

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT  
INDIVIDUALS WITH DISABILITIES EDUCATION ACT-PART B (IDEA-B)  
GUIDELINES FOR LOCAL APPLICATION  
ENTITLEMENT and PRESCHOOL SUB-GRANT ALLOCATIONS**  
Revised April, 2009

**GENERAL INFORMATION & GUIDELINES**

**[IDEA Part B - Section 613- Local Educational Agency Eligibility]**

The purpose of this document is to provide information to New Mexico Public Education Agencies on the submission of applications for and the awarding of sub-grants under the Individuals with Disabilities Education Act (IDEA-B), as amended by the Individuals with Disabilities Education Improvement Act of 2004, Public Law No. 108-446. IDEA-B provides financial assistance for two entitlement sub-grants: the Basic Sub-grant (Sec. 611(f)) and the Preschool Sub-grant (Sec. 619(g)). This application serves as the application for IDEA-B Basic and Preschool entitlement sub-grants. NMPED may require additional information as part of the selection process for certain IDEA-B discretionary sub-grants.

Please note that your local IDEA Panel must be included in reviewing and providing input regarding this application. Applicants who are awarded a sub-grant (“sub-grantees”) must make their applications available for public inspection. (34 CFR § 76.304)

**DEFINITIONS**

1. **NMPED:** the New Mexico Public Education Department, also referred to as the state educational agency (SEA).
2. **SEB:** the Special Education Bureau of the NMPED
3. **LEA:** “local educational agency”: a public board of education or other public authority legally constituted within a State for either administrative control or direction of , or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State , or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools. The term includes -- (1) An educational service agency, as defined in 34 CFR §300.12; and (2) Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public nonprofit charter school that is established as an LEA under State law. (34 CFR §300.28)
4. **Voluntary Joint Eligibility:** the submission of one application in which two or more LEAs establish a joint responsibility for implementing programs that receive assistance under IDEA-B and, thus, are jointly responsible for compliance with all applicable requirements of state and federal laws and regulations.
5. **Mandated Joint Eligibility:** The NMPED may require an LEA to establish its eligibility jointly with another LEA if the SEB determines that the LEA will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.  
(34 CFR §300.223)

6. **Voluntary Combined Application:** The submission of one combined application for multiple LEAs in which each LEA is establishing its IDEA-B eligibility singularly, although applications are submitted together. (34 CFR § 76.303)

This type of application is intended for LEAs that do not intend to establish joint eligibility with other LEAs. Each LEA wishing to submit its application through a voluntary combined application with other LEAs must submit a separate Plan of Assurance, Section III of the NMPED's "Local Application for IDEA-B", signed and approved by each LEA's Special Education Director, Superintendent and School Board.

**NOTE:** While the voluntary combined application is designed for LEAs that do not intend to establish joint eligibility with other LEAs, it is possible that the U.S. Department of Education, a hearing officer or a court could determine otherwise and find the LEAs jointly eligible and jointly responsible, even with clarified intent in the application. LEAs using the combined application should ensure identifiable demarcations in their program responsibilities and fund accounting. For example, if multiple LEAs use a common fiscal agent, each LEA must use an accounting system that permits identification of the costs paid for under its sub-grant. (34 CFR § 76.303(d)) It is equally important to ensure that the fiscal agent uses an accounting system that will permit the identification of costs paid under each LEA's sub-grant. If an LEA cannot account for its IDEA-B funded costs because there is insufficient recordkeeping to distinguish each LEA's sub-grant funds, this fact, coupled with a combined application, could be perceived by an auditor or the U.S. Department of Education as joint eligibility.

7. **Public Agencies Responsibilities:** "Compliance with applicable laws and regulations. Each New Mexico public agency, within the scope of its authority, shall develop and implement appropriate policies, procedures, programs and services to ensure that all children with disabilities who reside within the agency's educational jurisdiction, including children who are enrolled in private schools or facilities such as residential treatment centers, day treatment centers, hospitals, mental health institutions, or are schooled at home, are identified and evaluated and have access to a free appropriate public education (FAPE) in compliance with all applicable requirements of state and federal laws and regulations. This obligation applies to all New Mexico public agencies that are responsible under laws, rules, regulations or written agreements for providing educational services for children with disabilities, regardless of whether that agency receives funds under the IDEA and regardless of whether it provides special education and related services directly, by contract, by referrals to private schools or facilities including residential treatment centers, day treatment centers, hospitals, mental health institutions or through other arrangements."

