

Q & A background for “IDEA Special Education Excess Costs”

Background: IDEA regulations require that recipients of those funds, *as a condition of assistance*, certify that certain criteria are met. One criterion with which we are most familiar is the Maintenance of Effort (MOE) requirement. However another of those requirements, separate from MOE, is the *Excess Costs* test. This requirement is not new to IDEA (some sources have noted that it has been required since the late 70’s); however it wasn’t until the recent update to the IDEA regulations that a clearer definition became available. IDEA regulations now spell out how that calculation is to be performed. CDE is required to implement the new regulations and they have an internal workgroup that is currently undertaking that task.

Q. What does *Excess Costs* mean? Of course there are excess costs; that’s why we all have encroachment!

A. True! But this is not measuring encroachment. *Excess costs* aims to get at the principle that a school district needs to spend as much money on a child with disabilities as it does on a non-disabled child – before that district is eligible to spend IDEA funding. Here is the exact definition of excess costs from the IDEA regulations (300.16):

§ 300.16 Excess costs.

Excess costs means those costs that are in excess of the average annual per student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting—

(a) Amounts received

- (1) Under Part B of the Act;
- (2) Under Part A of title I of the ESEA; and
- (3) Under Parts A and B of title III of the ESEA and;

(b) Any State or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section, but excluding any amounts for capital outlay or debt service. (See Appendix A to part 300 for an example of how excess costs must be calculated.)

(Editor’s note: “assistance” is the federal word for funding)

Q. When does this go into effect?

A. It already is and has been in effect. As a SELPA recipient /LEA subrecipient, we’ve been required to do this for years. However, with the recent IDEA clarification, we now have an actual calculation to perform. The federal Office of Special Education Programs (OSEP) will be visiting CDE later this year. As a State we must show that we are implementing the regulation; hence guidance from CDE will be coming soon, *on a short timeline*.

Q. When would a district perform the calculation?

A. Best guess: as part of the Unaudited Actuals. The test requires a district to spend, on a per pupil basis, at least as much in the *current* year on a child with disabilities, as it spend in the *prior year* on non-disabled children.

Q. What if a district fails the test?

A. Best guess: the test is a condition of assistance (300.200 and 300.202). As such your auditor would probably have to disallow all IDEA expenditures. As a practical matter, a district would ensure that it passed this test while closing; by spending enough local / state funds (prior to IDEA) to meet the requirement.

Q. Does this mean a district cannot spend the cash IDEA funds that it has received until fiscal year end?

A. No. LEAs can spend IDEA cash funds under the presumption that they are passing the test. However if at year end closing they do not meet the test, those expenditures coded to IDEA might have to be re-coded to state and / or local sources.

Q. What does the exact calculation look like?

A. I've attached a version of what the federal government provided. We are hopeful that "targeted" but state-funded programs will also qualify for exemption from the calculation (similar to the way Title I funds are excluded); but there is not provision in the federal regulations that seem to allow for that. CDE will explore that topic with OSEP.

Q. Okay, I've reviewed the calculation and it says I have to do the calculation separately for elementary students and secondary students. I'm a Unified school district; I don't have that information!

A. True! But the federal government is adamant and clear on the point. Unified districts may not report in the aggregate. How the calculation will be performed for these districts is unclear, especially since historical data was not coded by school site. Best guess: Some proportional allocation of district wide costs will be applied.

Q. There is no way a County Office of Education run regional program will pass this test.

A. Agreed. That still needs to be worked out. See the question below on district of residence for one possible solution.

Q. Who is the enforcing arm of these regulations?

A. The federal government twists the State's arm, which will twist the SELPA's arm, who will twist the district. The arm twisting follows the funding.

Q. What is the actual language in the regulations for the *Excess Cost* requirement?

A. Section 300.202 of the IDEA regulations reads:

(b) *Excess cost requirement*

(1) *General.*

(i) The excess cost requirement prevents an LEA from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to paragraph (b)(1)(ii) of this section.

(ii) The excess cost requirement does not prevent an LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or State funds are available for nondisabled children of these ages. However, the LEA must comply with the nonsupplanting and other requirements of this part in providing the education and services for these children.

(2)

(i) An LEA 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 of the Act are used.

(ii) The amount described in paragraph (b)(2)(i) of this section is determined in accordance with the definition of *excess costs* in § 300.16. That amount may not include capital outlay or debt service.

(3) If two or more LEAs jointly establish eligibility in accordance with § 300.223, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in § 300.16 in those agencies for elementary or secondary school students, as the case may be.

Q. I note that section 2(i) says I must spend a minimum average amount for the education of children with disabilities. But some children with disabilities are in the regular classroom (e.g. speech services). Can I include those expenditures?

A. Yes, I believe so. However, currently SACS isn't tracking that data since it isn't coded to goal 5000 (MOE implications for those of you jumping ahead).

