



N O V E M B E R 2 0 1 6
IDEA Fiscal Forum



F I S C A L
Q & A
With O S E P



The logo features the word "FISCAL" in black uppercase letters at the top. Below it, a large blue "Q" and a large green "A" are connected by a blue ampersand "&". At the bottom, the word "With" is in blue lowercase letters, followed by "O S E P" in black uppercase letters. The entire graphic is enclosed in a thin blue rounded rectangle.

F I S C A L
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This document is a summary of the final plenary session at the IDEA Fiscal Forum 2016. Questions were posed in advance of the session by state forum participants. This document includes their questions and OSEP’s answers, as recorded by staff from the Center for IDEA Fiscal Reporting (CIFR) and reviewed and amended by OSEP.

At the IDEA Fiscal Forum 2016 in Denver, OSEP staff held a Q&A session during the final plenary. This document is a summary of that session. Questions were posed in advance of the session by state forum participants. This written summary includes their fiscal questions and OSEP’s answers as recorded by CIFR staff and reviewed and amended by OSEP.

The IDEA Fiscal Forum was sponsored by CIFR and the IDEA Data Center (IDC) with support from the National Center for Systemic Improvement (NCSI). Other presentations from the meeting are available on CIFR’s website at <https://cifr.wested.org/presentations-from-the-november-2016-idea-fiscal-forum/>.

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CS 1 — Must charters employ special education certified teachers?

Charter schools are required to follow IDEA requirements at 20 U.S.C. 1412(a)(14) (A–E) (as amended by ESSA):

QUALIFICATIONS FOR SPECIAL EDUCATION TEACHERS. The qualifications described in subparagraph (A) shall ensure that each person employed as a special education teacher in the State who teaches elementary school, middle school, or secondary school —

- i. has obtained full State certification as a special education teacher (including participating in an alternate route to certification as a special educator, if such alternate route meets minimum requirements described in section 200.56(a)(2)(ii) of title 34, Code of Federal Regulations (CFR), as such section was in effect on November 28, 2008), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except with respect to any teacher teaching in a public charter school who shall meet the requirements set forth in the State’s public charter school law;
- ii. has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
- iii. holds at least a bachelor’s degree.

CS 2 — What requirements do LEAs have for a charter school within their district in a state where charter schools do not get allocations?

IDEA regulation 300.209(b) — talks about schools of an LEA — charter schools within an LEA (not their own LEA). LEAs must provide funds to charter schools in the same manner and at the same time. Many LEAs do not provide funds to their schools but provide services. If an LEA provides funds or services to its schools, it must provide the same thing to charter schools in the LEA.

See the [December 2000 Guidance on Allocating Funds to Charter Schools](#) — Section 5 — schools of the LEA.

Coordinated Early Intervening Services (CEIS)



CEIS 1 — When an LEA elects to do voluntary CEIS and submits a budget for say \$100,000 for CEIS — If they only spend \$90,000 for CEIS do they have to carryover the remaining \$10,000, or can those funds go back to all other allowable uses?

There is an important distinction between the requirement or ability to reserve an amount and the requirement in certain circumstances to expend that 15%. It is not enough to just budget that amount.

The other important distinction is voluntary vs. required. In this case, which is voluntary, they are allowed to expend less. They are not required to spend the money. They may need to amend their budget, but it is a voluntary process, so there is no need to expend everything. Funds may go back to all other allowable uses.

CEIS 2 — For CEIS used for professional development with no students served in that year, do we start counting students in Years 2 and 3?

OSEP Memo 08-09. Question 7 (emphasis added):

7. How should an LEA count and track students who received CEIS when funds are used for professional development or a schoolwide intervention initiative?

To ensure consistency across LEAs in a State, each State should develop a method for its LEAs to count and track students who are served by personnel who participated in professional development activities supported with CEIS funds.

It would be appropriate for an LEA to count, and subsequently track for two years, the number of students in need of additional support who received instruction from personnel who participated in the professional development program.

It would not be appropriate to count every student who was taught by these personnel if some of the students were not in need of additional support or were receiving special education services.

