

VII. LOCAL EDUCATIONAL AGENCY (LEA) ELIGIBILITY

A. GENERAL REQUIREMENTS

1. SUBGRANTS TO LEAs (34 CFR 300.705)

For each year for which funds are allocated to states under 34 CFR 300.703, it is the policy of the Department of Elementary and Secondary Education to award subgrants to responsible public agencies as described in 34 CFR 300.705.

2. CONDITION OF ASSISTANCE (34 CFR 300.200)

A responsible public agency is eligible for assistance under Part B of the Act for a fiscal year if the agency submits a budget application and provides assurances to the SEA that the responsible public agency has a Board approved local compliance plan that meets each of the conditions in 34 CFR 300.201 through 300.213.

3. CONSISTENCY WITH STATE POLICIES (34 CFR 300.201)

The responsible public agency, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under 34 CFR 300.101 through 300.163 and 300.165 through 300.177.

The responsible public agency may:

- a) adopt the State model local compliance plan, in which case the agency does not have to submit its plan to the SEA for approval, OR
- b) adopt the State model local compliance plan, with revisions to allow for unique agency characteristics or local requirements, in which case the agency must submit the plan to the SEA for approval, OR
- c) write a local compliance plan which meets all of the requirements listed above, in which case the agency must submit the plan to the SEA for approval.

4. INFORMATION FOR SEA (34 CFR 300.211)

The LEA must provide the SEA with information necessary to enable the SEA to carry out its duties under Part B of the Act including information relating to the performance of children with disabilities participating in programs carried out under Part B of IDEA.

5. HEARINGS RELATED TO LEA ELIGIBILITY (34 CFR 300.221 and 300.155)

It is the policy of the Department to provide a local school district or public agency with notice and an opportunity for a hearing prior to determination of ineligibility for Part B funds under the Individuals with Disabilities Education Act.

Appeal by an applicant must be based upon an allegation that these actions by the Department of Elementary and Secondary Education violate state or federal statute or regulation. The Department shall provide a local school district or public agency with notice of intent to determine ineligibility. That notice shall contain:

- a) a statement of the basis upon which the Department proposes to determine ineligibility;
- b) possible options for resolving the issue;
- c) how the applicant can request a hearing not later than thirty (30) days from receipt of the notice of proposed ineligibility; and,
- d) information about the proposed procedures to be followed in the hearing.

This notice shall be transmitted to the applicant by certified mail with return receipt requested.

Requests for a hearing pursuant to this section shall be in writing and shall be directed to the Office of the Commissioner of Education.

Within thirty (30) days of the date of receipt of the appeal request, the Commissioner of Education or a designee shall conduct a hearing on the record on the proposed action. No later than ten (10) days after the hearing, the Commissioner or a designee shall issue a written ruling, including findings of fact and a reason for the ruling. If the Department of Elementary and Secondary Education determines that its action was contrary to state or federal statutes or regulations, which govern the applicable program, the Department of Elementary and Secondary Education, shall rescind its action.

The ruling by the Commissioner of Education or a designee shall be final unless appealed pursuant to Education Division General Administrative Regulations (EDGAR) which provides that notice of appeal must be filed with the Office of the Secretary of Education within twenty (20) days after the applicant receives notice of the decision. The decision of the Commissioner of Education shall contain a description of the applicant's right of appeal and shall be forwarded by certified mail with return receipt requested.

The Department shall make available at reasonable times and places to each applicant all records pertaining to any review or appeal that the applicant is conducting under this section, including the records of other applicants.

6. FAILURE TO PROVIDE FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

The hearing procedure described in this section will be used when a district is determined to be unwilling or unable to provide a Free Appropriate Public Education (FAPE) as described in Regulation IV.

B. FISCAL REQUIREMENTS

1. USE OF AMOUNTS (34 CFR 300.202)

The amounts provided to the LEA under Part B of the Act must be:

- a) expended in accordance with applicable provisions of Part B of IDEA;
- b) used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with the excess cost provision of this section;
- c) used to supplement State, local, and other Federal funds and not to supplant those funds;
- d) expended in accordance with the LEA's Part B Budget Application; and,
- e) directed 100% towards special education unless otherwise allowed.

