

**CHAPTER 67-23-02
STATE FUNDING FOR SPECIAL EDUCATION**

Section

- 67-23-02-01 ~~Definition~~ Definitions
- 67-23-02-02 ~~Costs State Funding for Educating Students with Disabilities or a Significant Medical Condition~~
- 67-23-02-03 ~~Conditions for Contracted Services for Students with Disabilities or a Significant Medical Condition~~
- 67-23-02-03.1 Building contracts for Students with Disabilities or a Significant Medical Condition
- 67-23-02-04 ~~Costs Allowed Under School-Placed or Agency-Placed Contracts for Students with Disabilities or a Significant Medical Condition Attending an In State Private or Public School or an Out of State Public or Private School~~
- 67-23-02-05 ~~Paraeducators Instructional Support Staff for Students with Disabilities or a Significant Medical Condition~~
- 67-23-02-06 ~~Special Education Boarding Care Placement and Reimbursement for Students with Disabilities or a Significant Medical Condition~~
- 67-23-02-07 ~~Costs Not Allowed Under School-Placed or Agency-Placed Contracts~~

67-23-02-01. ~~Definition~~ Definitions.

As used in this chapter:

1. "Contract for services" means a contract between the resident district and another school district or an organization outside the local education agency for services to a student with disabilities or a significant medical condition.
2. "Instructional Support Staff" may include paraprofessionals, speech-language pathology paraprofessionals, registered behavior technicians, and special education technicians.

History: Effective February 1, 2000; amended effective October 1, 2024.

General Authority: NDCC ~~45-59-05~~ 15.1-32.04; 15.1-32-09; 28-32-02

Law Implemented: NDCC ~~45-59-05~~ 15.1-32; 20 USC 1400-1419

67-23-02-02. ~~Costs State funding for educating students with disabilities or a significant medical condition.~~

The resident district must pay the cost of special education and related services required by law ~~for the student with disabilities.~~

History: Effective February 1, 2000; amended effective October 1, 2024.

General Authority: NDCC ~~45-59-05~~ 15.1-32.04; 15.1-32-09; 28-32-02

Law Implemented: NDCC ~~45-59~~ 15.1-32-14 ~~45-59-05~~; 20 USC 1400-1419

67-23-02-03. Conditions for contracted services for students with disabilities or a significant medical condition.

1. Excess Cost-School Placed

A resident district may enter into a contract for services for ~~students with disabilities~~ if all of the following requirements are met:

- a. The IEP or 504 team has developed an IEP educational plan and determined that the least restrictive environment for the education of the student with disabilities is not available in the neighborhood school of the resident district.
- b. Another setting is available for education in the least restrictive environment in another district or other setting in North Dakota or another state.
- c. The curriculum and educational services provided in the least restrictive setting are approved by the superintendent resident school district. The resident district, or the educating district in the event of open enrollment, must notify the superintendent in writing and submit the proper forms. The forms must be complete and include the proper signatures. Sections g and j of the student's current IEP must also be submitted to the department with the contract. of public instruction using the online application. The student's current educational plan must be submitted to the department with the contract if it is not in North Dakota's case management system.
- d. The school district making the education placement is able to assure the superintendent that alternative public school placements in the state were investigated and that the alternate setting selected is accredited, nonprofit, and nonsectarian and has proper facilities and services for the education of the student. Assurance is made by completing the contract form with required signatures.

2. Agency Placed, noneducation purposes according to NDCC 15.1-29-14

- a. A student's notification of financial responsibility, or notification of placement must be created:
 - a. By a qualifying State agency into a qualified childcare home, or a licensed residential program or;
 - b. By the Administrator of the licensed residential program if a parent or legal guardian voluntarily places with private funding.
- b. Notification of financial responsibility must be submitted at the time of initial placement and on September 15 of each year while the student meets the requirements of NDCC 15.1-29-14.
- c. A notification of financial responsibility or notification of placement determines financial responsibility and all charges are the responsibility of the district of residence.

