 171.22. Personnel.**

(a) *Teachers.* Teachers in approved private schools shall have public school certification appropriate to their assignment.

(b) *Supervisor.* Each approved private school shall have at least one supervisor with public school certification appropriate to his assignment.

(c) *Teacher-student ratio.* The teacher-student ratio shall be in accordance with the appropriate special education program standards.

**Notes of Decisions***Supervisor*

In a private school for severely disturbed children, the lack of a full-time classroom supervisor who is free to perform his functions unrestricted by classroom obligation is a deficiency which prevents the school from meeting the Approved Private School Standards contained in subsection (b). *Wiley House v. Scanlon*, 465 A.2d 995 (Pa. 1983).

The Secretary is not plainly erroneous in construing 22 Pa. Code § 171.22(b) to require that an approved private school employ a supervisor who is fully able to supervise without the burden of concurrent teaching obligations. *Wiley House v. Scanlon*, 432 A.2d 324 (Pa. Cmwlth. 1981).

**§ 171.23. Application for approved private school status.**

(a) *General rule.* A private school program will be approved after the submission of an approvable application and the satisfactory completion of an onsite evaluation. Each program offered by the private school shall be approved. Disapproval of a program will be considered an adjudication under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to practice and procedure of Commonwealth agencies and judicial review of Commonwealth agency action), and notices, hearings and appeals will be conducted in accordance with the statute.

(b) *Existing program.* The program for handicapped persons for which the licensed private school is requesting approval shall have been in operation for at least 1 year.

(c) *Experimental programs.* The Secretary may grant exceptions to the provisions of Chapter 14 (relating to special education services and programs) to meet certain unique programmatic needs of exceptional persons in approved private schools. The exceptions will be evaluated annually by the Secretary and may be terminated at the discretion of the Secretary.

(d) *Mainstreaming.* Cooperative programs between a public school and an approved private school may be approved by the Secretary.

(e) *Vocational programs.* Payment for the audited costs of vocational education programs will be made only when the Department has both approved programs and deemed them to be necessary because of the unavailability of appropriate programs for the students enrolled there.

(f) *Programs for multihandicapped.* An increase in the maximum rate payable for a program of instruction and maintenance for students having two or more severe handicaps may be approved only if the private school requesting the payment, at the time of the schools initial agreement to enroll a multihandicapped child:

(1) Has a specific approval from the Department for a program appropriate to at least one of the severe handicapping conditions.

(2) Demonstrates to the Department that the actual costs of instruction and maintenance are required to be increased in order to provide an appropriate program to a student having two or more severe handicaps; the approved increase in the maximum rate payable may not exceed these actual costs or the

maximum increase allowable by law, whichever is lower; see section 1376(f) of the Public School Code of 1949 (24 P. S. § 13-1376(f)).

(3) Demonstrates to the Department that the school can provide a program, appropriate to the needs of the child having two or more severe handicaps, that specifically addresses those handicaps for which the school does not have program approval.

(g) *Application.* A licensed private school requesting approval shall submit an application to the Department. The application shall be in a form prescribed by the Department and shall include:

- (1) A copy of all licenses.
- (2) A brief resume for each administrator and faculty member, including a copy of certifications and other relevant credentials.
- (3) The calendar of the school.
- (4) A description of arrangements for transporting students.
- (5) The enrollment capacity of the school.
- (6) The admission criteria of the school.
- (7) The tuition and fee structure of the school.
- (8) An outline of the education program of the school, showing conformity with the specific applicable special education program standards.

(h) *Onsite evaluation.* After the Department has approved the application, the Department will conduct an onsite evaluation.

(1) *General rule.* A private school will be approved when the evaluation demonstrates that the school is operating in conformity with this chapter.