2. PERMISSIVE USE OF FUNDS (34 CFR 300.208)

Funds provided to an LEA under Part B of the Act may be used for the following activities:

- a) *Services and aids that also benefit nondisabled children.* For the costs of special education and related services and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more children will benefit from these services.
- b) *Coordinated Early Intervening services.* 34 CFR 205(d), 34 CFR 208 (a)(2), 34 CFR 226). To develop and implement coordinated, early intervening educational services in accordance with 34 CFR 300.226. A 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 effort, 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 (with a particular emphasis on students in kindergarten through grade 3) 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. In implementing coordinated, early intervening service, a responsible public agency may carry out activities that include:
 - 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.

Nothing in this section shall be construed to either limit or create a right to FAPE under Part B or to delay appropriate evaluation of a child suspected of having a disability. The amount of funds expended by an LEA for early intervening services under 34 CFR 300.226 shall count toward the maximum amount of expenditures that the LEA may reduce local effort.

- c) High cost special education and related services. To establish and implement cost or risk sharing funds, consortia, or cooperative for the LEA itself or for LEAs working in a consortium of which the LEA is a part, to pay for high cost special education and related services. In Missouri this is known as the “High Need Fund.”
- d) Administrative case management. An LEA may use funds received under Part B of the Act to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities that is needed for the implementation of those case management activities.
- e) Schoolwide Programs under Title I of the Elementary and Secondary Education Act (ESEA) 34 CFR 300.206. LEAs may use funds received under Part B for any fiscal year to carry out a school-wide program under section 1114 of the ESEA. The amount used in any school-wide program may not exceed the amount received by the LEA under Part B for that fiscal year, divided by the number of children with disabilities in the jurisdiction of the LEA, and multiplied by the number of children with disabilities participating in the school-wide program. Part B funds used in this manner, must be considered Federal Part B funds for purposes of calculations required for determining excess costs. All other requirements of Part B of the Act must be met by an LEA using Part B funds in a school-wide program, including ensuring that children with disabilities in school-wide program receive services in accordance with a properly developed IEP and are afforded all of the rights and services guaranteed to children with disabilities under the Act.

3. ACCOUNTING AND PAYMENT PROCEDURES

- a) Each LEA shall submit a budget application for Part B funds on or before the required due date. Part B funds may not be obligated until the budget application has been substantially approved, which occurs upon submission.
- b) LEAs shall submit payment requests for Part B funds by the required due dates. Payment requests must be based on actual expenditures to date or expenditures that will occur within three days of receiving the funds.
- c) LEAs must create a system for tracking Part B funds separately from state/local funds.
- d) Capital outlay purchases with Part B funds must be prior approved by the Department. This includes equipment, construction/renovation and vehicles/buses.
- e) Each LEA shall submit a final expenditure report (FER) for Part B funds on or before the required due date.
- f) Appropriate records shall be maintained to verify all expenditure of funds received under Part B of IDEA.

4. EXCESS COST (34 CFR 300.202)

- a) A responsible public agency may not use funds provided under Part B of IDEA to pay for all of the costs directly attributable to the education of a child with a disability ages six (6) through seventeen (17).
- b) A responsible public agency may use Part B funds to pay for all of the costs directly attributable to the education of a child with a disability ages three (3) through five

(5) and ages eighteen (18) through twenty (20), if no local or State funds are available for nondisabled children of these ages. However, the agency must comply with the nonsupplanting and other requirements of this part in providing the education and services for these children.

- c) A responsible public agency meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B are used.
- d) Excess costs must be calculated in accordance with 34 CFR 300.16 and may not include capital outlay or debt service.

