

Halina Rechul

Ph.D, State Higher Vocational School in Nowy Sącz

Bartłomiej Wrona

Ph.D., University of Economics in Kraków

Subsidies for performing education tasks granted by territorial self-government units to non-public sector entities

Дочерние предприятия для выполнения задач образования, предоставляемые территориальными самоуправляющимися единицами в неправительственных секторах

Summary

Territorial self-government units, in accordance with the provisions of the Act on Education System, are obliged to transfer to education units run by legal and individual persons, subsidies for financing the tasks they perform concerning education, upbringing and taking care. The aim of this paper is to present the rules governing the granting of education subsidies to entities from outside the public sector by territorial self-government units. The system of financing education evolves, therefore the authors presented the regulation governing education subsidies valid until 2016 as well as the new ones, put into effect on 1st January 2017. The paper also presents the results of authors' own research into the level of subsidies granted by territorial self-government units to entities from outside the public sector.

Keywords: self-government unit, subsidies, non-public sector entities.

Резюме

Территориальные органы самоуправления, в соответствии с положениями Закона об образовании, обязаны переводить в образовательные единицы, принадлежащие юридическим и физическим лицам, субсидии для финансирования задач, которые они выполняют в отношении образования, воспитания и ухода. Целью настоящего документа является представление правил, регулирующих предоставление субсидий на образование предприятиям за пределами государственного сектора органами территориального самоуправления. Система финансирования образования развивается, поэтому авторы представили положение, регулирующее субсидии на образование, действующие до 2016 года, а также новые, введенные в действие 1 января 2017 года. В статье также представлены результаты собственных исследований авторов уровня субсидий, предоставляемых территориальными единицами самоуправления органам за пределами государственного сектора.

Ключевые слова: единица самообеспечения, субсидии, организации, не являющиеся государственным сектором.

Introduction

Poland has a developed system of public finance responsible for performing a number of tasks, including education ones.

Territorial self-government units, in accordance with the provisions of the Act on Education System, are obliged to transfer to education units run by legal and individual persons, subsidies for financing the tasks they perform concerning education, upbringing and taking care. The principles of financing schools and centers, both public and non-public ones which have the same powers as public schools and which are run by entities which are not territorial self-government units have been determined in the following legislature: the Act on Education System from 1991¹, the Act on Public Finance from 2009², as well as regulations of the Minister of National Education concerning the method of dividing part of the general education subvention for territorial self-government units.

The following public and non-public institutions subsidized from the commune or district budget are also entitled to receive education subsidies³:

- kindergartens, including special kindergartens,
- other forms of pre-school upbringing,
- primary schools with kindergarten divisions,
- special primary schools with kindergarten divisions,
- schools in which the school obligation or the education obligation is fulfilled,
- schools in which the school obligation or the education obligation is not fulfilled,
- education centers which are: youth upbringing centers, socio-therapy centers, special school and upbringing centers and centers enabling mentally handicapped children and youth to fulfill their school and education obligation,
- boarding schools.

Education subsidies are also transferred from the province self-government budget to the following institutions of regional significance: public special primary schools, public special schools in which the school or education obligation is fulfilled. Finally, public and non-public art schools are subsidized from the state budget.

In case of public schools and centers and non-public schools and centers with public school rights, the provisions of the Act on Education System imposed an obligation of subsidizing them by territorial self-government units. On the other hand, in case of non-public schools which do not have the rights of public schools, a territorial self-government unit may subsidize them, however,

¹ The Act of 7th September 1991 on Education System (Journal of Laws from 2016, item 1943).

² The Act of 27th August 2009 on Public Finance (Journal of Laws from 2013, item 885 as amended).

³ *Niepubliczne jednostki oświatowe. Organizacja, finanse i kadry*, Praca zbiorowa, Wydawnictwo C.H. Beck, Warszawa 2012, p. 182.

the decision on whether the subsidy should be granted rests exclusively with the decision-making organ of the unit.

1. Subsidies in the public finance system

Subsidies were defined as the funds that require special accounting principles, coming from state budget, territorial self-government unit budget or from state special purpose funds, allocated on the basis of this Act, separate acts or international agreements, for financing or co-financing the performance of public tasks. Thus the legal foundation for granting the subsidy from the state budget or the budget of a territorial self-government unit must always be a provision included in the act or international agreement. The Act on Public Finance introduces the division of subsidies into: purpose subsidy, object subsidy and subject subsidy⁴.

Special purpose subsidy is always used to finance expenses defined in the law (specific expenses). Therefore the beneficiary is obliged to settle the special purpose subsidy not only by demonstrating the proof of the expenses incurred by the organ by also by proving that the goal for which the subsidy was granted has been accomplished. Special purpose subsidies, contrary to other subsidies, must be settled both in their financial and content aspects. Object subsidies have been constructed so as to improve the recipient's access to a particular product or service. Thanks to them the product recipient or the service user does not have to bear the full costs or is exempted from them. The object subsidy is determined using the unit rates and is settled by providing the proof of producing a unit product or service and incurring associated costs which the beneficiary is reimbursed for with such subsidy. A special type of subsidies are subject subsidies, which have neither features of special purpose subsidy nor object subsidy. The source legislature defines only the beneficiary receiving such subsidy, that is the type of current activity which can be financed with this subsidy. Thus the beneficiary accounts for the use of the subject subsidy by presenting expenditure on running costs⁵.

The subject literature also emphasizes the division of subsidies into:

- general and special purpose subsidies,
- object and subject subsidies,
- discretionary and non-discretionary subsidies.

The division into general and special purpose subsidies is made taking into account whether the beneficiary has to incur specified expenses using the funds they received or not. If the special purpose subsidy is not used for the tasks related to its purpose, the beneficiary is obliged to return the subsidy which was not

⁴ Article 126 of the Act of 27th August 2009 on Public Finance (Journal of Laws from 2013, item 885, as amended).

