

New Subgranting Authority

To implement the state's IDEA Part C program, a state lead agency (LA) may provide federal IDEA Part C funds to early intervention service (EIS) providers (including public or private individuals or agencies) to provide EIS in the state. Historically, under federal regulations at 34 CFR §76.50 and IDEA Part C, state LAs did not have express authority to issue subgrant awards of federal IDEA Part C funds. Instead of awarding subgrants, state LAs commonly utilized contracts or other arrangements with vendors or organizations within the state to carry out the Part C EIS program.

The Consolidated Appropriations Act of 2021 (CAA 2021), passed in December 2020 by Congress, provides states with flexibility for the first time for their federal IDEA Part C 2021 funds “to make subgrants to local educational agencies, institutions of higher education, other public agencies, and private nonprofit organizations to carry out activities authorized by section 638 of IDEA.” This new flexibility is optional and is likely, but not guaranteed, to be included in future appropriation acts.¹

This guide outlines key differences between contracts and subgrants, offers initial next steps for planning and decision-making, and highlights questions for states to consider as they determine whether to pursue this option.²

As you review this document, please consider the following key points regarding the subgranting authority under the CAA 2021:

- » Subgranting is optional and at the state's discretion. The flexibility offered in the CAA 2021 does not require any state to subgrant.
- » Depending on state laws, regulations, and current implementation practices, a state may do nothing, opt for both contracting and subgranting, or transition to subgranting only. No change is required to the extent that current practices meet the requirements of the state and IDEA.
- » States will need to engage with their legal and fiscal offices within the state LA due to the statutory and regulatory implications of subgranting.
- » Stakeholder engagement (including the State Interagency Coordinating Council, parents of children with disabilities, and EIS providers) is critical for decisions on whether to use the subgrant option.

“States may use funds allotted under section 643(c) of the IDEA to make subgrants to local educational agencies, institutions of higher education, other public agencies, and private nonprofit organizations to carry out activities authorized by section 638 of IDEA.”

Consolidated Appropriations Act of 2021, Public Law 116-260

¹ The CAA of 2022 includes similar authority.

² In accordance with 2 CFR §200.1, a subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

How Are Subgrants Under the CAA 2021 Different From Contracts Used by the State LA?

Under the IDEA Part C regulations at 34 CFR §303.121, state LAs must have policies that describe the state's methods for “contracting or otherwise arranging for services.” Most states have policies for contracting with counties, local educational agencies (LEAs), nonprofit and for-profit agencies, and private individuals to provide EIS. Conversely, the subgrant option in the CAA 2021 explicitly restricts eligible recipients to “LEAs, institutions of higher education (IHEs), other public agencies, and private nonprofit organizations.” Additional differences between awarding contracts and subgrants under IDEA Part C are described in Table 1.

Table 1. Contract and Subgrant Similarities and Differences for Part C Funds*

Frequently Asked Questions	Procurement and Contracts	Subgrants (under the CAA 2021)
What is it?	Generally, it is a competitive procurement for goods or services as specified in 2 CFR §200.331(b) of the OMB Uniform Guidance	Generally, an award of financial assistance to a recipient to support the accomplishment of a public purpose as specified in 2 CFR §200.331(a) of the OMB Uniform Guidance
Who is eligible?	Determined by state statute and regulations; typically includes counties, LEAs, nonprofit and for-profit agencies, and private individuals	The CAA 2021 authorizes Part C subgrants to “LEAs, IHEs, other public agencies, and private nonprofit organizations.”
When might the state LA consider making subgrants?	Generally, contracts might be useful when the state LA needs a specific set of goods or services to accomplish the goals and objectives of the grant.	There are many factors to consider when subgranting. Generally, subgrants might be useful when the state LA requires ongoing support from its EIS providers to accomplish the goals and objectives of the grant.
What should the state LA keep in mind when establishing how the state arranges for the provision of EIS?	Generally, contracts are procured following the procedures outlined in the OMB Uniform Guidance and state procurement law. See 2 CFR §§200.317 through 200.327.	Under 34 CFR §76.50, subgrants must be explicitly authorized by the authorizing statute. Under CAA 2021, IDEA Part C grantees may award subgrants to directly carry out project activities described in its application.
What other legal authorities should the state LA keep in mind?	The state LA must monitor and maintain internal controls over the contract, consistent with IDEA Section 635(a)(10), 34 CFR §303.120(a), and 2 CFR §§200.303 and 200.329(a). In a contract, the contractor must adhere to all the terms of the contract for goods or services.	The state LA must monitor and maintain internal controls over the subgrantee, consistent with IDEA Section 635(a)(10), 34 CFR §303.120(a), and 2 CFR §§200.303 and 200.329(a). In a subgrant, or “subaward,” all the regulations and requirements that apply to the grantee are passed on to subgrantees, making the grantee a “pass-through entity.” The grantee is responsible for monitoring the subgrantee for compliance with those regulations and requirements. See 2 CFR §200.1.