[6.31.2.9(A), NMAC]

8. **State Supported Educational Program (SSEP):** a publicly funded program that:
  - A. provides special education and related services to children with disabilities who come within the program's educational jurisdiction;
  - B. is operated by, or under contractual arrangements for, a state school, state educational institution or other state institution, state hospital or state agency; and
  - C. is primarily funded through direct legislative appropriations or other direct state support to a public agency other than a local school district.

9. **EPSS:** Educational Plan for Student Success, which is the annual strategic plan which guides the improvement of student performance of districts and local schools.

10. **SPP:** State Performance Plan.

### **THOSE ELIGIBLE TO APPLY**

LEAs and State Supported Educational Programs (SSEPs) are eligible to apply for funds under the IDEA-B grant. Applicants must have completed accurate, valid and timely required child count reports. Failure to complete these reports could affect application approval.

### **DISTRIBUTION OF FUNDS**

Both IDEA-B Basic and Preschool entitlement funds are available for distribution. IDEA-B Basic sub-grants are distributed according to the formula described at IDEA Sec. 611(f) [20 U.S.C. 1411(f); 34 CFR § 300.705]. IDEA-B Preschool sub-grants are distributed according to the formula described at IDEA Sec. 619(g).

[20 U.S.C. 1419(g); 34 CFR § 300.816].

### **DUE DATE**

Applications (original copy with original signatures only) must be received on or before 5:00 pm, May 29, 2009 at the:

**New Mexico Public Education Department  
Special Education Bureau  
120 Federal Place Room 206  
Santa Fe, NM 87501-2752**

### **AWARD NOTICE**

Estimated allocations for Fund codes 24106 (IDEA-B Basic Entitlement) and 24109 (IDEA-B Preschool Entitlement, if applicable) will be included as federal revenues in the LEA's initial operating budget which is typically approved by the NMPED before mid-June. Funds to be budgeted as Coordinated Early Intervening Services (CEIS) are to be budgeted under fund code 24112. Funds to be budgeted as Private School Proportionate Share are to be budgeted under fund code 24115. Funds budgeted under fund codes 24112 and 24115 are to be subtracted from the LEA's Basic and Preschool Entitlement allocations as applicable. Application approval letters will serve as the sub-grant award notices for the IDEA-B entitlement sub-grants.

Application approval letters will be mailed as soon as applications are approved. Expending against sub-grant award may not commence until after application has been substantially approved and budget authority has been authorized by NMPED. Reimbursements will begin in July for those LEAs whose applications have received final approval.

### **PERIOD OF AVAILABILITY AND CARRYOVER (34 CFR sections 76.708-76.710)**

Sub-grantees must obligate the IDEA-B sub-grant funds during the obligation period. The start date for this period will be no earlier than July 1 and will be the later of (1) the date when the NMPED may begin to obligate the IDEA-B grant funds or (2) the date that the applicant submits its application to NMPED in substantially approvable form. Reimbursement for obligations is subject to final approval of the application. NMPED will notify sub-grantees, in writing, of the period during which they may obligate the funds. Sub-grantees will have the current grant award year (a.k.a., the year in which the funds were appropriated), as well as a carryover period of one additional federal fiscal year ending on September 30, to obligate their sub-grant funds. Generally, this will be a total obligation period of no more than 27 months, although it could be shorter depending on when an application is substantially approvable and whether NMPED reallocates IDEA-B sub-grant funds consistent with its authority under 34 CFR § 300.705(c) and 34 CFR § 300.817. NMPED strongly encourages grantees to expense funds in the current grant award year, rather than in the carryover year.

Funds carried over must be used in accordance with the federal statutes and regulations in effect for carryover period and any application the sub-grantee is required to submit for the carryover period. The State must return to the Federal Government any carryover funds not obligated by its sub-grantees by the end of the carryover period.

A special restriction applies on the carryover of the proportionate share of IDEA-B basic entitlement sub-grant funds (and preschool entitlement sub-grant funds, if applicable – see Objective 6 of the Application for criteria on applicability) that an LEA has set aside for equitable participation services for parentally-placed private school students. If an LEA has not expended all of the proportionate share on equitable services by the end of the current grant award year (a.k.a., the year in which the funds were appropriated), the LEA must obligate any remaining amounts of the proportionate share for special education and related services (including direct services) to parentally-placed private school children with disabilities during the carryover period.

