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October 25, 2022

Special Education Private Schools in Massachusetts Receive a 14% Hike in Tuition Rates for FY24; Local Towns and Schools Districts Will Pay for the Increase.

FAQ

- **What is the most recent update about state approved private special education tuitions for FY24?**

  The Operational Services Division (OSD) of the Commonwealth of Massachusetts Executive Office for Administration and Finance has set a 14% inflation factor for M.G.L. approved private special education program tuitions for purchase by cities and towns, beginning July 1, 2023 (FY24).

- **What is the OSD and what authority do they have to set tuition rates?**

  The OSD is an executive branch agency of the Commonwealth of Massachusetts. The agency falls under the Executive Office for Administration and Finance, and has a variety of responsibilities, including setting tuition prices for more than 200 approved special education programs in approximately 100 private schools. These schools accommodate students with needs that cannot be met by their current school district. OSD also sets prices for services not included in tuition, such as one-to-one aides.

  The OSD is required by M.G.L. Chapter 7, Section 22N, to submit an "estimated rate of inflation for social service programs," including MGL Ch. 71B approved private school programs to the Secretary of the Executive Office for Administration and Finance by October 1st of each year for consideration in preparation of the Governor's annual budget recommendation.

  The OSD is also required by the above statute to notify Commonwealth Superintendents of this estimated rate of inflation for their use in planning for increases to Approved Private Special Education programs.

- **What is the OSD's recent determination?**

  The estimated rate of inflation for FY 2023/24 has been set at **14.0%,** and consists of two components: a 5.18% cost of living adjustment (COLA) and an 8.82% "Workforce Stability Factor."

- **What expenditures does the OSD rate increase apply to?**

  Per 808 CMB 1.06, the rate increase applies to MGL Ch. 71B approved private school programs in Massachusetts, as well as to private schools that are located outside of the Commonwealth in states where there is no established state rate or price setting mechanism. The OSD also sets prices for services not included in tuition, such as one-to-one aides.

- **Is the OSD's October 1 estimate final, or just preliminary?**

  This is unclear. The Governor's proposed FY24 budget must include an increase such as the one determined by OSD, but it is unclear if such a steep and unprecedented tuition hike will make it into the budget, especially during a transition year.

- **Doesn't the statute governing the work of the OSD include language that price increases must be fair to both the school district and the provider of services?**

  Absolutely. MGL Chapter 7, Section 22N states explicitly: "The bureau (OSD) shall have the responsibility for prescribing the methods to be used in determining the prices to be reimbursed to providers of special education programs by governmental units. The methods prescribed by the division in determining prices shall incorporate cost containment standards and shall be fair to both governmental units and providers."

  The OSD's determination is unfair and unreasonable.

- **What are the historical OSD increases for MGL Ch. 71B approved private school programs?**

  From FY'11 through FY'23, the average tuition increase was 1.87% with a low of 0.75% (FY'11) to a high of 2.72% (FY'21).

Historical OSD Inflation Figures

FY'11	0.75%
FY'12	1.69%
FY'13	2.13%
FY'14	1.80%
FY'15	1.53%
FY'16	1.40%
FY'17	1.83%
FY'18	1.15%

FY'19	2.33%
FY'20	1.63%
FY'21	2.72%
FY'22	2.26%
FY'23	2.54%
FY'24	14.00%*

*(5.18% COLA & 8.82% "Workforce Stability Factor")

- **What is the 'workforce stabilization factor?'**

  The "workforce stabilization factor," which is included in the OSD's FY24 rate calculation, is intended to mitigate a 'fiscal cliff' created by the cessation on 6/30/23 of supplemental funding provided to private schools in FY22 and FY23 to assist with recruitment, hiring and retention of qualified staff. This supplemental funding includes:

- FY22 EAASES Workforce Grants	$79,722,544
- FY22 EAASES II Workforce Grants	$20,000,000
- FY23 EAASES Workforce Grants	$136,550,720

  The FY23 EAASES Workforce Grants are described at the following link, which clarifies that "[a]pproximately $140M in state funding has been made available for this program based on a 14% increase in the OSD-approved price for students in each program…"

  https://www.doe.mass.edu/federalgrants/esser/eaases/.

- **What is the estimated total cost of the OSD rate increase, statewide?**

  A conservative estimate of the fiscal impact of the OSD calculation is a whopping $92,807,590.

  This amount represents 14% of FY21 school district expenditures on in-state private school tuitions (function code 9300), or $662,911,356 - the most recent data available from DESE. Of course, the actual cost to districts is likely to be higher, to account for three additional years of inflation (since FY21) and the fact that OSD rates apply not only to private school programs located within Mass (function code 9300), but to out of state schools (function code 9200) in states where there is no established state rate or price setting mechanism, and to the cost of services not included in tuition, such as one-to-one aides.

  The impact on each district will vary, but is expected to be a significant budgetary increase for all.

- **When does the OSD rate increase go into effect?**

  The 14% rate increase would go into effect for FY 2023/24, funded by local appropriations from cities and towns. If approved, school districts would need to obtain sufficient appropriation from their cities and towns to cover the 14% increase in FY24.

- **Will Circuit Breaker reimburse the cost of this increase in FY24?**

  No. The payments to private schools would not be reimbursed until FY25.

- **Is the current, statewide Circuit Breaker appropriation sufficient to cover the anticipated cost of the OSD increase in FY25?**

  No. It is highly unlikely that the current appropriation would be sufficient to cover the cost of the OSD increase, while holding districts harmless at the current reimbursement rate.

