

§§ 222.42–222.49 [Reserved]

**Subpart D—Payments Under Section 8003(d) of the Act for Local Educational Agencies That Serve Children With Disabilities**

**§ 222.50 What definitions apply to this subpart?**

In addition to the terms referenced or defined in § 222.2, the following definitions in 20 U.S.C. 1401 or 34 CFR § 77.1 apply to this subpart:

*Children with disabilities* means children—

(1)(i) With mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) Who, by reason thereof, need special education and related services.

(2) The term *children with disabilities* for children aged 3 to 5, inclusive, may, at a State’s discretion, include children—

(i) Experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(ii) Who, by reason thereof, need special education and related services.

*Children with specific learning disabilities* means children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. These disorders include conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. This term does not include children who have learning problems which are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of

emotional disturbance, or of environmental, cultural, or economic disadvantage.

*Free appropriate public education* means special education and related services that—

(1) Have been provided at public expense, under public supervision and direction, and without charge;

(2) Meet the standards of the State educational agency;

(3) Include an appropriate preschool, elementary, or secondary school education in the State involved; and

(4) Are provided in conformity with the individualized education program (IEP) required under section 1414(a)(5) of the Individuals with Disabilities Education Act.

*Individualized education program (IEP)* means—

(1) A written statement for each child with a disability developed in any meeting by a representative of the LEA or an intermediate educational unit who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, the teacher, the parents or guardian of the child, and whenever appropriate, the child, which statement must include—

(i) A statement of the present levels of educational performance of the child;

(ii) A statement of annual goals, including short-term instructional objectives;

(iii) A statement of the specific educational services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs;

(iv) A statement of the needed transition services for students beginning no later than age 16 and annually thereafter (and, when determined appropriate for the individual, beginning at age 14 or younger), including, when appropriate, a statement of the inter-agency responsibilities or linkages (or both) before the student leaves the school setting;

(v) The projected date for initiation and anticipated duration of these services; and

(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