[34 CFR § 300.133(a)(3)]

### **ALLOWABLE USES OF SUBGRANT FUNDS**

The purpose of IDEA-B grants is to assist States in providing special education and related services to children with disabilities in accordance with the requirements of IDEA-B. [20 U.S.C. 1411(a)(1)] For the IDEA-B Preschool grants in New Mexico, this is targeted at children with disabilities who will turn age three during the school year through those children age 5, inclusive.

[20 U.S.C. 1419(a)]

A. GENERAL USE OF FUNDS – LEAs must use their IDEA-B sub-grant funds consistent with applicable provisions of IDEA-B, as follows:

- (1) Must be used only to pay the excess costs of providing special education and related services to children with disabilities;
- (2) Must be used to supplement State, local, and other Federal funds and not to supplant such funds; and
- (3) Must not be used to reduce an LEA's maintenance of effort (MOE) for the education of children with disabilities below the preceding year's level.

[20 U.S.C. 1413(a)(2)(A); 34 CFR § 300.202]

These expenditures must directly benefit the targeted program beneficiaries – children with disabilities. To determine whether IDEA-B funds are used only to pay excess costs, an LEA should monitor its expenditures during the school year to ensure that it spends the required minimum amount from sources other than IDEA-B during the school year. The required minimum amount is determined using Appendix A of the IDEA-B regulations, a copy of which is included as Appendix A of this document. If two or more LEAs jointly establish eligibility in accordance with IDEA regulation § 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 IDEA regulation §300.16 for those agencies in elementary or secondary school students, as the case may be.

[34 C.F.R. §300.202(b)(3)]

B. ADDITIONAL ALLOWABLE USES OF FUNDS:

- (1) Appropriate technology for IEP case management - LEAs may use their IDEA-B sub-grant funds to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in IEPs, that are needed for implementation of those case management activities.

[20 U.S.C. § 1413(a)(4)(B); 34 CFR § 300.208(b)]

(2) High Cost Special Education and Related Services - LEAs may use their IDEA-B sub-grant funds to establish and implement cost or risk sharing funds, consortia, or cooperatives to pay for high cost special education and related services.  
[20 U.S.C. 1413(a)(4)(A)(iii); 34 CFR § 300.208(a)(3)]

(3) IDEA-B grant funds may be used to benefit children who have not been identified for special education as a “child with a disability,” but only in limited circumstances, described below:

1. Incidental Benefits to Nondisabled Children – LEAs may use their IDEA-B sub-grant funds 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 child’s IEP, even if one or more nondisabled children benefit from these services.  
[20 U.S.C. 1413(a)(4)(A)(i); 34 CFR § 300.208(a)(1)]

In this situation, the child with a disability is the direct, targeted beneficiary because the IDEA-B funds are intended to pay for the child’s IEP services. Normally, federal program services must only benefit the targeted program beneficiaries. If nondisabled children derive benefits, incidentally, from the fact that IEP services are being provided to the targeted beneficiary, this would not make the expenditure of IDEA-B funds unallowable.

2. Direct Benefits to Certain Nondisabled Children Who Need Additional Academic and Behavioral Support To Succeed (Early Intervening Services) – If approved by NMPED, LEAs may use up to 15 percent\* of IDEA-B basic and preschool entitlement sub-grant funds to develop and implement coordinated early intervening educational services. These services may either be (1) professional development for teachers and other school staff to enable such personnel to deliver scientifically-based academic and behavioral interventions and, where appropriate, instruction on the use of adaptive and instructional software; or (2) provision of educational and behavioral evaluations, services, and supports, including scientifically-based literacy instruction. The services must be designed to directly benefit nondisabled children who need additional academic and behavioral support to succeed in the general education environment; these students are the intended target group for this type of IDEA-B funded services. Early intervening services must not be provided to, or directed to benefit, children who have been identified for special education as “children with disabilities.” IDEA-B-funded early intervening services can be aligned with activities funded by, and carried out under the Elementary and Secondary Education Act (ESEA). However, the IDEA-B funds must be used to supplement, and not supplant, ESEA funds made available for these activities and services.  
[20 U.S.C. 1413(a)(4)(A)(ii); 34 CFR §§ 300.208(a)(2), 300.226]

*\*The amount of IDEA-B Entitlement (Section 611 and 619) sub-grant funds the LEA can set aside for early intervening services may be affected by the amount by which an LEA can choose to adjust its local fiscal effort under 34 CFR § 300.205 if the LEA is permitted to do so. To understand how the two choices (use of IDEA-B funds for early intervening services versus use of local funds to adjust local effort) interplay, see Appendix D of the IDEA-B regulations, a copy of which is included as Appendix D of this document.*

Each LEA that develops and maintains coordinated, early intervening services under 34 CFR 300.226 must annually report to the SEB on:

(i) The number of children served under 34 CFR 300.226 who received early intervening services; and

- (ii) The number of children served under 34 CFR 300.226 who received early intervening services and subsequently receive special education and related services under Part B of IDEA during the preceding two year period.

