

**§ 222.36 What minimum number of federally connected children must a local educational agency have to receive a payment on behalf of those children under section 8003(b) and (e)?**

(a) Except as provided in paragraph (d) of this section, an LEA is eligible to receive a payment under section 8003(b) (basic support and learning opportunity threshold) and (e) (hold harmless) for a fiscal year only if the total number of its eligible federally connected children for whom it provided a free public education for the preceding fiscal year was—

(1) At least 400 who were in average daily attendance (ADA); or

(2) At least 3 percent of the total number of children in ADA.

(b) Except as provided in paragraph (d) of this section, an applicant LEA is eligible to receive a payment under section 8003 for a fiscal year on behalf of federally connected children described in section 8003(a)(1)(F) or (G) only if the total number of those children for whom it provided a free public education for the preceding fiscal year was at least—

(1) 1,000 in ADA; or

(2) 10 percent of the total number of children in ADA.

(c) Children described in paragraph (b) of this section are counted for the purposes of paragraph (a) of this section only if the applicant LEA is eligible to receive a payment on behalf of those children under section 8003.

(d) This section does not apply to hold harmless payments under section 8003(e) for fiscal year 1995.

(Authority: 20 U.S.C. 7703(a)(3) and (b)(1)(B))

[60 FR 50778, Sept. 29, 1995, as amended at 62 FR 35415, July 1, 1997]

**§ 222.37 How does the Secretary calculate the average daily attendance of federally connected children?**

(a) This section describes how the Secretary computes the ADA of federally connected children for each category in section 8003 to determine an applicant's payment.

(b) If an LEA is in a State that collects actual ADA data for purposes of distributing State aid for education, the Secretary calculates the ADA of that LEA's federally connected chil-

dren for the current fiscal year payment as follows:

(1) Except as provided in paragraph (b)(3) of this section—

(i) By dividing the ADA of all the LEA's children for the second preceding fiscal year by the LEA's total membership on its survey date for the second preceding fiscal year (or, in the case of an LEA that conducted two membership counts in the second preceding fiscal year, by the average of the LEA's total membership on the two survey dates); and

(ii) By multiplying the figure determined in paragraph (b)(1)(i) of this section by the LEA's total membership of federally connected children in each subcategory described in section 8003 and claimed in the LEA's application for the current fiscal year payment (or, in the case of an LEA that conducts two membership counts, by the average of the LEA's total membership of federally connected children in each subcategory on the two survey dates).

(2)(i) For purposes of this section, actual ADA means raw ADA data that have not been weighted or adjusted to reflect higher costs for specific types of students for purposes of distributing State aid for education.

(ii) If an LEA provides a program of free public summer school, attendance data for the summer session are included in the LEA's ADA figure in accordance with State law or practice.

(iii) An LEA's ADA count includes attendance data for children for whom it makes tuition arrangements with other educational entities.

(3) Attendance data are not counted for any child—

(i) Who is not physically present at school for the daily minimum time period required by the State, unless the child is—

(A) Participating via telecommunication or correspondence course programs that meet State standards; or

(B) Being served by a State-approved homebound instruction program for the daily minimum time period appropriate for the child; or

(ii) Attending the applicant's schools under a tuition arrangement with another LEA.

(c) If an LEA is in a State that does not collect ADA data for purposes of