An LEA should only count the students and the personnel who participated in the professional development program in the year(s) of or the year(s) immediately after the training, rather than counting the students and those personnel each year after the training.

A similar method might be used to count students who benefit from a school-wide intervention initiative supported with CEIS funds. Students who meet the LEAs criteria of being in need of additional support and participate in the initiative should be counted as receiving CEIS in the year(s) of or the year(s) immediately following the initiative and tracked for the following two years. Students who participate in an initiative for more than one year should be counted each year they participate.

Excess Cost



EC 1 — Expenditures from which funding sources can an LEA use to fulfill excess cost compliance? This is not which funds are used in the Appendix A calculation of APPE but funds that are expended to meet compliance.

This question is asking what expenditures should be considered when determining whether an LEA has met the excess cost requirement.

When you are determining whether an LEA has met the requirement, you should look at the expenditures for the education of children with disabilities, excluding the Federal Part B funds. You cannot include the Federal Part B funds. This does not include capital outlay and debt service, because those are not used for the education of children with disabilities.

You must include state and local funds for the education of children with disabilities.

EC 2 — Can you give a layman’s definition of how a district knows they have met excess cost?

What are the expenditures for those children with disabilities? — special education from state and local funds (not federal) and any expenditures that are contributed to students with disabilities. For example, in a high school if there is an after-school sports program that is open to everyone, with 200 kids involved (funded through the state or local funds), and 5 kids with disabilities are included in the sports program. It follows that 2.5% of the costs of the program are likely attributable to kids with disabilities.

It would not be appropriate to say that 10% of the children in the district have disabilities, so 10% of all of the costs are attributed to students with disabilities. You cannot focus on percentages except as in the example above.

EC 3 — Can the district define an elementary school student vs. a secondary school student for excess cost?

If the state defines elementary vs. secondary, use those definitions. If not, and the LEAs define, those should be used in the calculation. If there is no clear definition in the state, LEAs can develop a definition for elementary and secondary that must be used consistently from year to year.

EC 4 — When determining if an LEA has met the excess cost requirement, does the SEA/LEA include capital outlay and debt service (in the expenditures)?

No. Capital outlay and debt service should not be included. As a general rule, it is excluded because they are not attributable to the education of children with disabilities. If you have a specific situation where you think it is attributable, contact OSEP, but we have not heard of one yet.

Local Educational Agency (LEA) Allocations



LEA 1 — There has been discussion with states about resetting base allocations when a new LEA (particularly charters) are formed. If a district was in existence when allocations were set but had no special education students (has a 0 base), OSEP has indicated that the district must receive a base payment. Also, 34 CFR §300.816b(4) very clearly includes those LEAs in first year of operation. Is there something else for already existing and operating districts that had zero base, and, if so, would it go back to only July 1, 2009, or all the way back to 1999? Will States be given time to “phase in” any new requirements around disproportionality?

If an LEA received a base payment of zero in its first year of operation, the SEA must adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any children with disabilities. The State must divide the base allocation for the LEAs that would have been responsible for serving children with disabilities now being served by the LEA, among the LEA and affected LEAs based on the relative numbers of children with disabilities in the appropriate age ranges. The specific IDEA requirements are found at 34 CFR §300.705(b)(2)(iv) and §300.816(b)(4).

In addition, the requirements at 34 CFR Part 76, Subpart H, also apply. The December 2000 guidance document, specifically Questions/Answers 74–80 may be helpful. <https://osep.grads360.org/#program/idea-funds-and-charter-schools>

LEA 2 — Base year 611 and 619 allocations — child counts may have changed since 1998 and 1999. If a district’s child count has changed, can the district’s base year be recalculated?

There are five situations for when the base payment adjustments can be made. §Four are described in [§34 CFR 300.705\(b\)\(2\)](#) and [300.816\(b\)](#) and include:

1. When a new LEA is created;

2. When two LEAs are combined or merged;
3. When there are geographic or administrative changes regarding how or where services are provided; or
4. When an LEA had a zero base payment in its first year.