Please see guidance memo from Denise Koscielniak, New Mexico Special Education Director, regarding “Technical Assistance: Early Intervening Services”, dated November 11, 2007; may be accessed at <http://www.ped.state.nm.us/seo/guide/EIS%20Guidance.pdf>. [34 CFR 300.226(d); 20 U.S.C 143(f)(4); 6.31.2.9(D)(4) NMAC]

- 3. **Benefits to All Children in a School-wide Program** - IDEA-B sub-grant funds may be used to carry out a Title I school-wide program under section 1114 of the ESEA, even if the specific expenditure is not in accordance with other applicable provisions of IDEA-B. The amount available for this purpose is capped per each Title I school-wide program. The cap is computed as follows:
  - (i) The LEA’s IDEA-B sub-grant for that fiscal year; divided by
  - (ii) The number of children with disabilities in the LEA’s jurisdiction; and multiplied by
  - (iii) The number of children with disabilities participating in the school-wide program.

If an LEA uses IDEA-B sub-grant funds for this purpose, the funds are still considered Federal Part B funds for purposes of the excess cost calculations and any calculations to determine if supplanting has occurred.

**NOTE:** If an LEA is considering use of its IDEA-B funds for this purpose, IDEA requires that the LEA meet all other requirements of IDEA-B, including ensuring that children with disabilities in school-wide program schools:

- (i) receive services in accordance with a properly developed IEP; and
- (ii) are afforded all of the rights and services guaranteed to children with disabilities under IDEA.

[20 U.S.C. 1413(a)(2)(D); 34 CFR § 300.206]

If an LEA cannot meet all other requirements of IDEA-B, it should not use its IDEA-B sub-grant funds for this purpose.

**C. SPECIAL RULES FOR IDEA-B PRESCHOOL FUNDS – IDEA-B Preschool sub-grant funds:**

- (1) Must be used exclusively for services for students with disabilities who turn three during the school year to those students who turn five after September 1.
- (2) May not be used to develop and implement early intervention educational services provided for under part C.

**D. EDUCATIONAL SERVICES FOR GIFTED STUDENTS**

IDEA-B funds must not be used to pay for educational services for “gifted children” under section 6.31.2.12 NMAC.

**E. FEDERAL COST PRINCIPLES**

All IDEA-B funds must be used consistent with the Federal cost principles that apply to state and local governments, which are described in OMB Circular A-87. Costs must be reasonable, necessary and allocable. [OMB Circ. A-87, Attachment A] More specific requirements apply to particular items of costs. [See OMB Circ. A-87, Attachment B.] These Federal cost principles can be accessed on the Internet at [http://www.whitehouse.gov/omb/circulars/a087/a87\\_2004.html](http://www.whitehouse.gov/omb/circulars/a087/a87_2004.html).

## **MAINTENANCE OF EFFORT (MOE)**

### **A. BUDGET INFORMATION**

In order to determine that an LEA complies with the maintenance of effort requirement at 34 CFR § 300.203(a) for the purpose of establishing the LEA's eligibility for a sub-grant award, the NMPED must determine that the LEA budget for the education of children with disabilities remains at least the same total or per capita amount from either (1) local funds only or (2) the combination of State and local funds, as the LEA spent for that purpose from the same source for the most recent prior year for which information is available. An LEA that relies on the "local funds only" measure section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the "local funds only" standard was used to establish its compliance.

#### **CERTAIN FUNDS CANNOT BE CONSIDERED "STATE OR LOCAL FUNDS":**

- i. Reimbursements from Federal funds (e.g., Medicaid) for services provided under IDEA-B shall not be considered "State or local" funds for the purposes of determining the LEA's maintenance of effort.  
[20 U.S.C. 1412(a)(12); 34 CFR § 300.154(g)(2)]
- ii. Expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA shall not be considered in determining an LEA's maintenance of effort compliance.  
[20 U.S.C. 1413(a)(2)(A); 34 CFR § 300.203(b)(3)]

### **B. ALLOWABLE REDUCTIONS UNDER 34 CFR § 300.204**

IDEA-B allows the NMPED to consider certain allowable reductions in determining if an LEA meets the maintenance of effort requirement. An LEA is allowed to reduce its level of expenditures for the education of children with disabilities below the level of expenditures for the preceding fiscal year if the reduction is attributable to:

- (1) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.
- (2) A decrease in the enrollment of children with disabilities.
- (3) 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:
  - (i) Has left the jurisdiction of the agency;
  - (ii) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or
  - (iii) No longer needs the program of special education.
- (4) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.
- (5) The assumption of cost by the high cost fund operated by the SEA under §300.704(c).