⁵ Lachiewicz W., Ciszewski P. (editors), *Dotacje oświatowe. Udzielanie, rozliczanie, kontrola wykorzystania*, Wydawnictwo C.H. Beck, Warszawa 2013, p. 4.

used. The division of subsidies into subject and object ones concerns the features determining a particular subsidy. Subject subsidies relate to a specific feature of the subject, whereas object subsidies are concerned with a specific activity of the beneficiary.

As emphasized by W. Lachiewicz and P. Ciszewski, education subsidies “are subject subsidies, whereas taking into account the dichotomy criteria – they are both special purpose and subject ones”. The authors also point out that the concept of “special purpose subsidy” does not fully match special purpose subsidies as construed from the Act on Public Finance⁶.

2. The evolution of regulations governing education subsidies until 2016

The evolution of regulations governing education subsidies dates back to the 1990s. The education subsidies granted from the commune budget as well as subsidies granted from the state budget were to be accounted for with expenses on didactic or care and upbringing activities of the subsidized kindergarten, school or center. The period of the 1990s was characterized by the fact that all matters concerning the education subsidies were regulated by resolutions of commune councils. Such resolutions constituted all regulations governing the calculation of the amount of subsidies and the way of transferring them and accounting for them. Since 1999 the subsidy base has also included current or running (planned) expenditure calculated per pupils of self-government kindergartens, schools or centers. A dilemma appeared then, concerning how to understand the concept of “running expenses” for the financing of which a subject subsidy was granted. At that time monthly information on the number of pupils was necessary to determine the amount of due subsidy. Such information was also treated as the settlement of the subsidy, neglecting the potential claims the territorial self-government unit could make that the unused subsidy be returned to its budget.

In 2001–2007 many changes were introduced in the provisions regulating the way education subsidies are granted and accounted for. The foundation of subsidies for non-public schools, until then dependent on running expenses, were replaced with values related to the amount of education subvention received by the territorial self-government unit per one pupil in a school of the same type and kind as the subsidized school. At that time also some norms were implemented stipulating the obligation to return the subsidy to the state budget or the territorial self-government unit budget. This obligation concerned the subsidy which was not used or which was used contrary to its purpose.

⁶ Ibidem, p. 9.

By amending the Act on Education System from 2009 it was decided that education subsidies for public and non-public units are dedicated to running expenses of the school, kindergarten or center concerning education, upbringing or taking care, including social prophylaxis. Such intended use of the education subsidy practically did not differ from the provisions of the Act on Education System from the 1990s. Within the above-mentioned amendment local governments were also provided with the possibility of controlling beneficiaries as to how they use the education subsidy granted to them.

The amendment to the Act on Education System from 2013 also brought some changes to the purpose and use of the funds from the education subsidy by the beneficiary.⁷ The new regulations refer to the concept of “tangible assets” and “investment” as construed in the Act on Accounting, listing the types of tangible assets whose financing from the education subsidy can be included in the current activity. The implemented changes also concern the principles of transferring the education subsidy⁸.

The subsidies mentioned in Articles 80 and 90 of the Act on Education System are allocated for financing the accomplishment of tasks that schools, kindergartens and centers have in education, upbringing and care, including social prophylaxis. The replaced provisions of the Act on Education System determined that subsidies could only be used to cover the running expenses of the school or center. In their judgments, administrative courts emphasized that the role of a subsidy granted from the budget of a territorial self-government unit is not to subsidize all kinds of activities conducted by the school or to cover all its expenses⁹.

Due to some doubts that appeared as to the type of expenditure that can be considered running expenses, on 1st January 2014 an amendment of legal regulations was introduced, consisting in defining such expenses. The Act indicates that subsidies can only and exclusively be used to:

- cover the running expenses of schools and centers, covering each expense incurred for the goals of the school or center activities, including remuneration of an individual managing the school or center if they are school or center principals, excluding expenses on investments and investment purchases, purchasing and taking over shares or contributing shares to commercial law partnerships;
- purchase of tangible assets and intangible assets covering: books and other library collections, didactic aids supporting the didactic and upbringing process, recreation and sports equipment, furniture and other tangible assets and

⁷ The Act of 13th June 2013 Amending the Act on Education System and Some Other Acts (Journal of Laws 2013, item 827).

⁸ W. Lachiewicz, P. Ciszewski (editors), *Dotacje oświatowe...*, op. cit., pp. 7–27.

⁹ The judgment of the Province Administrative Court in Kraków from 22nd January 2015, I SA/Kr 1799/14.

intangible assets whose value does not exceed the amount specified in the provisions on corporate income tax, and for which the depreciation write-offs are considered costs of obtaining revenue in 100% of their value, at the moment of giving them for use¹⁰.

The subsidies granted from the budget of the territorial self-government unit are annual. This means that their part which has not been used by the end of the budget year must be returned to the budget of this unit by 31st January next year. Subsidies granted from the budget of the territorial self-government unit and used contrary to their purpose or in excess amount must be returned to the budget along with interests within 15 days from finding such irregularities¹¹.

Subsidies are transferred in 12 installments by the last day of the month, to the bank account of the school or center. As a result of the amendment to the Act, since 1st January 2014 the December part is transferred by the 15th December. Previously the part of subsidy for December could be transferred by the territorial self-government unit to the bank account of the school or center even on the last day of December, which made it practically impossible to spend the funds from the subsidy before the end of the budget year¹². However, the provisions obliging the authorities to pay the part of subsidy for December by 15th December, in a situation when the final amount of expenditure in the budget of the territorial self-government unit, constituting the basis for calculating the subsidy, is known only on 31st December, cause various interpretation problems¹³.