(2) *Procedure.* The following procedure will be followed in conducting onsite evaluations:

- (i) The school will be notified that its application has been approved by the Department.
- (ii) The Department and the school will agree on a date for the evaluation.
- (iii) The school shall submit ten copies of its program to the chairperson of the evaluation team at least 10 days prior to the evaluation.
- (iv) The evaluation team will visit the school to examine the administrative, program and budgetary operations for compliance with the applicable statutes, regulations and standards.
- (v) The team chairperson will summarize the evaluation at the close of the onsite visit.
- (vi) The Department will notify the school of the results of the evaluation within a reasonable time.

**Notes of Decisions***Approval*

There is no duty imposed on the Department of Education by 22 Pa. Code § 171.23(a) or (d) (relating to application for approved private school status) to approve a private school program. *Summit School, Inc. v. Department of Education*, 402 A.2d 1142 (Pa. Cmwlth. 1979).

**Subchapter B. [Reserved]****Source**

The provisions of this Subchapter B adopted August 29, 1980, effective August 30, 1980, 10 Pa.B. 3511; § 171.139 corrected January 15, 1993, effective August 9, 1986, 23 Pa.B. 263; reserved April 7, 2006, effective April 8, 2006, 36 Pa.B. 1645. Immediately preceding text appears at serial pages (279606) and (256415) to (256438).

**Notes of Decisions***Retroactivity*

Education Department did not err in applying audit regulations, Subchapters A and B, which became effective after commencement of fiscal year being audited, since the institution's right to compensation was conditional (subject to audit) rather than vested and the rule is that administrative agencies may adopt such retroactive regulations so long as their application does not interfere with a vested right to compensation. *Ashbourne Educational Services, Inc. v. Department of Education*, 499 A.2d 698 (Pa. Cmwlth. 1985).

**§§ 171.40—171.43. [Reserved]****Notes of Decisions***Reimbursability*

As the approved private school failed to establish a basis for an allocation of allowable costs alternative to the equivalent full-time student reimbursement entitlement formula which the auditor applied in concluding that the Department of Education has overpaid the school, the Court properly determined that the school must reimburse the Department for overpayments which the school received for tuition and maintenance of approved special education pupils enrolled at the school. *Community Country Day School v. Department of Education*, 641 A.2d 1282 (Pa. Commw. 1994).

*Reimbursable Cost*

Private school is not entitled to reimbursement for cost of yearbooks since that is not a usual and necessary operational cost of a school district or intermediate unit, and since 22 Pa. Code § 171.160 specifically requires that private schools charge students for such items. *Ashbourne Educational Services, Inc. v. Department of Education*, 499 A.2d 698, 702 (Pa. Commw. 1985).

**Cross References**

This section cited in 22 Pa. Code § 171.40 (relating to standards for determining allowable expenses and costs incurred by approved private schools).

- § 171.45. [Reserved].
- § 171.48. [Reserved].
- § 171.50. [Reserved].
- § 171.55. [Reserved].
- § 171.60. [Reserved].
- § 171.65. [Reserved].
- § 171.70. [Reserved].
- § 171.74. [Reserved].
- § 171.80. [Reserved].
- § 171.82. [Reserved].
- § 171.85. [Reserved].
- § 171.90. [Reserved].
- § 171.95. [Reserved].
- § 171.100. [Reserved].
- § 171.105. [Reserved].
- § 171.110. [Reserved].
- § 171.115. [Reserved].
- § 171.120. [Reserved].
- § 171.125. [Reserved].
- § 171.130. [Reserved].
- § 171.135. [Reserved].
- § 171.137. [Reserved].

§ 171.139. [Reserved].

§ 171.140. [Reserved].

§ 171.142. [Reserved].

§ 171.145. [Reserved].

§ 171.147. [Reserved].

§ 171.150. [Reserved].

§ 171.153. [Reserved].

§ 171.155. [Reserved].

§ 171.160. [Reserved].

§ 171.165. [Reserved].

§ 171.170. [Reserved].

§ 171.173. [Reserved].

§ 171.175. [Reserved].

§ 171.177. [Reserved].

§ 171.180. [Reserved].