[20 U.S.C. 1413(a)(2)(B); 34 CFR § 300.204]

### **C. ADJUSTMENT TO LOCAL FISCAL EFFORT UNDER 34 CFR § 300.205 IF NOT PROHIBITED BY NMPED**

For any fiscal year in which the IDEA-B basic entitlement (Section 611) sub-grant allocation received by an LEA (not the Preschool sub-grant) exceeds the amount the LEA received for the

previous fiscal year, the LEA may be able to reduce the level of its local fund expenditures on the education of children with disabilities, by not more than 50 percent of the amount of that excess. If the NMPED decides to exercise its authority under 34 CFR § 300.230 to reduce the State maintenance of effort level, an LEA must not reduce local effort, through this allowable adjustment, by more than the reduction in State funds they receive. The Applicant may want to consult with the SEB to determine whether the NMPED is exercising this authority and to determine the amount of reduced State funding your LEA will receive for the education of children with disabilities. (See Line G in Table 4 below.)

If the NMPED determines that an LEA is not meeting the requirements of IDEA-B, including the targets in the State’s performance plan, the NMPED must prohibit the LEA from reducing its local fiscal effort under 34 CFR § 300.205. As a result, only an LEA that is determined to be “Meets Requirements” is eligible to reduce it’s MOE as per 34 CFR § 300.205. (34 C.F.R. § 300.608.)

The amount by which an LEA can choose to adjust its local fiscal effort under 34 CFR § 300.205 can be affected by the amount of IDEA-B Basic (Section 611) sub-grant funds the LEA sets aside for early intervening services. To understand how the two choices (use of local funds versus use of IDEA-B funds) interplay, see Appendix D of the IDEA-B regulations.

<b>Table 1. Calculating FFY09 / FFY 08 Excess</b>	<b>Line No.</b>	<b>Amount</b>
What is the LEA’s <u>estimated</u> IDEA-B Basic entitlement (Sec. 611(f)) sub-grant allocation for Federal FY 2009?	Line A	
What was the LEA’s IDEA-B Basic entitlement (Sec. 611(f)) sub-grant allocation for Federal FY 2008?	Line B	
<b>Line A minus Line B = Amount of excess</b>	Line C	

<b>Table 2. Calculating Max Cap on Local Adjustment</b>	<b>Line No.</b>	<b>Amount</b>
Enter Line C = Amount of excess in allocations	Line C	
Multiply Line C by 50 percent (or .5 ) .		X 0.5
<b>Cap on adjustment to local fiscal effort</b>	Line D	

<b>Table 3. Calculating Cap after CEIS Deduction</b>	<b>Line No.</b>	<b>Amount</b>
Enter the amount of IDEA-B Basic entitlement (Sec. 611(f)) funds the LEA intends to set aside, if any, for coordinated early intervening services.	Line E	
<b>Line D minus Line E = Amount of cap on adjustment to local fiscal effort after EIS deduction</b>	Line F	

<b>Table 4. Calculating Actual Cap on Local Adjustment</b>	<b>Line No.</b>	<b>Amount</b>
Has the NMPED decided to reduce State maintenance of effort as permitted under 34 CFR § 300.230? If yes, enter the reduction in State funds for the LEA. If no, enter zero.	Line G	
<b>If Line F is greater than Line G, then actual cap on adjustment to local fiscal effort is Line G, enter Line G amount.</b> <b>If Line F is less than Line G, then actual cap on adjustment to local fiscal effort is Line F, enter Line</b>	Line H	

<b>F amount.</b>		
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Line H represents the amount that the LEA can reduce its IDEA-B maintenance of effort, as long as the LEA spends that same amount in local funds on activities that could be supported with funds under the federal Elementary and Secondary Education Act (ESEA). For the upcoming fiscal year, the LEA would be shifting local fund resources from activities for the education of children with disabilities to ESEA-type activities.