The Act on Education System emphasizes that subsidies are received by non-self-government kindergartens and schools, and not by persons managing these organizational units. However, the lack of full, organizational independence (especially the status of a legal person) suffered by private schools and centers accounts for the fact that it is the person managing them that decides on their vital matters and bears the responsibility for the economic aspects of their operations. Therefore we can assume that the person managing them is the beneficiary and the party in the legal and financial relation¹⁴.

¹⁰ Article 80 of the Act of 7th September 1991 on Education System (Journal of Laws from 2004, No 256, item 2572, as amended).

¹¹ The judgment of the Province Administrative Court in Kielce from 7th March 2012, II SA/Ke 45/12.

¹² The judgment of the Province Administrative Court in Gdańsk from 27th October 2010, I SA/Gd 892/10; The judgment of Province Administrative Court in Kielce from 10th March 2009, II SA/Ke 30/09.

¹³ Granting subsidies from budgets of territorial self-government units to education units for which the leading organs are entities other than territorial self-government units. Regional Accounting Chamber in Lublin, Lublin 2014, p. 48.

¹⁴ A. Jeżowski, *Finansowanie publiczne oświaty niepublicznej*, ABC a Wolters Kluwer business, Warszawa 2014, p. 148.

Article 80 of the Act on Education System stipulates that a subsidy is granted on the basis of a submitted application. The provisions oblige the constituting organ of a relevant territorial self-government unit to include in the resolution on the rules of subsidizing “the scope of information that should be included in the petition for granting a subsidy”. Due to the fact that the provisions of the Act do not mention the date for submitting an application, it is impossible to reject a subsidy on the grounds of failing to meet the deadline for submitting an application. The Act does not regulate, either, who should put forward the application for granting a subsidy, this entity may be indicated in the resolution of the constituting organ of the territorial self-government unit.

Schools and kindergartens – both public and non-public – run by entities other than territorial self-government units, receive subsidies from the budget of the self-government unit on principles determined respectively in Articles 80 and 90 of the Act on Education System. Depending on the type of kindergarten center – the Act differently determines the basis for calculating the amount of subsidy granted by the commune.

By the end of 2016 the provisions of the Act on Education System stipulated that public kindergartens run by entities other than commune, receive for each pupil a subsidy from the commune budget “equaling the running expenses allocated per one pupil in public kindergartens run by the commune”, decreased by the fees for using the kindergarten upbringing and catering, constituting the income of the commune budget. On the other hand, a person running the kindergarten upbringing in another public form of kindergarten upbringing receives a subsidy per each pupil from the commune budget “in the amount not lower than 50% of running expenses allocated for one pupil in a public kindergarten run by the commune”, decreased by the fees for using the kindergarten upbringing and catering, constituting the income of the commune budget. Public kindergartens which do not belong to self-government are not obliged to report information on the planned number of pupils in order to receive the subsidy, however, this obligation concerns subsidies for children covered with early development support.

Subsidies for non-public kindergartens, on the other hand, according to the provisions of the Act before the 2016 amendment were granted for every pupil “in the amount not lower than 75% of running expenses incurred in public kindergartens per one pupil, decreased by the above-mentioned fees, as determined in the budget of a given commune”. The person running other forms of preschool education received a subsidy from the commune budget for every pupil covered with this form of preschool education “in the amount not lower than 40% of running expenses per one pupil incurred in public kindergartens run by the com-

mune” decreased by the fees for using the kindergarten education and catering, which constitute the source of income for the commune¹⁵.

A subsidy for a disabled pupil was specified differently. In all the above-mentioned cases the subsidy for a disabled pupil cannot be lower than the amount allocated for one disabled pupil in the kindergarten or kindergarten unit in the education part of the general subvention received by the commune. As for the pupils covered with early development support, the same subsidy basis was determined. It should be emphasized that disabled pupils and pupils covered with early development support who attend kindergartens, including non-public kindergartens, are included in the education subvention received by communes from the state budget.

In case there is no kindergarten run by the commune, the level of subsidy is determined by referring to running expenses incurred by the neighboring commune which has public kindergartens. Therefore it is necessary to make a specific choice of one commune. The “nearest” term was not specified by the Act before its amendment in 2016, which could imply that it was the commune council, which provides relevant provisions of local law, that was entitled to specify this concept¹⁶.

It should be emphasized, however, that in 2013 and 2014 the Act on Education System was amended, inter alia, by the Act of 13th June 2013 on Amending the Act on Education System and Some Other Acts¹⁷. The amendment mostly covered kindergartens, introducing the principle of decreasing the running expenses which constituted the basis for calculating subsidies for public and non-public kindergartens, by fees for using the kindergarten education and for catering, which constituted the source of commune income. The main goal of the amendment, however, was to remove the barriers in access to preschool education. To achieve this, the special purpose subsidy was introduced for communes for increasing the number of places and improving conditions of preschool education. The amendments concerning the calculation of the subsidy became valid on 1st September 2013.

Until the end of 2016 the provisions of the Act on Education System stipulated that public schools receive a subsidy for each pupil from the budget of the territorial self-government unit obliged to run appropriate types and kinds of schools in the amount equal to the running expenses allocated for one pupil in schools of the same type and kind run by this territorial self-government unit, not lower, however, than the amount allocated for one pupil of a school of particular type and kind in the education part of the general subvention for territorial self-government

¹⁵ A. Ostrowska, *Nowy wymiar dotowania opieki przedszkolnej – wnioski z reformy i postulaty 'de lege ferenda'*, „Finanse Komunalne”, Miesięcznik Regionalnych Izb Obrachunkowych, No 11/2014, Wolters Kluwer, Warszawa 2014, p. 21.

¹⁶ A. Jeżowski, *Finansowanie publiczne...*, op. cit., p. 149.

