

§§ 222.24–222.29 [Reserved]

**Subpart C—Payments for Federally Connected Children Under Section 8003(b) and (e) of the Act**

**§ 222.30 What is “free public education”?**

In addition to the terms defined in § 222.2, the following definition applies to this part:

*Free public education.* (1) The term means education that is provided—

- (i) At public expense;
- (ii)(A) As the complete elementary or secondary educational program as determined under State law through grade 12; and
- (B) Preschool education, whether or not included as elementary education by State law;
- (iii) In a school of the local educational agency (LEA) or under a tuition arrangement with another LEA or other educational entity; and
- (iv) Under public supervision and direction, except with respect to children with disabilities.

(2) For the purpose of paragraph (1)(i) of this definition, education is provided at public expense if—

- (i) There is no tuition charge to the child or the child’s parents; and
- (ii) Federal funds, other than funds under the Act, do not provide a substantial portion of the educational program.

(3) For the purpose of paragraph (1)(ii) of this definition, the complete elementary or secondary educational program is the program recognized by the State as meeting all requirements for elementary or secondary education for the children claimed and, except for preschool education, does not include a program that provides only—

- (i) Supplementary services or instruction; or
- (ii) A portion of the required educational program.

(4) For the purpose of paragraph (1)(iii) of this definition, a tuition arrangement must—

- (i) Satisfy all applicable legal requirements in the State; and
- (ii) Genuinely reflect the applicant LEA’s responsibility to provide a free

public education to the children claimed under section 8003.

(5) For the purpose of paragraph (1)(iv) of this definition, education provided under public supervision and direction means education that is provided—

- (i) In a school of the applicant LEA or another LEA; or
- (ii) By another educational entity, over which the applicant LEA, or other public agency, exercises authority with respect to the significant aspects of the educational program for the children claimed. The Secretary considers significant aspects of the educational program to include administrative decisions relating to teachers, instruction, and curriculum.

(Authority: 20 U.S.C. 7703, 7709, 7713(6))

**§ 222.31 To which local educational agencies does the Secretary make basic support payments under section 8003(b) of the Act?**

The Secretary makes payments to an LEA with an otherwise approvable application for children claimed under section 8003(b) of the Act if—

- (a) The LEA meets the requirements in subpart A of these regulations and this subpart; and
- (b)(1) The LEA is responsible under applicable State or Federal law for providing a free public education to those children;
- (2) The LEA is providing a free public education to those children; and
- (3) The State provides funds for the education of those children on the same basis as all other public school children in the State, unless permitted otherwise under section 8009 of the Act.

(Authority: 20 U.S.C. 7703 and 7709)

**§ 222.32 Upon what information is a local educational agency’s basic support payment based?**

(a) The Secretary determines an LEA’s payment under section 8003(b) on the basis of information in the LEA’s application, including information regarding the membership of federally connected children.

(b) The LEA must supply information in its application regarding its federally connected membership on the

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basis of any count described in §§ 222.33 through 222.35.

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

(Authority: 20 U.S.C. 7703 and 7705)

#### § 222.33 When must an applicant make its first or only membership count?

(a)(1) An applicant must select a day in the current school year as the survey date for making the first membership count, which must be no earlier than the fourth day of the regular school year and on or before January 31.

(2) The applicant must use the same survey date for all schools in the LEA.

(b) As of the survey date, the applicant must—

(1) Count the membership of its federally connected children; and

(2) Count the total membership of its children—both federally connected and non-federally connected.

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(Authority: 20 U.S.C. 7703, 7705, 7706)

#### § 222.34 If an applicant makes a second membership count, when must that count be made?

(a)(1) The applicant may, but is not required to, make a second count of membership.

(2) If the applicant chooses to make a second count of membership, the applicant must select a day after January 31, but no later than May 14, as the survey date for making the second membership count, and make that count in accordance with § 222.33(b).

(3) The applicant must use the same survey date for the second membership count for all schools in the LEA.

(b) The applicant may use the information obtained from a second membership count to amend its application for assistance as described in § 222.5(b)(1).

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(Authority: 20 U.S.C. 7703 and 7705)

#### § 222.35 How does a local educational agency count the membership of its federally connected children?

An applicant counts the membership of its federally connected children by

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using one or both of the following methods:

(a) *Parent-pupil survey.* An applicant may conduct a parent-pupil survey to count the membership of its federally connected children, which must be counted as of the survey date.

(1) The applicant shall conduct a parent-pupil survey by providing a form to a parent of each pupil enrolled in the LEA to substantiate the pupil's place of residence and the parent's place of employment. A parent-pupil survey form must include the following:

(i) Pupil enrollment information (this information may also be obtained from school records), including—

(A) Name of pupil;

(B) Date of birth of the pupil; and

(C) Name of public school and grade of the pupil.

(ii) Pupil residence and parent employment information, including—

(A) Address of the pupil's residence (or other location information for that residence, such as legal description), including the name of the Federal facility if the pupil's residence is on Federal property; and

(B) Name (as it appears on the employer's payroll record) of the parent (mother, father, legal guardian or other person standing in *loco parentis*) who is employed on Federal property and with whom the pupil resides (unless the parent is a member of the uniformed services on active duty);

(C) Name and address of the Federal property on which the parent is employed (or other location information, such as legal description), unless the parent is a member of the uniformed services on active duty;

(D) If the parent is a member of the uniformed services on active duty, the name, rank, and branch of service of that parent;

(E) If the parent is a civilian employed on a Federal vessel, the name of the vessel, hull number, and name of the controlling agency;

(F) The signature of the parent supplying the information and the date of such signature; and

(G) The name of the parent's employer and the employer's address (or other location information, such as legal description), unless a parent is a