§ 171.185. [Reserved].

§ 171.190. [Reserved].

§ 171.194. [Reserved].

§ 171.195. [Reserved].

### Subchapter C. INTERIM AUDIT STANDARDS

Sec.

171.201. Purpose and applicability.

171.202. General guidelines.

171.203. Form of records.

- 171.204. Related party transactions.
- 171.205. Exceptions to Generally Accepted Accounting Principles.
- 171.206. Administrative costs.
- 171.207. Payments in excess of expenditures.

**Authority**

The provisions of this Subchapter C issued under sections 1376(c.8), and 1376.1(f.5) of the Public School Code of 1949 (24 P. S. §§ 13-1376(c.8) and 1376.1 (f.5), unless otherwise noted.

**Source**

The provisions of this Subchapter C adopted April 7, 2006, effective April 8, 2006, 36 Pa.B. 1645, unless otherwise noted.

**§ 171.201. Purpose and applicability.**

(a) The purpose of these audit standards is to ensure that revenues provided by the Commonwealth for students whose placement in the approved private school has been approved by the Department have been spent on the provision of education services, including residential services in some cases, to children who are residents of this Commonwealth and who have been approved by the Department under § 171.16 (relating to assignment).

(b) These interim standards apply to audits conducted after July 1, 2005, and will apply until final standards are promulgated.

**§ 171.202. General guidelines.**

An approved private school shall maintain an accounting and bookkeeping system in accordance with the following standards:

- (1) Accounts shall be kept in accordance with Generally Accepted Accounting Principles (GAAP) as defined by the American Institute of Certified Public Accountants, except as modified by § 171.205 (relating to exceptions to Generally Accepted Accounting Principles).
- (2) Costs shall be properly assigned to a specific cost objective and indirect costs shall be allocated to direct costs. If multiple cost objectives are involved, financial information shall be segregated by cost objective in the bookkeeping records.
- (3) Bookkeeping records must include the following:
  - (i) Cash receipts journal.
  - (ii) Cash disbursements journal.
  - (iii) General ledger.
  - (iv) Payroll journal.
  - (v) Fixed asset and depreciation listings.
- (4) Adequate documentation to verify postings shall be maintained. The documentation must include the following:
  - (i) Purchase orders.
  - (ii) Customer invoices.



- (iii) Vendor invoices.
  - (iv) Cash remittance advices.
  - (v) Employee expense reports.
  - (vi) Employee time records.
- (5) A payroll shall be prepared and supported by appropriate documentation authorizing the rate of pay and employee time records, when necessary.
- (6) A school shall maintain all pertinent financial records, including cost allocation worksheets, for 3 years after submission of the audit report.
- (7) Schools shall submit audits to the Department by November 1 of each year.
- (8) School audits shall be conducted by an independent certified public accountant.

**§ 171.203. Form of records.**

The financial records that are required to be created and maintained under these standards may be in electronic form, rather than paper form.

**§ 171.204. Related party transactions.**

- (a) Related party transactions will be presented and disclosed in accordance with Generally Accepted Accounting Principles.
- (b) Related parties include the following:
  - (1) Affiliates of the enterprise.
  - (2) Entities for which investments are accounted for by the equity method by the enterprise.
  - (3) Trusts for the benefit of employees, such as pension and profit-sharing trusts that are managed by or under the trusteeship of management.
  - (4) Principal owners of the enterprise and its management.
  - (5) Members of the immediate families of principal owners of the enterprise and its management.
  - (6) Other parties with which the enterprise may deal if one party controls or can significantly influence the management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests.
- (c) Another party also is a related party if it can significantly influence the management or operating policies of the transacting parties or if it has an ownership interest in one of the transacting parties and can significantly influence the other to an extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests.