¹⁷ The Act of 13th June 2013 on Amending the Act on Education System and Some Other Acts (Journal of Laws from 2013, item 827).

units. The amount of a subsidy for a public school run by an individual or a legal entity which was not a self-government unit thus should be calculated on the basis of funds allocated for running schools of the same type and kind in the budget of a given self-government unit for a given year. In this sense the running expenses should also be current, not historical. Only when there are no schools of the same type and kind in a given self-government unit, can a subsidy be granted in the amount transferred to self-government from state budget within the education part of the general subvention¹⁸. Public schools and kindergartens which do not belong to self-government, are not obliged to submit information on the planned number of pupils in order to receive a subsidy, except for the subsidy for pupils covered with early development support.

The provisions of the Act valid until the end of 2016 specified that the subsidies for non-public schools with the qualifications of public schools, in which school obligation or education obligation is fulfilled, are granted for each pupil in the amount not lower than the amount allocated for one pupil of a particular type and kind of school in the education part of the general subvention received by the territorial self-government unit, on condition that the person running the school provides the authority relevant for granting the subsidy with the planned number of pupils not later than on 30th September of the year preceding the granting of the subsidy. The requirement voiced in Article 90 of the Act on Education System, forcing persons running schools to submit to the authority relevant for granting the subsidy, before 30th September of the previous year, the information on the planned number of pupils, allows territorial self-government units to allocate funds in their budgets. Non-public schools without the qualifications of public schools may receive subsidies from the district budget.

Schools and kindergartens – both public and non-public – run by entities other than territorial self-government units, receive from the budget of these units subsidies on principles specified in the Act on Education System. The rules of calculating the subsidies for particular kindergartens, other forms of preschool education, schools and centers were far from uniform in the Act. The foundations for calculating the subsidies depending on the type of an education unit before 1st January 2017 are presented in Table 1 below.

¹⁸ A. Jeżowski, *Finansowanie publiczne...*, op. cit., p. 150.

Table 1. The basis for calculating the subsidy depending on the type of education unit used before 1st January 2017

Type of education unit	The basis for calculating the subsidy
Public education units	With reference to pupils without disabilities, subsidies are calculated on the basis of running expenses allocated in the same type and kind of self-government education units (except for subsidies for other preschool forms). If there are no public schools and units of the same type and kind in the commune or district, the basis for subsidizing is the education part of the general subvention for territorial self-government units. If there are no commune kindergartens, the basis for determining the amount of subsidy for kindergartens is the running expenses incurred by the nearest commune for running a public kindergarten.
Non-public kindergartens	The subsidy is calculated on the basis of running expenses determined in the commune budget and incurred by public kindergartens. On one hand this means planned expenses, defined in the budget, but on the other hand, the expenses actually incurred or made in commune kindergartens. In practice, these are two different figures.
Non-public preschool forms	The subsidy for non-public preschool forms is based on expenses incurred for one pupil in public kindergarten. In case the commune does not have its own kindergarten, the subsidy is based on running expenses incurred by the nearest commune for running a public kindergarten.
Non-public schools with qualifications of public schools	Subsidies for non-public schools with qualifications of public schools, in which the school obligation or the education obligation is fulfilled, and for non-public centers, is calculated on the basis of the general education subvention received by local authorities.
Non-public post-junior high schools	Subsidies for non-public post-junior high schools, which do not fulfill the education obligation, are calculated taking into account the running expenses determined in commune or district budget, incurred by self-government schools of this type and kind – subvention does not apply here. In the event when the territorial self-government unit does not run a school of such type and kind, the basis for calculating the subsidy should include running expenses incurred by the nearest commune or district for running a public school of the same type and kind.
Student of qualification vocational course and pupil covered with early development support	Subsidy for a student of a qualification vocational course and a pupil covered with early development support is calculated on the basis of general subvention allocated for territorial self-government unit.

Source: own work on the basis of: W. Lachiewicz, P. Ciszewski (editors), *Dotacje oświatowe...* op. cit., pp. 162–164.

The provisions of the Act on Education System, before its amendment from 2016, stipulated that the subsidy for schools and kindergartens should be determined on the basis of:

- running expenses in kindergartens and schools run by the territorial self-government unit, or

- the amounts allocated for one pupil in the education part of general subvention (or, as worded in the Act before 2012 – territorial self-government units¹⁹).

In the situation where the provisions of the Act determine the subsidy on the basis of subvention, the subsidy is calculated by first determining the total amount of education subvention for pupils in a school of a given type and kind and then dividing this amount by the number of pupils. The amount of subvention per one pupil is then multiplied by the number of pupils in the subsidized unit. In addition, in the construction of some subsidy calculation foundations, certain multipliers (rates) are included, by which the amount of subvention is multiplied.

Another way of calculating the subsidy per one pupil can be found in solutions which determine the amount of subsidy on the basis of the level of self-government expenditure on its own education units of the same type and kind as the subsidized entity. It should be emphasized, though, that the level of running expenses cannot be determined on the basis of historical data – from the previous budget year. The reference point should be the current level of financing these expenses in schools and kindergartens run by the territorial self-government unit in a given year. The aim of the Act on Education System is to equal the financing from budget funds for analogous schools and kindergartens (public and non-public) and this goal would not be reached if the subsidies were determined on the basis of last year's expenditure²⁰.

Before the Act on Education System was amended in 2016, the provisions did not specify whether the planned or executed expenses should be taken into account. The Act used the terms of anticipated and incurred expenses, which, due to ambiguous wording, can be interpreted as: *anticipated running expenses...* as planned (for calculating the subsidies for public kindergartens and schools based on running expenses of territorial self-government unit), whereas *running expenses determined in the budget, incurred...* - as expenses executed (for calculating subsidies for public kindergartens on the basis of the expenses of the nearest commune and non-public kindergartens – on the basis of a given commune expenses). The lack of cohesion in the provisions could lead to various interpretations made by territorial self-government units as well as accounting chambers and administrative courts²¹.