~~Each resident district of a student with disabilities must:~~

- ~~a. Participate in development of the IEP planning for the student;~~
- ~~b. Evaluate the alternate program as defined in subdivision b of subsection 1 annually and establish an appropriate program for the student with disabilities within the resident district system whenever feasible;~~
- ~~c. Maintain a case file, including a progress and periodic evaluations of the student with disabilities;~~

- ~~d. Provide transportation and boarding care for the student; and~~
- ~~e. Share educational records with other school districts or residential facilities that provide educational services for the student with disabilities.~~
- ~~3. The school or facility providing the education to a student with disabilities must:~~
 - ~~a. Provide the education program as prescribed in the IEP developed by the multidisciplinary team including representation from the resident district;~~
 - ~~b. Report to parents at the same frequency as progress reports are provided for students who are not disabled attending the school during the school year;~~
 - ~~c. Report progress and summary evaluations to the resident district two times during the school year; and~~
 - ~~d. Share educational records with school districts or other residential facilities that provide educational services for the student with disabilities.~~
- ~~4. A school district may not enter into a contract with any in-state public school, in-state or out-of-state private nonsectarian, nonprofit corporation, or out-of-state public school for the education of any student because of a disability, unless the services provided by the school and the contract have been approved in advance by the superintendent. In order for a resident district to recover appropriate funds, the proposed contract forms must be filed with the department twenty working days in advance of the effective date of a new or changed placement. Preapproval may be set aside based on a waiver from the department.~~
- ~~5. A waiver request form, with reason for the waiver and projected submission date, is available from the department.~~
- ~~6. The administrator of the resident district of the student with disabilities must complete a contract for services using forms provided by the department to the administrator of the school providing the education to the student with disabilities.~~
- ~~7. The administrator of the school providing the education shall return the completed contract to the office of special education at the department.~~
- ~~8. The superintendent must notify each of the parties involved of approval or disapproval.~~
- ~~9. The resident district of the student with disabilities must make all payments to the school providing the education related, including special education related, service payments and boarding care payments, according to the period of time indicated in the contract.~~
- ~~10. The school providing the education for the student with disabilities shall arrange participation of the resident district in the IEP or other planning meetings and must maintain contact regarding the student's progress with the resident district and with the parents of the student with disabilities during the year.~~
- ~~11. The school providing the education for the student with disabilities shall keep and provide the resident district of the student with disabilities with attendance records for the student. In the event that the student attends the school operated by the school providing the education for a period less than a school year, the resident district of the student with disabilities will be liable for costs only for the period of time that the student was in attendance to the end of the month in which attendance ceases.~~

History: Effective February 1, 2000; amended effective October 1, 2024.

General Authority: NDCC ~~15-59-05~~ 15.1-32.04; 15.1-32-09; 28-32-02

Law Implemented: NDCC ~~15-59-05, 15-59-06, 15-59-07~~ 15.1-32-14, 15.1-32-15, 15.1-29-14; 20 USC 1400-1419

67-23-02-03.1. Building Contracts for students with disabilities or a significant medical condition.

1. Each school district making the school placement of a student with disabilities must:
 - a. Participate in development of the educational planning for the student;
 - b. Evaluate the alternate program as defined in subdivision b of subsection 1 annually and establish an appropriate program for the student with disabilities within the resident district system whenever feasible;
 - c. Maintain a case file, including a progress and periodic evaluations of the student with disabilities;
 - d. Provide transportation and when applicable boarding care for the student; and
 - e. Share educational records with other school districts or residential facilities that provide educational services.
2. The school or facility providing the education must:
 - a. Provide the education program as prescribed in the educational plan developed by the IEP or 504 team including representation from the resident district;
 - b. Report to parents at the same frequency as progress reports are provided for students attending the school during the school year;
 - c. Report progress and summary evaluations to the resident district two times during the school year;
 - d. Share educational records with school districts or other residential facilities that provide educational services for the student; and
 - e. Bill only for direct services in the student's educational plan provided by special education and related services providers.
3. The educating district must create an electronic contract with educational costs using the online application. Out-of-state contracts and costs can be created with the assistance of the superintendent of public instruction.
4. Submission of the contract is initiated by the educating district, followed by approval from the resident district and the superintendent of public instruction. Emails will be generated with approval and/or rejections to the serving district, the resident district, and the superintendent of public instruction.
5. The resident district must make all payments to the school providing the education-related service payments and boarding care payments, according to the period of service indicated in the contract.
6. The school providing the education shall arrange participation of the resident district in the IEP or 504 or other planning meetings and must maintain contact regarding the student's progress with the resident district and with the parents of the student during the year.

History: Effective October 1, 2024.

General Authority: 15.1-32.04; 15.1-32-09; 28-32-02

Law Implemented: 15.1-32-14,15.1-32-15, 15.1-29-14,15.1-32-16; 20 USC 1400-1419

67-23-02-04. Costs allowed under school-placed or agency-placed contracts for students with disabilities or a significant medical condition attending an in-state private or public school or an out-of-state public or private school.