  For context, the current year state-wide appropriation for Circuit Breaker is $441,031,605. The $92.8 million estimated cost of the OSD rate increase represents a full 21% of the entire state-wide appropriation. Without significant additional state appropriation for this line item, the OSD increase would surely crowd out the reimbursement of existing instructional and/or transportation expenditures.

  In addition, nearly all of the Circuit Breaker appropriation is expended each year to reimburse instructional costs, tuition and transportation claims. In FY22, 99% of the statewide appropriation was spent on reimbursements to districts, compared to 94% in FY21 and 93% in FY20. At these expenditure levels, there is little to no surplus appropriation remaining to cover the increase.

  An extraordinary increase in the cost of tuition would certainly diminish the amount of money that each district receives, further diminishing its effect on mitigating the financial burden to each district.

- **Are the additional Circuit Breaker funds promised by SOA sufficient to offset the OSD increase?**

  Under the Student Opportunity Act (SOA), districts are expected to receive additional Circuit Breaker reimbursement to cover the cost of out-of-district transportation expenses, phased in as follows: 25% of FY21 claims (paid in FY22), 50% in FY22, 75% in FY23 and 100% in FY24.

  It is *possible* that the amount of additional reimbursement for out-of-district transportation will be adequate to reimburse districts for the OSD increase, once this reimbursement is fully phased-in. Based on FY22 Circuit Breaker reimbursement data provided by DESE, the imputed value of out-of-district transportation expenses claimed in FY21 was about $105 Million, which is roughly equivalent to the estimated cost of the OSD increase. (In FY22, DESE reimbursed 75% of eligible FY21 transportation claims totaling $26,221,3561. Since only 25% of total out-of-district transportation expenses were

eligible to be claimed for FY21, it follows that the total value of out-of-district transportation costs incurred in FY21 was approximately $105 Million.) If this experience is representative of future year claims, it is ***possible*** that the additional revenue provided by SOA will be adequate to reimburse districts for the OSD increase, once this reimbursement is fully phased-in.

However, re-allocating the SOA funds to support the OSD increase will have the effect of eliminating the forward progress made under the Act to reimburse districts for these transportation expenses. A recent report issued by State Auditor Suzanne M. Bump entitled "Fulfilling the Promise of Local Aid by Strengthening State-Local Partnerships," highlights pupil transportation as an under-funded service area, and calls for the state to continue to meet the financial commitments of SOA with respect to Circuit Breaker reimbursement for out-of-district transportation.

- **Can districts apply for Extraordinary "Pothole" Relief in FY24 to offset the impact of the OSD cost increase?**

  Maybe. Districts are eligible to request emergency 'pothole' relief in the current year, when claimable special education costs exceed 125% of the previous year's claimed costs. Unfortunately, the source of the pothole funding is the same statewide appropriation for Circuit Breaker, which will now be stretched even further, given the extraordinary OSD increase. In addition, districts will not qualify for extraordinary relief given the 14% OSD rate increase alone; other tuition increases would be necessary to meet the 125% eligibility threshold.

- **Are private special education schools offering signing bonuses?**

  Some are offering signing bonuses of up to $10,000 to recruit staff. Check out the Massachusetts Association of Approved Special Education Schools (MAAPS) website: https://maaps.org/jobs/. Most local districts simply do not have the financial resources to offer such bonuses and asking for a 14% rate hike to help support these kinds of recruitment strategies would be untenable. Additionally, school districts and private schools often compete for the same pool of qualified personnel, further complicating recruitment in public schools.

- **Is some additional level of funding appropriate for private special education schools?**

  Yes, it is fair and reasonable for OSD to propose a rate hike that may even go beyond what it has historically provided (i.e., an average 1.87% over the last 13 fiscal years), especially given inflationary and workforce pressures all schools, public and private, are facing.

  All schools are struggling to fill positions to serve special education students. It's an incredibly tight and unpredictable labor market, and it is reasonable to provide some increase to help obtain and retain qualified staff.

  But local school districts do not have the ability to impose a 8.82% "workforce stability" salary increase on the local community and taxpayers. OSD should consider a phased-in rate increase over the next several years as a way to help local districts plan for and anticipate fair, reasonable, and sustainable private special education tuition

increases that will not adversely impact educational programs and students, including in district special education students, in local districts.

- **What can we do to mitigate the impact of the OSD determination?**

  Cities and Towns should immediately advocate for:

  1. Fiscal relief in FY24, the year in which the OSD increase will take effect. This fiscal relief could take the form of additional, one-time state funds for districts that could offset the impact of this extraordinary increase on city and town budgets.

  2. A three-year, phased implementation of the workforce stability factor increase. A phased approach is needed to help school districts and private education schools achieve sustainable budget increases that will not adversely impact educational programs for students and staff.

  3. A significantly expanded Circuit Breaker appropriation at the state level. Significant additional funds will be needed to hold districts harmless at the current reimbursement rate, if the OSD's recommended increase goes into effect.

  4. The creation of a statewide Special Education Commission. The charge would be to look comprehensively at the fiscal sustainability of special education service delivery in Massachusetts, examine the underlying cause of increasingly complex student needs, and evaluate the adequacy of the underlying structure that supports these students in Massachusetts. The Commission also could make recommendations that inform practices and approaches going forward.

- **What are the next steps?**

  Each school district should:

  1. Use the template provided to calculate the estimated additional cost of the 14% OSD increase and estimate the impact of that increase on their FY24 budget.

  2. Make their School Committee, City or Town Boards, Finance Committees and local SEPACs aware of the OSD determination and its potential fiscal impact; share this FAQ document broadly.

  3. Quickly engage with their local legislator using the template letter, for the purpose of effecting meaningful change on the FY24 state budget.

  4. Contact the Commissioner of Education to describe how this extraordinary increase could adversely impact educational programs and students.