¹⁹ Before the amended regulation became valid, some provisions of the Act on Education System related the amount of subsidy for children to the amount allocated in the education part of general subvention for territorial self-government units, in line with the grammatical interpretation – without the correction indicator Di.

²⁰ *Udzielanie dotacji z budżetów jednostek samorządu terytorialnego...*, op. cit., p. 19.
The judgment of the Supreme Administrative Court from 17th January 2008, II GSK 319/07.

²¹ *Udzielanie dotacji z budżetów jednostek samorządu terytorialnego...*, op. cit., p. 20.

3. Changes in the rules governing education subsidies introduced on 1st January 2017

The new regulations, which became valid on 1st January 2017, were introduced in the Act of 23rd June 2016 on Amending the Act on Education System and Some Other Acts²². The amendment was aimed at specifying and straightening the provisions regulating also the area of education subsidies.

When analyzing the regulations on calculating and granting subsidies, we often encounter the concept of “the nearest” commune, district or province. The legal provisions so far have not defined this concept, which gave rise to many doubts. On 1st January 2017 some provisions of the Act on Education System were implemented, defining this ambiguous concept. The method of determining the nearest commune first of all refers to the neighboring communes, pointing at one with the closest indicators of tax income per one inhabitant. If no neighboring commune of the same type as the subsidizing commune runs a particular type of school or kindergarten, the nearest commune shall be the commune with the most similar indicator of tax income per inhabitant in the area of the same district, further on in the same province, and finally, as the last resort, the commune of the most similar indicator of tax income per inhabitant located in another province²³.

The Act also separately defines such principles for the nearest commune running a kindergarten, a primary school in which a kindergarten section was organized, a school of a given type and kind and a boarding school as well as for the nearest district running a school of a given type and kind, a center of a given type and a boarding school. Relevant provisions of the Act on Education System refer in this scope to the provisions of the Act on the Income of Territorial Self-Government Units²⁴. Provisions of this Act determine the indicator of tax income per one inhabitant in a commune, marked as “G” indicator, which is calculated by dividing the amount of tax incomes of the commune for the year preceding the base year by the number of commune inhabitants. In case of districts, provisions of the above-quoted Act determine the “P” indicator per one inhabitant, calculated as the quotient of the amount of tax incomes of the district obtained in the year preceding the base year and the number of district inhabitants.

The new regulations also differentiate communes as to their type (rural, urban, rural-urban) and districts as to their size measured with the number of inhabitants. The provisions also introduce some limitation as to the nearest commune

²² The Act of 23rd June 2016 on Amending the Act on Education System and Some Other Acts (Journal of Laws from 2016, item 1010).

²³ A. Piszko, *Dotacje w oświacie po zmianach. Nowe zasady przyznawania dotacji od 1 stycznia 2017 r.* INFOR, Warszawa 2016, p. 27.

²⁴ The Act of 13th November 2003 on Incomes of Territorial Self-Government Units (Journal of Laws from 2016, item 198, as amended).

running a kindergarten and a primary school with a kindergarten section. Expenses in kindergartens and kindergarten sections, on the basis of which the amount of the subsidy is determined, can be financed with the funds coming from the European Union up to the level of 50%.

Another change introduced in the amendment of the regulations of education system can be seen in determining the basic amount of the subsidy, which since 1st January 2017 has played a key role in determining the subsidies for kindergartens, schools and centers. This concept was defined with reference to specific units, thus the basic amount of subsidy was determined for²⁵:

- kindergartens,
- primary schools with kindergarten sections,
- schools of particular type and kind,
- centers of particular type,
- boarding schools,
- other forms of kindergarten education.

The provision defining the method of calculating the basic amount of subsidy is similar for all units. For example, the basic amount of subsidy for schools of a given type and kind should be understood as the amount of running expenses planned for running schools of this type and kind by the territorial self-government unit, decreased by:

1. payment for catering in these schools, planned for the budget year in the budget of the self-government unit, constituting its budget income,
2. the sum of products of relevant amounts allocated in the education part of general subvention for the self-government unit for disabled pupils, socially maladjusted or threatened with social maladjustment in schools of a given type and kind, with decisions confirming the need for special education, issued because of relevant types of disability, social maladjustment or threat of social maladjustment, and the statistical number of these pupils in these schools, excluding pupils of special schools,
3. current expenses planned for the budget year in the budget of the self-government unit, financed with the funds from the European Union budget for running such schools,
4. the product of the amount allocated in the education part of general subvention for the territorial self-government unit for a child covered with early development support, who has been issued the opinion on the need for early development support and the statistical number of such children in those schools,

²⁵ Article 78b of the Act of 7th September 1991 on Education System (Journal of Laws from 2016, item 1943).

5. the product of the amount allocated in the education part of general subvention for a territorial self-government unit for a participant in rehabilitation and education classes in schools of a given type and kind, who has been issued the opinion on the need for rehabilitation and education classes and the statistical number of participants of such classes in schools,
 6. the amount of subsidy planned for a budget year in the budget of a territorial self-government unit for equipping schools with course books, education and exercise materials,
 7. the current expenses planned for a budget year in the budget of a territorial self-government unit for financing the activities of boarding schools,
 8. the current expenses planned in the budget of a territorial self-government unit for programs aimed at, inter alia, giving equal education opportunities to children and youth
- and divided by statistical number of pupils in those schools, decreased, in case of schools which are not special schools, by the statistical number of pupils who are disabled, socially maladjusted or threatened with social maladjustment in those schools, those who have been issued a decision on the need for special education due to relevant types of disability, social maladjustment or threat of social maladjustment.

