

(vi) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

(2) In the case where a participating agency, other than the educational agency, fails to provide agreed upon services, the educational agency shall reconvene the IEP team to identify alternative strategies to meet the transition objectives.

Intermediate educational unit means any public authority, other than an LEA, that is under the general supervision of a State educational agency, that is established by State law for the purpose or providing free public education on a regional basis, and that provides special education and related services to children with disabilities within that State.

Preschool means the educational level from a child's birth to the time at which the State provides elementary education.

Related services means transportation and those developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, and medical services, except that medical services must be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

Special education means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a child with a disability, including—

(1) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(2) Instruction in physical education.

(Authority: 20 U.S.C. 1401, 7703, 7705, 7713; 37 U.S.C. 101)

§ 222.51 Which children may a local educational agency count for payment under section 8003(d) of the Act?

(a) Except as provided in paragraph (b)(2) of this section, the children described in sections 8003(a)(1)(A)(ii), (a)(1)(B), (a)(1)(C), and (a)(1)(D) of the Act who are eligible for services under the provisions of the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*) may be counted by the local educational agency (LEA) for the purpose of computing a payment under section 8003(d).

(b)(1) An LEA may count a child or children described in paragraph (a) of this section who attend private schools or residential programs if the LEA has placed or referred the child or children in accordance with the provisions of section 613 of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 *et seq.* and 34 CFR part 300, subparts C and D.

(2) Children who are placed in private schools by their parents may not be counted under section 8003(d), but may participate in public school programs that use section 8003(d) funds.

(Authority: 20 U.S.C. 1400 *et seq.* and 7703(d))

§ 222.52 What requirements must a local educational agency meet to receive a payment under section 8003(d)?

To receive a payment under section 8003(d), an eligible LEA shall—

(a) State in its application the number of federally connected children with disabilities it claims for a payment under section 8003(d);

(b) Have in effect a written IEP for each federally connected child with disabilities claimed for a payment under section 8003(d); and

(c) Meet the requirements of subparts A and C of the regulations in this part.

(Approved by the Office of Management and Budget under control number 1810-0036)

(Authority: 20 U.S.C. 1400 *et seq.* and 7703)

§ 222.53 What restrictions and requirements apply to the use of funds provided under section 8003(d)?

(a) An LEA shall use funds provided under section 8003(d) in accordance

with the provisions of section 8003(d)(2) and 34 CFR part 300.

(b) Obligations and expenditures of section 8003(d) funds may be incurred in either of the two following ways:

(1) An LEA may obligate or expend section 8003(d) funds for the fiscal year for which the funds were appropriated.

(2) An LEA may reimburse itself for obligations or expenditures of local and general State aid funds for the fiscal year for which the section 8003(d) funds were appropriated.

(c) An LEA shall use its section 8003(d) funds for the following types of expenditures:

(1) Expenditures that are reasonably related to the conduct of programs or projects for the free appropriate public education of federally connected children with disabilities. These expenditures may include program planning and evaluation but may not include construction of school facilities.

(2) Acquisition cost (net invoice price) of equipment required for the free appropriate public education of federally connected children with disabilities.

(i) If section 8003(d) funds are used for the acquisition of any equipment described in this paragraph (c)(2) of this section, the fair market value of any financial advantage realized through rebates, discounts, bonuses, free pieces of equipment used in a program or project for the free appropriate public education of federally connected children with disabilities, or other circumstances, is not an allowable expenditure and may not be credited as an expenditure of those funds.

(ii) Funds awarded under the provisions of section 8003(d) may be used to acquire equipment for the free appropriate public education of the federally connected children with disabilities only if title to the equipment would be in the applicant agency.

(d) An LEA shall account for the use of section 8003(d) funds as follows:

(1) By recording, for each fiscal year, the receipt (or credit) of section 8003(d) funds separately from other funds received under the Act, *i.e.*, on a line item basis in the general fund account or in a separate account; and

(2) By demonstrating that, for each fiscal year, the amount of expenditures

for special education and related services provided to the federally connected children with disabilities is at least equal to the amount of section 8003(d) funds received or credited for that fiscal year. This is done as follows:

(i) For each fiscal year determine the amount of an LEA's expenditures for special education and related services provided to all children with disabilities.

(ii) The amount determined in paragraph (d)(2)(i) of this section is divided by the average daily attendance (ADA) of the total number of children with disabilities the LEA served during that fiscal year.

(iii) The amount determined in paragraph (d)(2)(ii) of this section is then multiplied by the total ADA of the LEA's federally connected children with disabilities claimed by the LEA for that fiscal year.

(3) If the amount of section 8003(d) funds the LEA received (or was credited) for the fiscal year exceeds the amount obtained in paragraph (d)(2)(iii) of this section, an overpayment equal to the excess section 8003(d) funds is established. This overpayment may be reduced or eliminated to the extent that the LEA can demonstrate that the average per pupil expenditure for special education and related services provided to federally connected children with disabilities exceeded its average per pupil expenditure for serving non-federally connected children with disabilities.

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(Authority: 20 U.S.C. 7703(d))

§ 222.54 What supplement-not-supplant requirement applies to this subpart?

Funds provided under section 8003(d) may not supplant any State funds that were or would have been available to the LEA for the free appropriate public education of children counted under section 8003(d).

(a) No section 8003(d) funds may be paid to an LEA whose per pupil State aid for federally connected children with disabilities, either general State aid or special education State aid, has been or would be reduced as a result of