\$ \_\_\_\_\_ = Total amount LEA plans to adjust its local fiscal effort  
(Line H)

*If the LEA plans to adjust its local fiscal effort, please provide an attached short narrative describing the applicant’s plan for shifting local fund resources to ESEA-type activities. The types of activities must be those that could be funded with ESEA funds, even if the LEA will not be operating an ESEA program with federal ESEA funds.*

**CRITERIA FOR APPLICATION APPROVAL**

- (1) The application includes all required components, including the Plan of Assurances in section III of this application from each LEA, and State Supported Education Program. (See DIRECTIONS).
- (2) The BUDGET adequately addresses the needs of students with IEPs.
- (3) Issues of noncompliance with federal regulations and state rules as identified in corrective action plans related to state level administrative complaints, due process hearings, EPPS, and the State Performance Plan (SPP) compliance indicators 1, 9,10,11,12,13,15, and 20 have been addressed to the satisfaction of NMPED.
- (4) All data submissions required on the 40th, 80th, 120th day, End of Year, and December 1 count dates must be timely, accurate, and reliable.
- (5) The Determination status (if in effect) of the applicant will also be considered.

Before making any final determination that an LEA or State agency is not eligible for assistance under IDEA-B or taking final action with respect to the disapproval of an application, in whole or in part, the NMPED shall provide the LEA with reasonable notice and the opportunity for a hearing as specified in 34 CFR § 76.401(d).

[20 U.S.C. 1412(a)(13); 34 CFR § 300.155; 20 U.S.C. 1413(c); 34 CFR § 300.221]

**COMPLIANCE AFTER DETERMINATION OF ELIGIBILITY**

If NMPED finds that an LEA or State agency that has been determined eligible for IDEA-B funds is failing to comply with any requirement under IDEA Sec. 613(a) [20 U.S.C. 1413(a); 34 CFR §§ 300.201-300.213], the NMPED shall reduce or shall not provide any further payments to the applicant until the NMPED is satisfied that the LEA or State agency is complying with the requirements. The NMPED shall consider any decision resulting from a special education due process hearing and any subsequent hearings on administrative review or in civil actions, held under 34 CFR §§ 300.511-300.533 that is adverse to the LEA or State agency involved in the decision. The NMPED must provide reasonable notice and an opportunity for a hearing to the LEA or State agency before reducing or stopping payments. If an LEA receives a notice from NMPED of the intent to reduce/stop IDEA-B payments, the LEA or State agency must bring this to the attention of the public, by means of public notice, within the LEA or State agency’s jurisdiction.

[20 U.S.C. 1413(d); 34 CFR § 300.222]

## **DIRECTIONS**

- (1) Submit the signed General Approval Statement.
- (2) Be sure to include the names of parents who are not employees of the district who participated in the development of the reauthorization form.
- (3) Submit the OBJECTIVES on paper, as required.
- (4) Submit initial budget request through OBMS for authorized amounts. Carryover may not be allowed to be budgeted until carryover notices are issued. (NMSD, NMSBVI and JJS should only submit paper BARs)
- (5) If submitting a combined application on behalf of its membership, an REC must submit the following for each member district: (1) signed General Approval Statement, (2) signed Local Application for IDEA-B Funding and (3) Objectives form/agreement. Each member LEA must have its own budget of IDEA-B funds. Each LEA must use an accounting system for its IDEA-B funds that will permit the identification of costs paid under each LEA's sub-grant. (34 CFR 76.303(d)) If an LEA authorizes an REC to budget and directly receive funding for a portion or all of the LEA's IDEA-B Basic Entitlement and/or Preschool Entitlement, each LEA must ensure that the REC's accounting system will permit the identification of costs paid under each LEA's sub-grant.

## **PROJECT CHANGES**

Programmatic changes – LEAs awarded IDEA-B sub-grants must obtain SEB's prior approval whenever it anticipates making any of the following changes:

- (1) A revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval);
- (2) Changes in key persons specified in the application or sub-grant award notice;
- (3) Contracting out or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award (i.e., use of fiscal agent, use of a third-party provider for related services or special education and related services to parentally-placed private school children with disabilities). (34 CFR § 80.30(d))

### **A. BUDGET CHANGES**

In order to assure appropriate expenditure of grant funds, any changes to approved budget line items, including job classification component of the authorized budget line items, must be approved by the SEB. Any changes not receiving prior SEB "program" approval may be denied reimbursement due to the possible inappropriate use of grant funds. Although the State of New Mexico has rules governing the processes by which LEAs are to establish budget authority, the appropriate use of IDEA-B funding is governed by Federal laws and regulations as described within the Local Application for IDEA-B Funding "Plan of Assurances", located in Section III.