The amendment of the Act on Education System also introduced the concept of statistical number of pupils. According to the provisions of the Act, the statistical number of pupils shall be understood as the number of pupils as of 30th September of the year preceding the budget year. It is necessary to determine the number of pupils as they constitute one of the parameters affecting the amount of subsidy. Before amending the Act on Education System this problem often used to be regulated by means of resolutions passed by the decision-making organ.

Territorial self-government units were also obliged to publish in the Public Information Bulletin:

- the basic amount of subsidy and its updates,
- the statistical number of pupils and its updates.

This information is of particular importance for organs running kindergartens, schools and other centers.

The provisions of the Act determine the minimum amount of subsidy which needs to be passed from the budget of the subsidizing unit onto the bank account of the school or center run by the entity which does not belong to the public sector. The general rules governing calculation of the minimum amount of education subsidy divided into types of units are presented in Table 2 below.

Table 2. The principles of determining the amount of education subsidy granted by territorial self-government units to entities from outside the public sector, divided into types of units, since 1st January 2017

Public kindergartens	They receive a subsidy for each pupil from the commune budget in the amount equal to the subsidy for kindergartens, but on a disabled pupil in the amount not lower than the amount allocated for such a pupil in the education part of general subvention for the commune. If there is no kindergarten run by the commune, the amount of subsidy is determined in the amount equal to the subsidy for kindergartens in the nearest commune which runs a kindergarten.
Special public kindergartens*	They receive a subsidy for each pupil from the commune budget in the amount not lower than the amount allocated for such a disabled pupil in the education part of general subvention for communes.
Other public forms of preschool education	They receive a subsidy for each pupil from the commune budget in the amount not lower than 50% of the basic amount of subsidy for kindergartens, but on a disabled pupil in the amount not lower than the amount allocated for such a disabled pupil of other form of preschool education in the education part of general subvention for the commune. If there is no kindergarten run by the commune, the amount of subsidy is determined in the amount not lower than 50% of the basic amount of subsidy for kindergartens in the nearest commune which runs a kindergarten.
Public primary schools with kindergarten sections	They receive for each pupil of the kindergarten section a subsidy from the commune budget in the amount equal to the basic amount of subsidy for primary schools in which preschool sections were created, but for a disabled pupil in the amount not lower than the amount allocated for such a disabled pupil of the preschool section in primary school in the education part of general subvention. If there is no primary school run by the commune in which a preschool section was established, the amount of subsidy is determined as equal to the basic amount of subsidy for primary schools with preschool sections in the nearest commune which runs a primary school with preschool section.
Special primary schools with kindergarten sections	They receive for each pupil of preschool section a subsidy from the district budget in the amount not lower than the amount allocated for a disabled pupil of a preschool section in primary school in the education part of general subvention for the district.
Schools in which school obligation or education obligation is fulfilled	They receive a subsidy for each child from the budget of a territorial self-government unit obliged to run such types and kinds of schools in the amount equal to the basic amount of subsidy for schools of this type and kind, not lower, however, than the amount allocated for such a pupil in the education part of general subvention for the territorial self-government unit. If in the area of the commune or district, there are no schools of such type and kind, the amount of subsidy is determined as equal to the basic amount of subsidy for schools of the given type and kind respectively in the nearest commune or district which run a school of such type and kind.
Public centers	They receive for each child a subsidy from the district budget in the amount equal to the basic amount of subsidy for centers of this type, however, not lower than the amount allocated for such a child in the education part of general subsidy for the district.
Non-public kindergartens**	They receive a subsidy for each pupil from the commune budget in the amount not lower than 75% of the basic amount of subsidy for kindergartens, but for the disabled pupil in the amount not lower than the amount allocated for such a pupil in the education part of general subvention for communes. If there is no kindergarten run by the commune, the amount of subsidy is determined as not lower than 75% of the basic amount of subsidy for kindergartens in the nearest commune which runs a kindergarten.
Non-public special kindergartens	They receive a subsidy for each pupil from the commune budget in the amount not lower than the amount allocated for such a disabled pupil in the education part of general subvention for communes.

Other non-public forms of preschool education	They receive a subsidy from the commune budget for each pupil in the amount not lower than 40% of the basic amount of subsidy for kindergartens, but for a disabled pupil in the amount not lower than the amount allocated for such a pupil in the education part of general subvention for the commune. If there is no kindergarten run by the commune, the amount of subsidy is determined as not lower than 40% of the basic amount of subsidy for kindergartens in the nearest commune which runs a kindergarten.
Non-public primary schools with kindergarten sections	They receive a subsidy from the commune budget for each pupil of the preschool section in the amount not lower than 75% of the basic amount of subsidy for primary schools with preschool sections, but for a disabled pupil in the amount not lower than the amount allocated for such a disabled pupil of preschool section in primary school in the education part of general subvention. If there is no primary school with preschool section run by the commune, the amount of subsidy is determined as not lower than 75% of the basic subsidy for primary schools with preschool sections in the nearest commune which runs a primary school with preschool sections.
Non-public special primary schools with kindergarten sections	They receive for each pupil of the preschool section the subsidy from the district budget in the amount not lower than the amount allocated for a disabled pupil from the kindergarten section in primary school in the education part of general subvention for the district.
Non-public schools with qualifications of public schools, in which school obligation and education obligation are fulfilled	They receive a subsidy in the amount not lower than the amount allocated for one pupil of a given type and kind of school in the education part of general subvention received by the territorial self-government unit.
Non-public centers	They receive a subsidy for each child in the amount not lower than the amount allocated for such a child in the education part of general subvention for the district.

* Before the amendment from 23rd June 2016 to the Act on Education System, the amount of subsidy for special kindergartens was not subject to separate regulations.

** They are not special kindergartens and they do not meet the requirements specified in Article 90 section 1b of the Act on Education System.

Source: own elaboration on the basis of the Act of 07th September 1991 on Education System (Journal of Laws from 2016, item 1943).