**§ 171.205. Exceptions to Generally Accepted Accounting Principles.**

The schedule of expenses prepared by the school shall be presented in accordance with Generally Accepted Accounting Principles, with the exception of the following, which will not be included:

- (1) Bad debts.
- (2) Unsubstantiated related party costs.
- (3) Cost of any individual insurance policies on the lives of officers, executives, administrators and other key staff.
- (4) Expenses paid with funding from another governmental entity, other than funding from the Department for approved students.
- (5) Fines, penalties, costs and damages assessed for failure to comply with Federal, State or local laws.
- (6) Costs related to meal service for staff members who are not involved in direct supervision of students.
- (7) Interest costs on loans from related parties at rates above the fair market rate available to the school.
- (8) Lobbying efforts to influence the outcome of any Federal, State or local election, referendum, initiative or similar activity, or to promote the introduction, enactment, or modification of any current or future Federal or State legislation.
- (9) Gains or losses on the sale of school assets.
- (10) Rental costs in a related party transaction that are found to be above the fair market rental value of the property.
- (11) Scholarships and discounts to students or their parents or other third parties.
- (12) Administrative costs, as defined in § 171.206 (relating to administrative costs), in excess of 10% of total costs.
- (13) Any money judgment, in excess of the deductible under an insurance policy, entered against the school or organization in administrative or court litigation and any settlement amounts, in excess of the deductible under an insurance policy, to avoid litigation.
- (14) Costs associated with medical personnel that are not related to the provision of a student's individualized education plan, except for costs related to a prudent level of oversight of students.

#### Cross References

This section cited in 22 Pa. Code § 171.202 (relating to general guidelines).

### § 171.206. Administrative costs.

- (a) Administrative costs are those costs that have been incurred for the operation of the executive and administrative offices of the organization and do not relate solely to any major function of the organization. This administrative expense category also includes its allocable share of fringe benefit costs, operation and maintenance expense, depreciation and use allowances and interest costs.
- (b) Costs or expenses related to the following functions are considered as administrative and are subject to the 10% administrative cap except when and to the extent that the costs or expenditures are incurred as a result of providing edu-

educational services to children who are residents of this Commonwealth and who have been approved by the Department through the PDE-4010 process. To the extent that the following costs are for educational services, they are not subject to the administrative cap and are reported in the schedule of operating expenses:

- (1) Activities of the board of directors.
- (2) Executive management.
- (3) Staff relations and labor negotiations.
- (4) Activities or programs operated to improve or sustain relations between the community and the school.
- (5) Activities concerned with the fiscal operations and purchasing activities of the school.
- (6) Printing, publishing and duplicating administrative publications such as annual reports, school directories and manuals.
- (7) Conducting and managing programs of planning, research development and evaluation for the school.
- (8) Activities concerned with writing, editing and other preparation necessary to disseminate educational and administrative information to students, staff, managers and the public through direct mailing, the various news media or personal contact.
- (9) Human resources activities, including recruiting, placement and staff transfers.
- (10) Activities concerned with preparing data for storage or storing and retrieving data for management reporting.
- (11) Activities concerned with acquiring, conducting and managing programs or planning, administration, implementation, coordination, reporting or evaluation of programs and projects that are State or Federally funded.
- (12) Activities designed to assist executive management with administrative functions so that they might accomplish the duties quickly and efficiently.

#### Cross References

This section cited in 22 Pa. Code § 171.205 (relating to exceptions to Generally Accepted Accounting Principles).

#### § 171.207. Payments in excess of expenditures.

- (a) If the amount of reportable costs in 2004-05 is less than the amount of revenues received by the schools for 2004-05 from the Commonwealth for the provision of educational services to children who have been approved through the PDE-4010 process, the difference may be retained by the school for use in 2005-06.
- (b) Beginning in 2005-06, if the amount of reportable costs in a year is less than the amount of revenues received in that year by the school from the Commonwealth for the provision of educational services to children who have been approved through the PDE-4010 process, the difference will be remitted to the

Commonwealth. Those funds shall be deposited in the Audit Resolution Fund for the resolution of previous audits.

[Next page is 181-1.]

171-20