The fifth situation, described in [Edgar Part 76 subpart H](#), involves a new or significantly expanding charter school LEA. See the GRADS360° website guidance questions 79 and 80 (December guidance).

Beyond those five conditions, the base payment is the base payment and cannot be adjusted. The population payment may change but the base payment may not. When there is a reauthorization, there may be some adjustment at that point.

Local Educational Agency Maintenance of Effort (LEA MOE)



MOE 1 — We have a new cooperative forming and schools in the cooperative are asking to use special education dollars for start-up costs. This will increase their MOE. They are asking if this can be used as an exception? Are MOE expenditures?

There is no exception related to start-up costs for special education. Are those costs really for the education of students with disabilities? They may not even be relevant for the MOE calculation, but there is no exception unless they meet one of the other exceptions (e.g., long-term expenditure). Refer to [CIFR 34 §300.204](#) specific exceptions.

MOE 2 — If my LEA MOE policies have been updated and corrected, how many years do I need to go back to see if LEA MOE has/has not occurred? Note that my LEAs are often unable to go back more than a year or two with high quality data.

This will be addressed in an upcoming Q&A. In order to determine baseline, you need to go back as far as 2010–2011. We know this is a challenge for some states, please contact CIFR or Matt Schneer to work on this. This does not just mean that 2010–2011 is baseline and you can determine MOE from that. You have to review all intervening years to find the amount that must be met.

MOE 3 — If I have an LEA that has not utilized exceptions in prior years and has a shortfall, can I apply exceptions in prior years?

This will be addressed in an upcoming Q&A. The short answer is YES, those exceptions may be used in intervening years even if they had not been used previously.

MOE 4 — If an SEA 1) makes the LEA pay back state funds if the LEA did not meet the excessive cost threshold, or the SEA 2) withholds State funds in this amount, is there any impact on the LEAs MOE?

It depends. The fact that you withhold might affect MOE. If the withholding impacts the budget or expenditure it will affect MOE, but it is not a direct connection.

MOE 5 — If a state pays back funds to the federal government due to an LEAs failure to meet the excess cost requirement, does that amount count toward the state's MFS calculation? If the LEA has to pay those funds to the SEA, do the funds count toward LEA MOE?

Go back to the definition of MOE and MFS. It is for the education of children with disabilities. Repaying the federal government (or the SEA) is not for the education of children with disabilities so those funds don't count.

Maintenance of State Financial Support (MFS)



MFS 1 — If the State Education Agency does not know all of the other State Agencies with budgets that support individuals with disabilities, how can CIFR know them and/or assist the State?

CIFR does have resources with suggested agencies that might make funds available. Use CIFR's MFS tools. We recommend you go through every agency and send out letters to ask.

OSEP's Differentiated Monitoring and Support (DMS)



DMS 1 — Why is the completed State Systemic Improvement Plan (SSIP) evaluation form not available to states? How are states expected to improve if we don't know what impacted our determined level of TA?

There are concerns that you were given a rating for SSIP without being given the tool that was used to evaluate the SSIP. It's similar answer to what we talked about yesterday about risk assessment and why we are not sharing our organizational assessments or other tools. We view these as internal deliberative documents that help us do our work and decide how to do things. We are concerned that sharing too much will trigger Freedom of Information Act (FOIA) concerns that will allow the public to use these for other purposes.

If you don't have a clear understanding of your designation, please follow up. Contact your OSEP state lead, your OSEP Associate Division Director, etc., to discuss your concerns and a path forward.

DMS 2 — I didn't attend the grants management session, so I want to be sure all gets covered again, even if it is a repeat.

Presentations are available on the app, will be moved to the CIFR website, and may be repeated in the future.

DMS 3 — Can all fiscal-related information be posted or linked on CIFR vs. going to multiple sites (i.e., IDC, GRADS360°, etc.)?

These websites have different purposes but they link to each other. CIFR asks that you please let us know of any resources that you would like added to our website.

DMS 4 — What does a state do if an LEA fails to meet fiscal requirements? Can the SEA withhold funds?