In order to determine the amount of subsidy, it is necessary to:

- determine the basis for calculating the subsidy for one pupil of the subsidized unit – by finding in Article 80 or 90 of the Act on Education System a provision which determines the way of calculating the basis of subsidy for such unit;
- multiply the amount which is the statutory basis by the coefficient (multiplier) included in the statutory construction of such basis valid for the particular self-government (this concerns some bases);
- multiply the annual subsidy calculated in this way per one pupil of the subsidized unit by the actual number of pupils in this unit. In this way we will arrive at the annual amount of subsidy due for the subsidized unit²⁶.

The decisions of Regional Accounting Chambers and Administrative Courts indicates that the level of the rate (multiplier – percentage coefficient) valid in a given unit of territorial self-government is determined by the decision-making

²⁶ *Niepubliczne jednostki oświatowe...*, op. cit., p. 186.

body of this unit in the resolution of local law. The legislator regulated the principles of granting subsidies only by determining its bottom line, stating “not less than”. Therefore it is an exclusive competence of the decision-making body of a territorial self-government unit to determine the final amount of the subsidy²⁷.

4. The level of education subsidies granted by territorial self-government units to entities which do not belong to the public sector

The amounts allocated for subsidies for schools run by entities other than units of territorial self-government are registered in paragraph 254 “Subject subsidy from the budget for non-public unit of education system” and in paragraph 259 “Subject subsidy from the budget for a public unit of education system run by a legal entity other than the territorial self-government unit or by an individual person”. The summarized amounts of subsidies for performing education tasks granted to entities which are not territorial self-government units are presented in Table 3 below.

²⁷ The decision of the Supreme Administrative Court of 14th January 2009, II GSP 7/08;
The judgment of the Province Administrative Court in Opole of 11th December 2009, I SA/Op 475/09;
The judgment of the Province Administrative Court in Warsaw of 18th January 2012, V SA/Wa 1852/11.

Table 3. The summarized amounts of subsidies for performing education tasks granted by territorial self-government units to entities which are not territorial self-government units which run schools and public centers (\$259) and non-public ones (\$254) in the period of 2008–2014

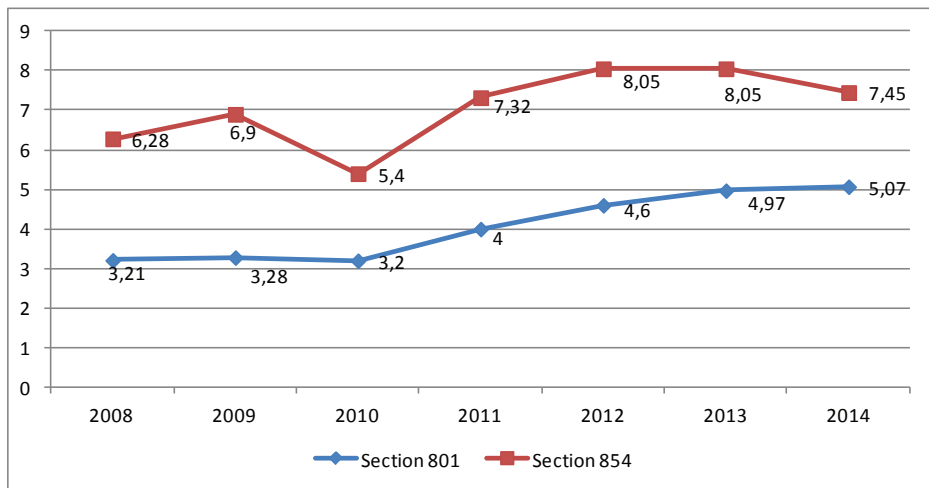
Section/ Subsection	Name	2008		2009		2010		2011		2012		2013		2014	
		PLN	%*	PLN	%*	PLN	%*	PLN	%*	PLN	%*	PLN	%*	PLN	%*
Paragraph 254															
801	education and upbringing	1398249494	3,21	1372692774	3,28	1177829753	3,20	1845427069	4,00	2276467388	4,60	2407257240	4,97	2178649238	5,07
80101	primary schools	172676416	0,40	159376415	0,38	143022292	0,39	205478482	0,45	259138545	0,52	319575307	0,66	305576242	0,71
80103	sections in primary schools	8487861	0,02	8535011	0,02	7271934	0,02	11539242	0,03	16114030	0,03	23324909,8	0,05	28661236,7	0,07
80104	kindergartens	396114337	0,91	412990247	0,99	454788887	1,24	648991307	1,41	830594778	1,68	1002614177	2,07	1020776472	2,38
80106	other preschool forms	0	0	0	0	6045985	0,02	17560115	0,04	30363025	0,06	61342703,9	0,13	72188963,9	0,17
80110	junior high schools	138842718	0,32	137861892	0,33	126350203	0,34	174716753	0,38	193315087	0,39	209748021	0,43	190111370	0,44
80120	comprehensive secondary schools	233729317	0,54	219894043	0,53	151534955	0,41	255557058	0,55	298136098	0,60	258839744	0,53	167367340	0,39
80130	vocational schools	363560409	0,83	352414640	0,84	221747792	0,60	432095831	0,94	522676017	1,06	412345879	0,85	275321154	0,64
854	education care	231592100	6,28	217339960	6,90	128118169	5,40	245924047	7,32	298836739	8,05	284588052	8,05	217047287	7,45
Paragraph 259															
801	education and upbringing	331216125	0,76	351649986	0,84	302902400	0,82	429311468	0,93	553718321	1,12	639393020	1,32	649130236	1,51
854	education care	17241281	0,47	18278353	0,58	9255723	0,39	21498626	0,64	21379663	0,58	22162674	0,63	10683642	0,37

* % share of granted subsidies in total expenses of the section

Source: own collaboration based on the data from the Ministry of Finance.

