

Ofc. of Elem. & Secondary Ed., Education

§ 222.53

Special education means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a child with a disability, including—

- (1) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
- (2) Instruction in physical education.

(Authority: 20 U.S.C. 1401, 7703, 7705, 7713; 37 U.S.C. 101)

§ 222.51 Which children may a local educational agency count for payment under section 8003(d) of the Act?

(a) Except as provided in paragraph (b)(2) of this section, the children described in sections 8003(a)(1)(A)(ii), (a)(1)(B), (a)(1)(C), and (a)(1)(D) of the Act who are eligible for services under the provisions of the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*) may be counted by the local educational agency (LEA) for the purpose of computing a payment under section 8003(d).

(b)(1) An LEA may count a child or children described in paragraph (a) of this section who attend private schools or residential programs if the LEA has placed or referred the child or children in accordance with the provisions of section 613 of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 *et seq.* and 34 CFR part 300, subparts C and D.

(2) Children who are placed in private schools by their parents may not be counted under section 8003(d), but may participate in public school programs that use section 8003(d) funds.

(Authority: 20 U.S.C. 1400 *et seq.* and 7703(d))

§ 222.52 What requirements must a local educational agency meet to receive a payment under section 8003(d)?

To receive a payment under section 8003(d), an eligible LEA shall—

(a) State in its application the number of federally connected children with disabilities it claims for a payment under section 8003(d);

(b) Have in effect a written IEP for each federally connected child with disabilities claimed for a payment under section 8003(d); and

(c) Meet the requirements of subparts A and C of the regulations in this part.

(Approved by the Office of Management and Budget under control number 1810-0036)

(Authority: 20 U.S.C. 1400 *et seq.* and 7703)

§ 222.53 What restrictions and requirements apply to the use of funds provided under section 8003(d)?

(a) An LEA shall use funds provided under section 8003(d) in accordance with the provisions of section 8003(d)(2) and 34 CFR part 300.

(b) Obligations and expenditures of section 8003(d) funds may be incurred in either of the two following ways:

(1) An LEA may obligate or expend section 8003(d) funds for the fiscal year for which the funds were appropriated.

(2) An LEA may reimburse itself for obligations or expenditures of local and general State aid funds for the fiscal year for which the section 8003(d) funds were appropriated.

(c) An LEA shall use its section 8003(d) funds for the following types of expenditures:

(1) Expenditures that are reasonably related to the conduct of programs or projects for the free appropriate public education of federally connected children with disabilities. These expenditures may include program planning and evaluation but may not include construction of school facilities.

(2) Acquisition cost (net invoice price) of equipment required for the free appropriate public education of federally connected children with disabilities.

(i) If section 8003(d) funds are used for the acquisition of any equipment described in this paragraph (c)(2) of this section, the fair market value of any financial advantage realized through rebates, discounts, bonuses, free pieces of equipment used in a program or project for the free appropriate public education of federally connected children with disabilities, or other circumstances, is not an allowable expenditure and may not be credited as an expenditure of those funds.

(ii) Funds awarded under the provisions of section 8003(d) may be used to acquire equipment for the free appropriate public education of the federally connected children with disabilities

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only if title to the equipment would be in the applicant agency.

(d) An LEA shall account for the use of section 8003(d) funds as follows:

(1) By recording, for each fiscal year, the receipt (or credit) of section 8003(d) funds separately from other funds received under the Act, *i.e.*, on a line item basis in the general fund account or in a separate account; and

(2) By demonstrating that, for each fiscal year, the amount of expenditures for special education and related services provided to the federally connected children with disabilities is at least equal to the amount of section 8003(d) funds received or credited for that fiscal year. This is done as follows:

(i) For each fiscal year determine the amount of an LEA's expenditures for special education and related services provided to all children with disabilities.

(ii) The amount determined in paragraph (d)(2)(i) of this section is divided by the average daily attendance (ADA) of the total number of children with disabilities the LEA served during that fiscal year.

(iii) The amount determined in paragraph (d)(2)(ii) of this section is then multiplied by the total ADA of the LEA's federally connected children with disabilities claimed by the LEA for that fiscal year.

(3) If the amount of section 8003(d) funds the LEA received (or was credited) for the fiscal year exceeds the amount obtained in paragraph (d)(2)(iii) of this section, an overpayment equal to the excess section 8003(d) funds is established. This overpayment may be reduced or eliminated to the extent that the LEA can demonstrate that the average per pupil expenditure for special education and related services provided to federally connected children with disabilities exceeded its average per pupil expenditure for serving non-federally connected children with disabilities.

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(Authority: 20 U.S.C. 7703(d))

34 CFR Ch. II (7-1-08 Edition)

§ 222.54 What supplement-not-supplant requirement applies to this subpart?

Funds provided under section 8003(d) may not supplant any State funds that were or would have been available to the LEA for the free appropriate public education of children counted under section 8003(d).

(a) No section 8003(d) funds may be paid to an LEA whose per pupil State aid for federally connected children with disabilities, either general State aid or special education State aid, has been or would be reduced as a result of eligibility for or receipt of section 8003(d) funds, whether or not a State has a program of State aid that meets the requirements of section 8009 of the Act and subpart K of the regulations in this part.

(1) A reduction in the per pupil amount of State aid for children with disabilities, including children counted under section 8003(d), from that received in a previous year raises a presumption that supplanting has occurred.

(2) The LEA may rebut this presumption by demonstrating that the reduction was unrelated to the receipt of section 8003(d) funds.

(b) In any State in which there is only one LEA, all funds for programs for children with disabilities other than funds from Federal sources are considered by the Secretary to be local funds.

(Authority: 20 U.S.C. 7703(d))

§ 222.55 What other statutes and regulations are applicable to this subpart?

Local educational agencies receiving funds under section 8003(d) are subject to the requirements of the Individuals with Disabilities Education Act, and related regulations (20 U.S.C. 1401 *et seq.* and 34 CFR part 300).

(Authority: 20 U.S.C. 1401 *et seq.*, 6314, and 7703(d))