5. MAINTENANCE OF EFFORT (34 CFR 300.203)

a) Funds provided to an LEA under Part B of the Act:

- must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year, and
- must be used to supplement State, local, and other Federal funds and not to supplant those funds as described in 34 CFR 300.202(a)(3).

b) Exceptions to Maintenance of Effort (34 CFR 300.204)

The total amount or average per capita amount of either local only or the combined State and local school funds budgeted by the LEA for expenditures in the current fiscal year for the education of students with disabilities must be at least equal to the total amount or average per capita amount of state and local school funds actually expended for the education of students with disabilities in the most recent preceding fiscal year for which the information is available. Allowance may be made for:

- the voluntary departure, by retirement or otherwise, or departure by just cause, of special education or related services personnel;
- a decrease in the enrollment of children with disabilities;
- the termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child has left the jurisdiction of the agency, has reached the age at which the obligation of the agency to provide FAPE to the child has terminated, or no longer needs the program of special education;
- the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities; and,
- the assumption of cost by the high cost fund operated by the SEA under 34 CFR 300.704(c).

c) Adjustment to Local Fiscal Effort (34 CFR 300.205)

In any fiscal year for which a district's Federal allocation exceeds the amount the

district received in the previous fiscal year, the district may reduce the level of expenditures required for the education of children with disabilities from state and local funds by not more than fifty (50) percent of the amount in excess.

If a responsible public agency exercises the authority to reduce their local effort, the agency must use an amount of local funds equal to the reduction in expenditures to carry out activities that could be supported with funds under the ESEA regardless of whether the agency is using funds under the ESEA for those activities.

If the SEA determines that a responsible public agency is unable to establish and maintain programs of FAPE that meet the requirements of section 613 (a) of the Act and this part or the SEA has taken action against the local educational agency under section 616, the SEA must prohibit the LEA from reducing the level of expenditures for that fiscal year.

The amount of funds expended by the responsible public agency for early intervening services under 34 CFR 300.226 shall count toward the maximum amount of expenditures that the responsible public agency may reduce maintenance of fiscal effort.

6. WITHHOLDING OF PAYMENTS

When the Department finds a failure to comply with any provision of applicable state or federal law, the Department may notify the LEA of restriction of funds under Part B until compliance is met.

7. EARLY CHILDHOOD SPECIAL EDUCATION (ECSE) EXPENDITURE REQUIREMENTS

- a) Early Childhood Special Education expenditures must be reported annually through an Expenditure Report for service provided during the previous school year. ECSE reimbursement may be paid through the monthly payment transmittal and may include both state and federal funds.
- b) ECSE expenditures may be claimed under the following categories: contractual expenditures, personnel, equipment, extended school year, leases/capital outlay, operation of plant, professional development, mileage, transportation, start-up costs, supplies/program maintenance.
 - 1) General Requirements
 - o All expenditures must follow the public agency's procurement guidelines.
 - o Public agencies may not collect or charge tuition costs for allowable ECSE services; however, the public agency may charge for tuition related to general early childhood education that is not part of the Individualized Education Program (IEP).

- 2) Contractual Expenditures

Placement of students outside of the district for instructional services must be through an approved private agency (Section VIII) or another public agency. Private agency tuition costs must be prorated if services other than ECSE are included in the tuition cost, unless the other service is part of the IEP goals.
- 3) Personnel Requirements

ECSE personnel must meet all personnel standards (Section VI.15) and caseload requirements as stated herein.
- 4) Equipment Expenditures
 - Equipment is defined as items that have a useful life of at least one year and a cost of \$1,000 or more per unit.
 - All equipment items purchased with ECSE funds are the property of the district's ECSE program and must remain with the program.
 - All individualized equipment purchases must be IEP driven.
- 5) Lease Expenditures
 - Leases are allowed for facilities, modular units, buses, vehicles, and office equipment.
 - Lease payments are made in accord with 5 CSR 30-640.200.
- 6) Capital Outlay (Lease Purchase, Purchase, New Construction, Renovation/Expansion) Expenditures
 - Prior approval by the Financial and Administrative Services Section is required on all capital outlay expenditures. Applications must be submitted annually to be considered for reimbursement during that school year.
 - Facility reimbursement for facility lease-purchases, purchases, and new construction is calculated based on the following formula.

$$\text{Eligible Count} * 60 \text{ Square Feet per Student} = \text{Amount of ECSE Reimbursable Space}$$

$$\text{Total Facility Cost} / \text{Total Facility Square Footage} = \text{Cost per Square Foot}$$

$$\text{Amount of ECSE Reimbursable Space} * \text{Cost per Square Foot} = \text{ECSE Reimbursement Amount}$$

$$\text{ECSE Reimbursement Amount} / 8 \text{ Years} = \text{Reimbursement per Fiscal Year}$$

Eligible count is the number of ECSE eligible students and non-disabled peers integrated into the ECSE classroom. The formula will be applied at the beginning of the agreement and remain consistent over the eight year period (renovation/expansion is reimbursed over a four year period) unless the district experiences a significant increase in students.

