



PART B EXCESS COST QUICK REFERENCE DOCUMENT

ARRA/Fiscal Priority Team

This Quick Reference Document has been prepared by the Regional Resource Center Program ARRA/Fiscal Priority Team to aid RRCP State Liaisons and other TA providers in understanding the general context of state questions surrounding excess cost.

As a “first-stop” for TA providers in investigating excess cost questions on behalf of their states, this document is intentionally brief and is not intended to provide comprehensive guidance on excess cost issues. It is also not designed or intended for general public distribution. For additional clarification or detail on a specific excess cost issue, TA providers are encouraged to contact the member of the ARRA/Fiscal Priority Team in their respective RRCP region or the ARRA/Fiscal Convener for additional information and resources (see complete contact information for the Team at the end of the document).

1. What is excess cost?

§300.16: “Excess costs means those costs that are in excess of the average annual per-student expenditure in an LEA [local educational agency] 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.”

2. Does the excess cost requirement apply to both the state and LEAs?

No. The excess cost requirement only applies to LEAs.

3. Must an LEA calculate excess cost or can a state calculate excess cost for the LEA?

If an LEA provides all the financial data required in the calculation of the average annual per-student expenditure pursuant to 34 CFR §§300.16, 300.202(b) and Appendix A to the IDEA regulations, to the SEA, it would be possible for the SEA to calculate excess cost for the particular LEA. As part of its general supervisory responsibilities, the SEA must ensure that its LEAs are meeting the excess cost requirement. Whether the state requires the LEAs to do the calculation, or,



provided that it has the information necessary to do the calculation itself, the state does the calculation, is up to the state.

4. Must a state have a definition for elementary and secondary education for purpose of calculating excess cost?

Under 34 CFR §300.13, "elementary school" means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, **as determined under state law**. Under 34 CFR §300.36, "secondary school" means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, **as determined under state law**, except that it does not include any education beyond grade 12. A state may adopt formal definitions of elementary and secondary education. However, if a state does not have state definitions of elementary and secondary education, it is possible that the state permits LEAs to use their own definitions. In either case, since the calculations for excess cost must be conducted separately for elementary and secondary education, the SEA will need to provide direction for LEAs to distinguish costs that are to be attributed to elementary education and those that are to be attributed to secondary education.

5. Are there examples of definitions for an elementary school or secondary school that states have adopted to meet this requirement?

Section 9101(18) of the Elementary and Secondary Education Act (ESEA) and IDEA, as indicated above, define "the term "elementary school" to mean a "nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law."

Similarly section 9101(38) and IDEA, as indicated above, define "secondary school" to mean "a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under state law, except that the term does not include any education beyond grade 12."

Some states have incorporated language from the following definitions used by the National Center for Educational Statistics (NCES):

"Elementary school: A school classified as elementary by state and local practice and composed of any span of grades not above grade 8. A preschool or kindergarten school is included under this heading only if it is an integral part of an elementary school or a regularly established school system.

Secondary school: A school comprising any span of grades beginning with the next grade following an elementary or middle school (usually 7, 8, or 9) and ending with or below grade 12. Both junior high schools and senior high schools are included."

6. Can the state's definition of elementary education and secondary education under IDEA be different than the state's definition under ESEA?

No. The requirements under the ESEA and IDEA are identical (see 34 CFR §§300.13 and 300.36 of the IDEA regulations and Section 9101(18) and Section 9101(38) of the ESEA).

7. Can an LEA adopt its own definition for elementary and secondary education for the purpose of calculating excess cost?

See question 4. If the state has adopted definitions of elementary and secondary education, the LEA must use these definitions. However, if the state has not adopted definitions, it may instruct an LEA to adopt and use its own definitions for elementary and secondary education for purpose of calculating excess cost.

8. Must an SEA/LEA calculate two different average per-pupil expenditures (APPEs): one for elementary education and one for secondary education?

Yes. The SEA/LEA must calculate an aggregated APPE for elementary education and an aggregated APPE for secondary education.

Appendix A to Part 300 – Excess Costs Calculations: "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. LEAs may not compute the minimum average amount it must spend on the education of children with disabilities based on a combination of the enrollments in its elementary schools and secondary schools."

9. Can the average per-pupil expenditure (APPE) be the same for an elementary school student and a secondary school student in an LEA?

It is possible but unlikely that the APPE for an elementary school student would be the same as that of a secondary school student, as the calculations of APPE must be done separately for elementary education and secondary education, and expenditures for secondary education are not likely to be the same as those for elementary education.

10. Must an LEA expend the aggregate average per-pupil expenditure (APPE) before they expend any IDEA funds?

An LEA must use IDEA Part B funds only for the excess costs of providing special education and related services to children with disabilities. 34 CFR §300.202(a)(2). Excess costs are those costs that are in excess of the average annual per pupil expenditures in the LEA for an elementary school or secondary school student, as



appropriate. The average annual per pupil expenditure must be computed as described in 34 CFR §300.16 annually. One way to meet the excess cost requirement is described in 34 CFR §300.202(b)(2)(i), which says that:

“[a]n 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.”

In its Analysis of Comments and Changes to the 1999 Part B regulations implementing the 1997 Amendments to the IDEA, OSEP commented on a proposed note regarding this question. The discussion stated:

The proposed note clarified the Department’s longstanding position that: (1) The excess cost requirement means that the LEA must spend a certain minimum amount for the education of its children with disabilities before Part B funds are used, ensuring that children served with Part B funds have at least the same average amount spent on them, from sources other than Part B, as do the children in the school district in elementary or secondary school as the case may be; (2) excess costs are those costs of special education and related services that exceed the minimum amount; (3) if an LEA can show that it has (on the average) spent the minimum amount for the education of each of its children with disabilities, it has met the excess cost requirement, and all additional costs are excess costs; and (4) Part B funds can then be used to pay for these additional costs. 64 Fed. Reg. 12571.



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