

Early Intervening Services (EIS) Guidance Document

1. *What are EIS?*

EIS are services provided to students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral supports to succeed in a general education environment.

The Individuals with Disabilities Education Act (IDEA) (U.S.C. §1413 (f)(2)) and its regulations 34 CFR §300.226(b)) identify the activities that a Local Education Agency (LEA) may carry out in implementing coordinated, early intervening services:

- Professional development (which may be provided by entities other than local educational agencies) for teachers and other school staff to enable such personnel to deliver scientifically-based academic instruction and behavioral interventions, including scientifically-based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and
- Providing educational and behavioral evaluations, services, and supports, including scientifically-based literacy instruction.

For example, a LEA might use EIS to provide behavioral interventions to nondisabled students who receive a certain number of disciplinary office referrals, perhaps as part of a Positive Behavioral Supports initiative. EIS might also be used to help fund reading or math specialists to work with nondisabled students who have not reached grade-level proficiency in those subjects, or to fund after-school tutoring for nondisabled students who score below “basic” on statewide assessments.

2. *Who may receive EIS?*

Section 613 (f)(1) of the IDEA permits LEAs to use IDEA funds for EIS for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral supports to succeed in a general education environment. An LEA determines which students need additional support. For example, an LEA might consider factors such as performance on reading or math assessments, disciplinary referrals, or suspension and expulsions to assess whether or not students need additional supports to succeed in a general education environment.

If an LEA chooses to use EIS funds to support school-wide interventions, it must be able to provide documentation that EIS funds were used to provide services only to students who need additional support and that other funds were used to fund the school-wide intervention for the special education students and students who do not need additional support. Children who are not yet in kindergarten may not receive EIS. The preamble to

the IDEA Part B regulations clarifies that students who received special education in the past, but are not currently receiving special education, are eligible to receive EIS.

3. What amount of IDEA funds may an LEA use for EIS?

An LEA may not use more than fifteen (15) percent of the amount the agency receives under Part B for any fiscal year, **less any amount reduced by the agency under adjustments to local fiscal year effort (34 CFR 300.205), if any**, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.

LEAs that seek to reduce their local maintenance of effort in accordance with 34 CFR 300.205(d) and use some of their Part B funds for early intervening services under 34 CFR 300.226 must do so with caution because the local maintenance of effort reduction provision and the authority to use Part B funds for early intervening services are interconnected. The decisions that an LEA makes about the amount of funds that it uses for one purpose affect the amount that it may use for the other.

Funds made available under this section may be used to carry out coordinated, early intervening services aligned with activities funded by and carried out under the Elementary and Secondary Education Act (ESEA) if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

In the case of a determination of significant disproportionality, an LEA identified as having significant disproportionality must use the maximum amount of funds for comprehensive EIS.

4. How may an LEA use EIS funds for professional development and behavioral and educational evaluations?

EIS funds may be used to provide professional development to all personnel who are responsible for students who need additional academic and behavioral supports to succeed in a general education environment, but who have not been identified as needing special education. Under limited circumstances personnel who are solely responsible for students receiving special education services or students who do not need additional support may participate in professional development funded with EIS funds. These personnel may participate so long as the cost of the professional development does not increase, the quality of the professional development does not decrease, and including those personnel would not exclude other personnel who are responsible for students who need additional support but have not been identified as needing special education.

LEAs may use EIS funds to provide behavioral and educational evaluations to determine the supports that are needed by students to succeed in a general education environment. However, funds may not be used for evaluations that are intended for use in determining eligibility for special education and related services.

5. How may EIS funds be used to implement RTI?

EIS funds may be used to support RTI as long as the EIS funds are used for services to nondisabled students in need of additional academic or behavioral support and supplement, not supplant, other funds used to implement RTI. For more information about RTI and supplement not supplant requirements, please refer to the OSEP guidance document at <http://spp-apr-calendar.rrfcnetwork.org/getfile/view/id/494>.

For example, one RTI framework includes a three-level continuum of instructional support. In this framework, tier one applies to all students in a general education setting. It would not be appropriate to use EIS funds for tier one activities that support these students because these activities are designed to provide high-quality instruction to the entire class or school and not principally intended to address the needs of students who are struggling. Tier two activities provide specialized small group instruction for students determined to be at risk for academic and behavioral problems. It would be appropriate to use EIS funds to support these tier two activities for at-risk, general education students. If students who are receiving special education and related services participate in the small group instruction, it would not be appropriate for EIS funds to be used for these students as EIS may not be provided to students that are currently identified as needing special education or related services. Tier three includes specialized individualized instructional or behavioral support for students with intensive needs. As in the case of tier two activities, EIS funds could be used for activities that support general education students at risk for academic and behavioral problems, but could not be used for students who are receiving special education or related services.

6. How will an LEA report EIS?

Districts using IDEA Part B funds for EIS must submit expenditure and student data information to the Department of Elementary and Secondary Education (DESE). For EIS services during the 2008-2009 school year, this data will be entered on the 2008-2009 Part B Final Expenditure Report.

Districts that provided EIS using Part B IDEA funds must report the following:

1. Professional development provided to teachers and other school staff.
2. Detail of what educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction was provided.

3. Number of students who received EIS using IDEA Part B funds who were not eligible for IDEA services at the time they received these services from your district during the school year.

4. Number of students with disabilities on the December 1 child count who received EIS using IDEA Part B funds at any time during the previous two school years.

Regarding counting students who received EIS when funds are used for *professional development*, it would be appropriate for an LEA to count, and subsequently track for two years, the number of students in need of additional support who received instruction from personnel who participated in the professional development program. It would not be appropriate to count every student who was taught by these personnel if some of the students were not in need of additional support or were receiving special education services. An LEA should only count the students who benefited from the professional development program in the year(s) of or the year(s) immediately after the training, rather than counting the students each year after the training.

Regarding counting students who received EIS when funds are used for a *school-wide intervention initiative*, students who meet the LEA's criteria of being in need of additional support and participate in the initiative should be counted as receiving EIS in the year(s) of or the year(s) immediately following the initiative and tracked for the following two years. Students who participate in an initiative for more than one year should be counted each year they participate.

Regarding counting students who received EIS when funds are used to *provide behavioral and educational evaluations*, students who are evaluated to determine the supports necessary for success in a general education environment should be counted as receiving EIS in the year of or the year immediately following the evaluation and tracked for the following two years.

7. *What is the monitoring process for LEAs that report EIS?*

Districts selected for monitoring will be required to submit the following documentation no later than March 31st to the DESE, Division of Special Education:

- The professional development provided to teachers and other school staff that enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software. Specifically, a list of the professional development provided the cost for each professional development meeting/training, and the titles of those that attended each meeting/training.
- A list of what educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction that is being provided including the cost for each.

The Superintendent for the selected school districts will be contacted through a letter informing them of this desk review. This letter will be provided in September, 6 months prior to their desk review.

Federal Guidance

The U. S. Department of Education, Office of Special Education Programs (OSEP), has posted several resources that might be of assistance to LEAs in implementing coordinated EIS including a topic brief, a video clip, questions and answers, and a professional development module.

To view this information, go to:

<http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CTopicalArea%2C8%2C>

If this link does not work, go to <http://idea.ed.gov/explore/home> and click on Early Intervening Services on the left side.

In addition, OSEP has provided a guidance document on EIS. We encourage districts to read it, as there are many requirements that must be complied with for the use of these funds and many scenarios that you must be familiar with to ensure your use of these monies is permitted.

To view the document, go to:

<http://spp-apr-calendar.rrfcnetwork.org/getfile/view/id/494>.