- 7) Operation of Plant Expenditures
 - For ECSE programs in stand-alone facilities with no other programs, all utilities and custodial costs may be charged to the ECSE program.
 - For ECSE programs in facilities with other programs/grades, a prorated portion of the utilities and custodial costs may be charged to the ECSE program.

- 8) Professional Development Expenditures
 - Teachers, administrators, and other direct services staff (OT, PT, SLPs, Interpreters, etc.) are allotted up to at a minimum \$300 per FTE for professional development activities. Part-time staff must be prorated based on these flat rate amounts.
 - Paraprofessionals are allotted up to at a minimum \$150 per FTE for professional development activities. Part-time staff must be prorated based on these flat rate amounts.

- 9) Start-Up Costs/New Classrooms Requirements
 - Start-up costs up to at a minimum of \$10,000 are allotted for a new classroom when the district has an increase from the prior year to the current year in either the December 1 Child Count or the End of the Year Count that meets the minimum caseload requirement.
 - A district that previously contracted for ECSE services with a private agency or cooperative and is starting a program in-house may utilize start-up funds even if minimum caseload requirements are not met.
 - Start-up costs up to at a minimum of \$1,200 per FTE are allotted for each new itinerant position that meets minimum caseload requirements.

- 10) Supplies/Program Maintenance Expenditures
 - The public agency is allotted at a minimum \$75 per the December 1 Child Count or the End of the Year Child Count (whichever is higher).

- 11) Transportation Expenditures
 - Public agencies with dedicated ECSE routes may charge the full cost of the bus driver, bus aides, contracted transportation costs, supplies, and equipment to the program. A prorated cost may be charged for mechanics, dispatchers, bus barns, contracted maintenance, and insurance.
 - Public agencies that do not have dedicated ECSE routes may only charge a prorated portion of the cost for the bus driver, bus aides, contracted transportation (not including maintenance) costs, supplies, and equipment. The public agency may not charge the program for mechanics, contracted maintenance, dispatchers, bus barns, and insurance.

12) Caseload Requirements

Caseloads for ECSE are mandatory and tied to funding requirements. The number of personnel approved for each district will be based upon a review of the district’s data for early childhood special education. ECSE funding will not be provided for staff serving children who are age 5 and kindergarten age eligible.

Position/Full Time Equivalent	Caseload/ Class Size
Teacher of Early Childhood Special Education Classroom	10-20*
Teacher of Integrated Classroom	10-20*
Itinerant Teacher (teachers who move from class to class within a facility or travel to other facilities)	12-22
Teacher of Severe/Low Incidence Classrooms	4-10*
Paraprofessional in ECSE Centerbased Self Contained Classroom or Integrated Classroom	10-20*
Paraprofessional in ECSE Severe/Low Incidence Classrooms	4-10*
Diagnostic Staff – for each position	160
Related Services Staff Employed by District (Occupational Therapist, Physical Therapist, Speech Therapist)	35-50
ECSE Dedicated Program or Process Coordinator (Administrator)	180
ECSE Secretary	180
Nurse (FTE can be increased if additional nursing needs are specifically addressed in IEPs)	175
Social Worker	
General	175
Diagnostic	160
Related Services	35-50

*Based on two half day sessions.

C. COMPLIANCE REQUIREMENTS

1. SIGNIFICANT DISPROPORTIONALITY 34 CFR 300.646

- A. The State ensures the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the local educational agencies (LEAs) with respect to:
1. The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment;
 2. The placement in particular educational settings of these children; and,
 3. The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

B. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, including disciplinary action resulting in suspension or expulsion, the State shall:

1. Provide for the review and, if appropriate, revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of the IDEA.
2. Require any LEA identified with significant disproportionality to reserve the maximum amount of funds specified under the IDEA to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly over identified; and,
3. Require the LEA to publicly report on a revision of policies, practices, and procedures described in C.1.B.1. of these regulations.