Regulations ([34 CFR §300.222](#)) do permit this. When an LEA is noncompliant during the middle of the year, the SEA is obligated to withhold funds. When the LEA is applying for a grant you can deny eligibility and withhold ([34 CFR §300.227](#)). However, you cannot do it without providing notice to the LEA and providing an opportunity to the LEA to have a hearing regarding the action.

Significant Disproportionality



SD 1 — If an LEA is found to have a third year of disproportionality (of the same data of concern), is that district to be mandated for 15% CEIS set-aside again?

As the regulations are currently written, this is left up to the state. You need to use the data set aside by the state.

SD 2 — What is the SEA fiscal/programmatic requirement if a significant disproportionality LEA does not expend the 15% set-aside for CEIS within 27 months?

If they are not expending the required amount, that is noncompliance, has harmed the federal interest, and repayment is required. You may be able to do some journal voucher transfers to avoid the penalty but should have good monitoring procedures in place to ensure this does not happen.

SD 3 — When do you anticipate releasing the new regulations around disproportionality?

The significant disproportionality regulations were published on December 19, 2016 in the Federal Register, available at <https://www.federalregister.gov/documents/2016/12/19/2016-30190/assistance-to-states-for-the-education-of-children-with-disabilities-preschool-grants-for-children>.

Miscellaneous



MISC 1 — Can you talk about procedures for distributing competitive grants to LEAs through discrete funds for things such as implementing an evidence-based reading program?

No answer yet; will provide through CIFR.

MISC 2 — What are other states doing to meet the Federal Funding Accountability and Transparency Act (FFATA) requirements for non-LEAs that receive sub-grant awards?

For FFATA guidance, see <https://www.ed.gov/>. There are provisions for reporting on contracts that might be applicable.

MISC 3 — Can you talk about contracted services (e.g., OT, PT, speech)? This would include office space, supplying computers, etc. IRS audit staff have informed LEAs that when contracting, the same person cannot provide therapy for an extended time.

We're not 100% certain what this question is. We think this is outside of the IDEA and is asking about the relationship between employees and contractors. This is an area of law outside of the scope of the IDEA. We cannot provide guidance on this. If this is your question or other states have questions, reach out to your state's general counsel office. They will have information on how courts in your state or region are interpreting the requirements and how they apply to you.

MISC 4 — Can you talk about different methods you have seen for determining catastrophic or high-cost funding?

This is opportunity to reach out to other states for information on how others are implementing them. They have different names — “circuit breaker” (Massachusetts) and payor sources. OSEP is most familiar with those where you have chosen to use funds as allowed under [34 CFR §300.704](#) and the flexibility provided under [34 CFR §300.208\(a\)\(3\)](#). Some states report these funds in their applications to OSEP. Other states do this through non-federal funding, and this would be a great thing to share at a different meeting. What is the application process? How do you fund? How do LEAs demonstrate that they incurred those costs?

Things that might contribute to high-cost funds in states — Zika virus, opioid epidemic, etc.

There is interest from multiple states. States can use CIFR’s listserv to seek information from other states on this, even though it is outside of CIFR’s scope.

MISC 5 — Is there specific guidance on the 10% rule for the budget? Does this apply to both the SEAs and LEAs?

This requirement used to be found in EDGAR at 34 CFR §80.30 about changing the budget by 10% of the total grant award amount triggering notification.

This is now in the [Uniform Guidance 2 CFR §200.308\(e\)](#) and is left at the agency’s discretion to continue. OSEP has opted to continue, has issued guidance on its website.

This has not been pushed forward to the LEA level yet — OSEP will go back and ask general counsel, but lacks authority to require SEAs to review LEAs in this manner.

MISC 6 — Can you describe the changes to the indirect cost under the new guidance?

[2 CFR §200.414](#) is the new indirect cost regulation. There is further guidance in Appendix 5 for state and local governments.

What has stayed the same?

1. The cognizant agency requirements — for Part B, it is always the U.S. Department of Education (ED)
2. Have to get a restricted rate based on supplement not supplant requirements.

What is new?

1. Diminimus rate (10%) not applicable to us.
2. Extension requirement — can request an extension of previous rate for up to four years.



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