The amounts allocated for subsidies for schools run by entities which are not self-government units were PLN 1398 million in 2008 for tasks registered in section 801, which accounted for 3.21% of the expenditure in this section, whereas in 2014 such subsidies reached PLN 2178 million, constituting 5.07%. Analyzing the data contained in the table we can conclude that the most important item was total tasks related to commissioning preschool care – in 2015 they accounted for 2.38% of total expenditure in the section. The analysis shows that the communes and towns with district status are most burdened with the obligation to subsidize, as they are obliged to participate in costs of preschool education. In section 854 the amount for subsidies was PLN 231 million in 2008, accounting for 6.28% of expenditure, whereas in 2014 the amount was PLN 217 million and constituted 7.45% of expenditure in section 854. Figure 1 presents the percentage share of the amounts allocated for education subsidies in total expenditure in sections 801 and 854.

Fig. 1. Percentage share of the amounts allocated for subsidies for performing education tasks by entities which are not self-government units in total education expenditure in 2008–2014



Source: own elaboration based on the data from the Ministry of Finance.

In the 2008–2014 period we observed the growth in the share occupied by subsidies granted for performance of education tasks to entities which were not self-government units in total expenditure both in section 801 and 854. Only in 2010 we could notice this share fall. In section 801 the share of subsidies grew from 3.21% in 2008 to 5.07% in 2014, whereas in section 854 the share of subsidies in total expenses reached 6.28% in 2008 and grew to 7.45% in 2014.

5. Checking the correctness of using the subsidy

The Act on Education System provides the subsidizing organ with some rights concerning controlling the beneficiary as to how the education subsidy is used. Before 2009 such checks could not be made. It was only in 2009 that the Act provided such an option (as this is not an absolute obligation) of controlling the subsidized units. The granted powers concern the possibility of accessing the controlled schools and centers and kindergartens and other forms of preschool education. Such control can only be performed in a situation when the subsidy resolution specifies the mode and scope of control. The decision-making body of the territorial self-government unit must define the content issues that will be checked and the procedure of checking, that is the scope and mode of the control.

The scope of control may cover the actual number of pupils in the subsidies entity and the correctness of using the subsidy in covering the running expenses of the school, kindergarten or center. The number of pupils can be controlled on the basis of the teaching documentation, the evidence of school fees paid and exemptions from such payments, as well as contracts for teaching pupils. While controlling the subsidy use, the financial and accounting records should also be checked, as well as bank account statements. However, the most important form of control consists in checking the source documentation, namely invoices and bills²⁸.

The decisions issued by Regional Accounting Chambers and administrative courts demonstrate that the settlement of subsidies using only the number of pupils is insufficient²⁹. At the same time, it is emphasized that it is not allowed to impose by means of local law such obligations on the controlled units which are not stipulated in the Act on Education System, related, for example, with the necessity to make copies and extracts from documents certified as conforming to original documents³⁰.

The education subsidy use control should end with signing the protocol. In the event the party refuses to sign the protocol, it should provide explanations for the reasons for such refusal. In a situation when the controlled party does not agree with the findings, the resolution should ensure the controlled entity has the right to make objections and provide explanations.

An ambiguous issue is connected with adding a provision on post-control recommendations to the resolution. The decisions of the Regional Accounting

²⁸ The judgment of the Province Administrative Court in Gliwice from 24th October 2013, I SA/GI 98/13.

²⁹ The resolution of the Board of the Regional Accounting Chamber in Kraków from 7th May 2014, No KI-411/135/14 (Official Journal of Małopolska Province from 2014, item 2835).

³⁰ The resolution of the Board of Regional Accounting Chamber in Zielona Góra from 29th July 2015, No 162/2015 (Official Journal of Lubuskie Province from 2015, item 1437).

Chambers question the post-control recommendations as an element of control³¹. However, in accordance with the delegation provision, the decision-making body is entitled to determine the control mode and post-control recommendations are an element of the control mode. The next step, in case of finding irregularities is to initiate the administrative proceedings based on Administrative Procedure Code. However, a much simpler solution seems to consist in giving post-control recommendations which the subsidized unit will comply with.

6. Conclusions

For the entities outside the public sector which run public and non-public schools and centers, subsidies granted by territorial self-government units constitute some form of supporting these entities. It should be emphasized that subsidizing schools and centers run by private entities is obligatory and the person managing such an entity is entitled to claim the subsidy³². The process of transferring, spending an accounting for the subsidy is subject to regulations defined in provisions of law, as it concerns public funds.

The new regulations concerning education subsidies, which became valid on 1st January 2017 were implemented by the Act of 23rd June 2016 Amending the Act on Education System and Some Other Acts. The above amendment specifies and organizes provisions regulating the area of education subsidies.

The amendment introduces the concept of basic amount of subsidy, which is of vital importance for the process of determining the amount of the subsidy. To meet the need for determining the subsidy the amendment also introduced the concept of the statistical number of pupils. A major novelty is the introduction of the necessity to publish the basic amount of subsidy and the statistical number of pupils. On 1st January another provision was implemented, defining the concept of running expenses, which constitute the basis for determining the basic amount of subsidy and the basis for deeming a particular commune as the “nearest” commune and a particular district as the “nearest” district.

The new provisions of the Act on Education System certainly match the expectations of the entities interested in determining the amount of education subsidy. However, only their practical application will help us assess their real influence on the process of determining, transferring and accounting for the education subsidies.

³¹ The resolution of the Board of Regional Accounting Chamber in Warsaw from 29th March 2011; No 114/K/11 (Official Journal of Mazowieckie Province from 2011, No 103, item 3276).

³² A. Piszko, *Dotacje w oświacie po zmianach. Nowe zasady przyznawania dotacji od 1 stycznia 2017 r.* INFOR, Warszawa 2016, p. 9.

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