2. PURCHASE OF INSTRUCTIONAL MATERIALS (34 CFR 300.210)

LEAs that choose to coordinate with the National Instructional Materials Access Center (NIMAC), when purchasing print instructional materials, must acquire those materials in the same manner and under the same conditions as an SEA. See Regulation VI.

LEAs are not required to coordinate with the NIMAC. If an LEA chooses not to coordinate with the NIMAC, the LEA must provide an assurance to the SEA that the LEA will provide instructional materials to blind persons or other persons with print disabilities in a timely manner. “In a timely manner” means that the responsible public agency has taken all reasonable steps to ensure that students with print disabilities have accessible materials at the same time their fellow students without disabilities have their materials.

Nothing in this section relieves an LEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

3. RECORDS REGARDING MIGRATORY CHILDREN WITH DISABILITIES (34 CFR 300.213)

The LEA must cooperate with efforts of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging health and educational information among the states for these children.

4. PERSONNEL (34 CFR 300.201)

LEAs must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared and meet the requirements outlined in Regulation VI.

Personnel paid in full or in part from Part B funds must be appropriately prepared and trained as outlined in Regulation VI, Personnel Standards of this State Plan.

Personnel paid in full or in part from Part B funds must maintain time and effort documentation prescribed in OMB Circular A-87 with either semi-annual certifications or Personal Activity Reports (PARS).

5. CLASS SIZE AND CASELOADS

Caseloads and Class Size Requirements differ between Early Childhood Special Education (ECSE) and grades K-12. Caseloads for ECSE are mandatory and tied to funding requirements. The standards for grades K-12 are desirable and should not exceed the maximum case load outlined in the Caseload guidance on the Office of Special Education website. Factors to consider when determining caseload for grades K-12 are listed below.

a) Caseloads and Class Size Requirements for Early Childhood Special Education (ECSE)

See Regulation VII Section 7 for ECSE requirements.

b) Class Size/Caseload Standards for Grades K-Twelve (12)

It is the responsibility of the public agency to assign students to classes and monitor student/teacher ratios for class size and caseload to ensure that there are adequate staff and that staff have adequate time to provide for the implementation of the IEP of each identified student with a disability.

Paraprofessionals/aides may be assigned to specific students and/or may be assigned to classrooms based upon the number and unique needs of students with disabilities being served in the class. While highly qualified teachers and licensed therapists must design and provide initial or original instruction, support personnel may provide reinforcement and practice of previously taught skills or content. Additionally, appropriately trained support personnel may provide assistance to students in response to specific needs related to:

- significant cognitive and/or sensory impairments;
- safety;
- mobility;
- personal care;

- behavior;
- medical/health; or,
- other unique circumstances.

Considerations when making staffing determinations include:

- instructional planning time (minimum of 250 minutes per week of instructional planning during the school day is required);
- data collection, observation, assessment, and report preparation;
- consultation and IEP planning with general educators;
- IEP case management;
- IEP Team meetings and meetings with parents;
- age of the children (younger children generally require more assistance with personal tasks such as toileting, dressing, and feeding); and,
- travel time between assignments.

When assigning students to a self-contained classroom, consideration should be given to the following:

- severity of the disability of the students assigned to the classroom;
- ages of students assigned to the classroom;
- range of needs of the students as specified in their IEPs;
- unique needs of the students as specified in their IEPs;
- other duties assigned to the classroom teacher (IEP case management, recess, lunch, etc.); and,
- level of paraprofessional support provided

When assigning students to a resource or general education classroom, consideration should be given to the following:

- The ages and grade levels of the students served
- The severity of the disabilities of the students served
- The unique needs of the students as identified in their IEPs
- The number of IEPs managed by the teacher
- Any assessment/evaluation responsibilities of the teacher
- Other duties assigned to the teacher