



STATE OF SOUTH CAROLINA DEPARTMENT OF EDUCATION

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Superintendent

1429 Senate Street
Columbia, South Carolina 29201

MEMORANDUM

TO: District Special Education Directors and Coordinators

FROM: John R. Payne, Director
Office of Special Education Services

DATE: July 10, 2014

RE: Proviso 1.80 of the 2014–15 Appropriations Act

This memorandum provides updated guidance and information regarding Proviso 1.80, which pertains to educational credits for exceptional needs children. As you know, this language first appeared in the 2013–14 South Carolina Appropriations Act (i.e., the state budget), as Proviso 1.85. It has since been revised and renumbered as Proviso 1.80 for the 2014–15 Appropriations Act.

The most significant change to this current year's proviso is relative to the definition of an exceptional needs child (or a child who would qualify for educational credits to attend an independent school). The language of the current proviso, with the new, expanded definition underlined, reads,

An 'exceptional needs' child is defined as a child:

(C)(1)(a) who has been evaluated in accordance with South Carolina's evaluation criteria, as set forth in S.C. Code Ann. Regs. 43-243.1, and determined eligible as a child with a disability who needs special education and related services, in accordance with the requirements of Section 300.8 of the Individuals with Disabilities Education Act; or

(b) who has been diagnosed within the last three years by a licensed speech-language pathologist, psychiatrist, or medical, mental health, psycho-educational, or other comparable licensed healthcare provider as having a neurodevelopmental disorder; a substantial sensory or physical impairment (such as deaf, blind, or orthopedic disability); or some other disability or acute or chronic condition that significantly impedes the student's ability to learn and succeed in school without specialized instructional and associated supports and services tailored to the child's unique needs; and

(2) the child's parents or legal guardian believes that the services provided by the school district of legal residence do not sufficiently meet the needs of the child.

Section (C)(1)(a) of the proviso addresses children evaluated and determined eligible for special education and related services in accordance with State Board of Education (SBE) Regulation [43-243.1](#) and the Individuals with Disabilities Education Act, 2004 (IDEA). Section (C)(1)(b) was added as it was the intent of the General Assembly to expand the definition of exceptional needs children to include children not evaluated in accordance with SBE Regulation 43-243.1 and determined eligible under the IDEA; whose parents did not want to have their children evaluated to determine eligibility under the IDEA; or children who have not been evaluated to determine eligibility under the IDEA, but whose parents have extensive documentation with diagnoses of disabilities or conditions that significantly impedes those children's ability to learn and succeed in school.

To that end, please note that the revised definition in Section (C)(1)(b) is not to be misconstrued as qualifying for special education and related services unless a child has been evaluated according to the IDEA regulations at 34 C.F.R. §§ 300.300 through 300.3011 and found eligible in one of the categories outlined in SBE Regulation 43-243.1 and 34 C.F.R. § 300.8. Section (C)(1)(b) relates to a health, medical, psychological, and psychiatric diagnoses; whereas Section (C)(1)(a) relates to educational determinations.

Second, please be reminded of your district's obligation to locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary, and secondary schools located within your jurisdiction (34 C.F.R. § 300.131). Third, your district should be prepared to make available a free appropriate public education should the child's parents choose to enroll the child in public school (71 Federal Register 46,593 (2006)).

Please note that in accordance with Proviso 1.80, the South Carolina Department of Education (except as noted in part (C)(1)(a) of the Proviso) may not regulate the educational program of an independent school. The South Carolina Education Oversight Committee (EOC), with support from the South Carolina Department of Revenue, maintains responsibility for "promulgating regulations further enumerating the specifics" of Proviso criteria.

For the full reading of Proviso 1.80, please visit [here](#); or visit <http://www.scstatehouse.gov/> and under Quick Search select the radio button that reads, "Budget," input 1.80 into the quick search field and press enter. Finally, for information from the EOC, please visit [here](#); or visit <http://www.eoc.sc.gov> and select "Educational Credit for Exceptional Needs Children" located on the right panel.

Also, please note that in Summer 2013, a Fact Sheet was distributed by the Office of Exceptional Children. That fact sheet is now voided, as it applied to the previous year's Proviso.

If you have any questions, please call (803) 734-8224.