Q. Will we use ADA or enrollment to calculate per pupil amounts?

A. Probably enrollment for total student population, as it corresponds best to the December 1st unduplicated pupil counts of special education.

Q. District of residence or district of service?

A. Great question! Unknown. Although it would seem district of residence best reflects the intent of the federal regulations.

Excess Costs Calculation - Appendix A to Part 300

Except as otherwise provided, amounts provided to an LEA under Part B of the Act may be used only to pay the excess costs of providing special education and related services to children with disabilities. Excess costs are those costs for the education of an elementary school or secondary school student with a disability that are in excess of the average annual per student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate. An LEA must spend at least the average annual per student expenditure on the education of an elementary school or secondary school child with a disability before funds under Part B of the Act are used to pay the excess costs of providing special education and related services.

Section 602(8) of the Act and §300.16 require the LEA to compute the minimum average amount separately for children with disabilities in its elementary schools and for children with disabilities in its secondary schools. In California there is not a legislative definition for elementary, for the excess cost calculation. Elementary may be defined as K-5 or K-6 and secondary as 6-12 or 7-12. LEAs may not combine the enrollments in its elementary schools and secondary schools to compute the minimum average amount.

The following example shows how to compute the minimum average amount an LEA must spend for the education of each of its elementary school children with disabilities under section 602(3) of the Act before it may use funds under Part B of the Act.

First the LEA must determine the total amount of its expenditures for elementary school students from all sources – local, State, and Federal (including Part B) – in the preceding school year. Only capital outlay and debt services are excluded.

Example: The following is an example of a computation for children with disabilities enrolled in an LEA's elementary schools. A separate calculation of the same type must be done for an LEA's secondary schools. In this example, the LEA had an average elementary school enrollment for the preceding school year of 800 (including 100 children with disabilities). The LEA spent the following amounts last year for elementary school students (including its elementary school children with disabilities):

(1)	From State and local tax funds	\$6,500,000
(2)	From Federal funds	+ 600,000
	Total expenditures	\$7,100,000

Of the total, \$60,000 was for capital outlay and debt services relating to the education of elementary school students. This must be subtracted from total expenditures.

(1)	Total expenditures	\$7,100,000
(2)	Less capital outlay and debt	- 60,000
	Total expenditures for elementary school students less capital outlay and debt	\$7,040,000

b. Next, the LEA must subtract from the total expenditures amounts spent for:

- (1) IDEA Part B allocation,
- (2) ESEA, Title I, Part A allocation,
- (3) ESEA, Title III, Parts A and B allocation,
- (4) State and local funds for children with disabilities, and
- (5) State or local funds for programs under ESEA, Title I, Part A, and Title III, Parts A and B. These are funds that the LEA actually spent, not funds received last year but carried over for the current school year.

Example: The LEA spent the following amounts for elementary school students last year:

(1)	From funds under IDEA, Part B allocation	\$	200,000
(2)	From funds under ESEA, Title I, Part A allocation		250,000
(3)	From funds under ESEA, Title III, Parts A and B allocation		50,000
(4)	From State funds and local funds for children with disabilities		500,000
(5)	From State and local funds for programs under ESEA, Title I, Part A, and Title III, Parts A and B		<u>150,000</u>
	Total	\$	1,150,000
(1)	Total expenditures less capital outlay and debt	\$	7,040,000
(2)	Other deductions		<u>- 1,150,000</u>
	Total	\$	5,890,000

c. Except as otherwise provided, the LEA next must determine the average annual per student expenditure for its elementary schools dividing the average number of students enrolled in the elementary schools of the agency during the preceding year (including its children with disabilities) into the amount computed under the above paragraph. The amount obtained through this computation is the minimum amount the LEA must spend (on the average) for the education of each of its elementary school children with disabilities. Funds under Part B of the Act may be used only for costs over and above this minimum.

(1)	Amount from Step b	\$	5,890,000
(2)	Average number of students enrolled		<u>+ 800</u>
	Average annual per student expenditure (\$5,890,000 / 800)	\$	7,362

d. Except as otherwise provided, to determine the total minimum amount of funds the LEA must spend for the education of its elementary school children with disabilities in the LEA (not including capital outlay and debt services), the LEA must multiply the number of elementary school children with disabilities in the LEA times the average annual per student expenditure obtained in Step c. above. Funds under Part B of the Act can only be used for excess costs over and above this minimum.

(1)	Number of children with disabilities in the LEA's elementary schools		100
(2)	Average annual per student expenditure	\$	<u>x 7,362</u>
	Total minimum amount of funds the LEA must spend for the education of children with disabilities enrolled in the LEA's elementary schools before using Part B funds (\$7,362 x 100)	\$	736,200

Please note that we have developed an excess cost calculation spreadsheet for district use in determining elementary and secondary excess costs.