As per 6.20.2.10(B) NMAC, the NMPED must take action on budget adjustment requests within 30 calendar days from the date of receipt by the department or such requests will otherwise be considered approved. Expenditures shall not be made by the school district until budget authority has been established and approval received from the NMPED. Budget adjustments shall not be incorporated into the school district's accounting system until approval is received by the department.

**APPENDIX A to Part 300-Excess Costs Calculation**

Except as otherwise provided, amounts provided to an LEA under Part B of IDEA 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 IDEA-B regulation section 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. 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.

- a. 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. 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 this total, \$60,000 was for capital outlay and debt service 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.	150,000
	Total.....	----- 1,150,000
(1).....	Total expenditures less capital outlay and debt.	----- 7,040,000
(2).....	Other deductions.....	-1,150,000
	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.	800
(3).....	\$5,890,000/800 Average annual per student expenditure.	\$ 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 service), the LEA must multiply the number of elementary school children with disabilities in the LEA times the average annual per student expenditure obtained in paragraph 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.	\$ 7,362
(3).....	\$7,362 x 100..... 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.	\$ 736,200

**APPENDIX B to Part 300--Proportionate Share Calculation**

Each LEA must expend, during the grant period, on the provision of special education and related services for the parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA an amount that is equal to:

- (1) A proportionate share of the LEA's sub-grant under section 611(f) of the Act for children with disabilities aged 3 through 21. This is an amount that is the same proportion of the LEA's total sub-grant under section 611(f) of the Act as the number of parentally-placed private school children with disabilities aged 3 through 21 enrolled in private elementary schools and secondary schools located in the LEA is to the total number of children with disabilities enrolled in public and private elementary schools and secondary schools located in the LEA aged 3 through 21; and
- (2) A proportionate share of the LEA's sub-grant under section 619(g) of the Act for children with disabilities aged 3 through 5. This is an amount that is the same proportion of the LEA's total sub-grant under section 619(g) of the Act as the total number of parentally-placed private school children with disabilities aged 3 through 5 enrolled in private elementary schools located in the LEA is to the total number of children with disabilities enrolled in public and private elementary schools located in the LEA aged 3 through 5.

Consistent with section 612(a)(10)(A)(i) of the Act and IDEA-B regulation section 300.133 of these regulations, annual expenditures for parentally-placed private school children with disabilities are calculated based on the total number of children with disabilities enrolled in public and private elementary schools and secondary schools located in the LEA eligible to receive special education and related services under Part B, as compared with the total number of eligible parentally-placed private school children with disabilities enrolled in private elementary schools located in the LEA. This ratio is used to determine the proportion of the LEA's total Part B sub-grants under section 611(f) of the Act for children aged 3 through 21, and under section 619(g) of the Act for children aged 3 through 5, that is to be expended on services for parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA.

The following is an example of how the proportionate share is calculated:

There are 300 eligible children with disabilities enrolled in the Flintstone School District and 20 eligible parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA for a total of 320 eligible public and private school children with disabilities (note: proportionate share for parentally-placed private school children is based on total children eligible, not children served). The number of eligible parentally-placed private school children with disabilities (20) divided by the total number of eligible public and private school children with disabilities (320) indicates that 6.25 percent of the LEA's sub-grant must be spent for the group of eligible parentally-placed children with disabilities enrolled in private elementary schools and secondary schools located in the LEA. Flintstone School District receives \$152,500 in Federal flow through funds. Therefore, the LEA must spend \$9,531.25 on special education or related services to the group of parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA. (Note: The LEA must calculate the proportionate share of IDEA funds before earmarking funds for any early intervening activities in IDEA-B regulation section 300.226).

The following outlines the calculations for the example of how the proportionate share is calculated.

**Proportionate Share Calculation for Parentally-Placed Private School Children with Disabilities For Flintstone School District:**

Number of eligible children with disabilities in public schools in the LEA.....	300
Number of parentally-placed eligible children with disabilities in private elementary schools and secondary schools located in the LEA.....	20
	-----
Total number of eligible children.....	320
 Federal Flow-Through Funds to Flintstone School District	
Total allocation to Flintstone.....	\$152,500
Calculating Proportionate Share:	
Total allocation to Flintstone.....	152,500
Divided by total number of eligible children.....	320
Average allocation per eligible child.....	476.5625
Multiplied by the number of parentally placed children with disabilities.....	20
Amount to be expended for parentally-placed children with disabilities.....	9,531.25

**Appendix C- Voluntary Early Intervening Services**

Each LEA that develops and maintains coordinated, early intervening services under 34 CFR 300.226 must annually report to the SEB on:

- A. The number of children served under 34 CFR 300.226 who received early intervening services; and
- B. The number of children served under 34 CFR 300.226 who received early intervening services and subsequently receive special education and related services under Part B of IDEA during the preceding two year period.