Frequently Asked Questions	Procurement and Contracts	Subgrants (under the CAA 2021)
Are indirect costs allowed?	Subject to the state's procurement laws, the state LA may include indirect costs in its contracts; such costs are not required to be charged on a restricted basis.	A subgrantee is allowed to charge indirect costs to the subgrant, provided that the state LA has approved the charging of indirect costs for the subgrantee on a restricted basis. Under the OMB Uniform Guidance, state LAs using modified total direct costs (MTDC) may charge indirect costs up to the first \$25,000 of each subaward to help administer the subaward. See 2 CFR §200.1 for the definition of MTDC.
What documentation must the state maintain?*	Generally, grantees must maintain documentation around the competitive bidding process; invoices for services or goods delivered; and such other documents as are necessary to facilitate an effective state LA monitoring and, if applicable, an audit. This is in addition to documentation showing that their contractor's costs are allowable, reasonable, necessary, and allocable under the grant.**	Generally, subgrantees must maintain documentation showing that their costs are allowable, reasonable, necessary, and allocable under the grant and the terms of their subgrant. Grantees must monitor subgrantees for compliance with the OMB Uniform Guidance and other applicable regulations and must maintain documentation of their compliance reviews. Subgrantees may be audited under the Single Audit Act (see 2 CFR §§200.332 and 200.501).

* Table adapted from "Contracts vs. Subgrants," Office of Elementary and Secondary Education. Available from <https://oese.ed.gov/files/2020/05/Contracts-vs-Subgrants-Chart-TSL.pdf>

** See 2 CFR §200.334 and §303.224(b) for additional information on records retention requirements.

*** This includes complying with the Cost Principles of the OMB Uniform Guidance codified at 2 CFR part 200 subpart E.

Considerations for States for Subgranting Under the CAA 2021

If states wish to pursue the use of subgrants as the sole mechanism or in combination with other methods, the state LA will need to take several initial steps in advance of any change in how funds are awarded:

- » contact your Office of Special Education Programs (OSEP) state lead to walk through what infrastructure elements need to be in place.
- » review policies and procedures for legal and programmatic considerations (including any state law requirements) and determine if new or revised policies and procedures are needed.
- » develop policies, procedures, and funding mechanisms.
- » ensure that IDEA and any state requirements for public participation are met related to any newly developed policies and procedures.

Questions to Facilitate State Planning for Subgranting Under the CAA 2021

What are the state-specific statutes or other regulations that identify entities eligible to receive IDEA Part C funds through subgranting?

Although the 2021 CAA provides state LAs with the authority to make subgrants to LEAs, IHEs, other public agencies, and private nonprofit organizations to carry out activities authorized by Section 638 of IDEA, states may have additional legislative or other regulatory requirements that impact whether an entity is eligible for subgranting.

How will the state LA's fiscal accountability and monitoring systems need to be revised for subgrants?

Depending on the current responsibilities of the local EIS providers under contractual obligations and the way that the state LA allocates IDEA Part C funds, the state LA's planning and implementation may be multifaceted. The potential change in responsibilities—such as procurement timelines for entities receiving subgrants—means that states should anticipate the implementation of a subgranting process that will require significant lead time and technical assistance.

How will the state LA communicate the benefits and challenges of subgranting to stakeholders?

Subgranting may require changes to policies and procedures for procurement, monitoring, billing, and accountability. State LAs should plan sufficient time to communicate with the Interagency Coordinating Council and other impacted stakeholders across the state system to allow for meaningful and appropriate input on subgranting decisions.

Resource

- ➔ U.S. Department of Education, Office of the Chief Financial Officer, Cost Allocation Guide for State and Local Governments (September 2019)

<https://www2.ed.gov/about/offices/list/ocfo/fipao/costallocationguide92019.pdf>

For additional resources, please visit CIFR at <http://cifr.WestEd.org> or contact us at cifr_info@WestEd.org.



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