1. Costs allowed under school-placed or agency-placed contracts for students with disabilities or a significant medical condition partially reimbursable from state special education funds include:

a. Boarding care costs, including:

- (1) Room costs;
- (2) Nursing service (unless billed directly to the student);
- (3) Child care;
- (4) Central services and supply;
- (5) Dietary services;
- (6) Plant operation;
- (7) Building maintenance and grounds;
- (8) Housekeeping;
- (9) Laundry and linen;
- (10) Depreciation; and
- (11) Insurance.

b. Education, including:

- ~~(1) Salaries salaries and employee benefits, which include teacher, principal, and superintendent coordinator, instructional aide/general education paraprofessional;~~
- ~~(2) Supplies; and~~
- ~~(3) Local school board costs.~~

c. Related services, including:

- (1) Speech therapy;
- (2) Physical therapy; ~~and~~
- (3) Occupational therapy; ~~and~~
- (4) Any other service required to assist a child with a disability designed to meet their individual needs.

d. Administrative, salaries and benefits for:

- (1) Special education director,

- (2) Special education assistant director; and
- (3) Other special education central office staff.

History: Effective February 1, 2000; amended effective October 1, 2024.

General Authority: NDCC ~~15-59-05~~ 15.1-32.04; 15.1-32-09; 28-32-02

Law Implemented: NDCC ~~15-59-05, 15-59-06, 15-59-07~~ 15.1-32-14, 15.1-32-15, 15.1-29-14, 15.1-32-19; 20 USC 1400-1419

67-23-05. Paraeducators Instructional support staff for students with disabilities or a significant medical condition.

The full cost of ~~a one-on-one paraeducator or aide~~ an instructional support staff can be claimed as an allowable cost under a school-placed and agency-placed contracts as defined in the educational plan contract if the ~~paraeducator is with the student with disabilities exclusively throughout a schoolday.~~ If a paraeducator has other duties, then the percentage of time and cost on the contract needs to be adjusted accordingly. The requirements and standards for a paraeducator are specified in chapter 67-11-14.

History: Effective February 1, 2000; amended effective October 1, 2024.

General Authority: NDCC ~~15-59-05~~ 15.1-32.04; 15.1-32-09; 28-32-02

Law Implemented: NDCC ~~15-59-05, 15-59-06, 15-59-07~~ 15.1-32-14, 15.1-32-15, 15.1-29-14; 20 USC 1400-1419

67-23-02-06. Special education boarding care placement and reimbursement for students with disabilities or a significant medical condition.

Educational boarding care placement for a student ~~with disabilities~~ may be accomplished only through the recommendation of the IEP or 504 team ~~and in the circumstance when a student cannot be transported daily to and from the home due to distance traveled.~~ Boarding care placement must be in a state-registered home or institution. ~~Boarding care for a child may occur in state but out of unit, within unit but out of district, or out of state.~~ Reimbursement is requested by the resident district through the local education agency for eighty percent of the cost of boarding care for the student. ~~The cost reimbursement may be applied for using a form available from the department.~~

History: Effective February 1, 2000; amended effective October 1, 2024.

General Authority: NDCC ~~15-59-05~~ 15.1-32.04; 15.1-32-09; 28-32-02

Law Implemented: NDCC ~~15-59-05, 15-59-07.2, 15-59.3-03~~ 15.1-32-14, 15.1-32-15, 15.1-29-14, 15.1-32-19; 20 USC 1400-1419

67-23-02-07. Costs not allowed under school-placed and agency-placed contracts.

Costs not allowed ~~under school-placed contracts for students with disabilities~~ are:

1. Medical services provided by a physician beyond diagnostic procedures;
2. Drugs and medication;
3. Incidental fees or personal equipment that are the responsibility of the parents of the students such as eyeglasses, a prosthesis, ~~textbook deposits~~, entertainment, or driver's education fees; and
4. Staff expenses including staff:
 - a. Travel; and
 - ~~b.~~ Education and training;
 - ~~c.~~ Libraries; and
 - ~~d.~~ Audiovisual supplies.

History: Effective February 1, 2000; amended effective October 1, 2024.

General Authority: NDCC ~~15-59-05~~ 15.1-32.04; 15.1-32-09; 28-32-02

Law Implemented: NDCC ~~15-59-02.1, 15-59-05, 15-59-06, 15-59-07~~ 15.1-32-14, 15.1-32-15, 15.1-29-14, 15.1-32-19; 20 USC 1400-1419