The students involved in the EIS program must be reported in the Student Accountability Reporting System (STARS) in the *Programs Fact Template, Field 17*. A final progress report, including each student's progress, and whether or not a student has been referred for special education services, must be submitted to the SEB no later than June 15 of the current year. Failure to submit the progress report may delay the LEA's request for EIS funds the following grant year.

The following format is recommended for annual reporting to the SEB for EIS:

Student ID	School Year 2007-2008		School Year 2008-2009	
	Received EIS	Received EIS and subsequently received special Education & related services	Received EIS	Received EIS and subsequently received special Education & related services
XXXXXXXXX1	0		1	
XXXXXXXXX2	0			1
XXXXXXXXX3	1		1	
XXXXXXXXX4	1			1
XXXXXXXXX5		1		
<b>Total</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>2</b>

**Appendix D to Part 300--Maintenance of Effort and Early Intervening Services**

LEAs that seek to reduce their local maintenance of effort in accordance with IDEA-B regulation section 300.205(d) and use some of their Part B funds for early intervening services under section 300.226 must do so with caution because the local maintenance of effort reduction provision and the authority to use Part B funds for early intervening services are interconnected. The decisions that an LEA makes about the amount of funds that it uses for one purpose affect the amount that it may use for the other. Below are examples that illustrate how §§300.205(d) and 300.226(a) affect one another.

Example 1: In this example, the amount that is 15 percent of the LEA's total grant (see §300.226(a)), which is the maximum amount that the LEA may use for early intervening services (EIS), is greater than the amount that may be used for local maintenance of effort (MOE) reduction (50 percent of the increase in the LEA's grant from the prior year's grant) (see §300.205(a)).

Prior Year's Allocation: \$900,000.  
 Current Year's Allocation: \$1,000,000.  
 Increase: \$100,000.  
 Maximum Available for MOE Reduction: \$50,000.  
 Maximum Available for EIS: \$150,000.

If the LEA chooses to set aside \$150,000 for EIS, it may not reduce its MOE (MOE maximum \$50,000 less \$150,000 for EIS means \$0 can be used for MOE).

If the LEA chooses to set aside \$100,000 for EIS, it may not reduce its MOE (MOE maximum \$50,000 less \$100,000 for EIS means \$0 can be used for MOE).

If the LEA chooses to set aside \$50,000 for EIS, it may not reduce its MOE (MOE maximum \$50,000 less \$50,000 for EIS means \$0 can be used for MOE).

If the LEA chooses to set aside \$30,000 for EIS, it may reduce its MOE by \$20,000 (MOE maximum \$50,000 less \$30,000 for EIS means \$20,000 can be used for MOE).

If the LEA chooses to set aside \$0 for EIS, it may reduce its MOE by \$50,000 (MOE maximum \$50,000 less \$0 for EIS means \$50,000 can be used for MOE).

Example 2: In this example, the amount that is 15 percent of the LEA's total grant (see §300.226(a)), which is the maximum amount that the LEA may use for EIS, is less than the amount that may be used for MOE reduction (50 percent of the increase in the LEA's grant from the prior year's grant) (see §300.205(a)).

Prior Year's Allocation:	\$1,000,000.
Current Year's Allocation:	\$2,000,000.
Increase:	\$1,000,000.
Maximum Available for MOE Reduction:	\$500,000.
Maximum Available for EIS:	\$300,000.

If the LEA chooses to use no funds for MOE, it may set aside \$300,000 for EIS (EIS maximum \$300,000 less \$0 means \$300,000 for EIS).

If the LEA chooses to use \$100,000 for MOE, it may set aside \$200,000 for EIS (EIS maximum \$300,000 less \$100,000 means \$200,000 for EIS).

If the LEA chooses to use \$150,000 for MOE, it may set aside \$150,000 for EIS (EIS maximum \$300,000 less \$150,000 means \$150,000 for EIS).

If the LEA chooses to use \$300,000 for MOE, it may not set aside anything for EIS (EIS maximum \$300,000 less \$300,000 means \$0 for EIS).

If the LEA chooses to use \$500,000 for MOE, it may not set aside anything for EIS (EIS maximum \$300,000 less \$500,000 means \$0 for EIS).