IDEA Regulations

EARLY INTERVENING SERVICES

The reauthorized *Individuals with Disabilities Education Act (IDEA)* was signed into law on Dec. 3, 2004, by President George W. Bush. The provisions of the act became effective on July 1, 2005, with the exception of some of the elements pertaining to the definition of a "highly qualified teacher" that took effect upon the signing of the act. The final regulations were published on Aug. 14, 2006. This is one in a series of documents, prepared by the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education that covers a variety of high-interest topics and brings together the regulatory requirements related to those topics to support constituents in preparing to implement the new regulations.[1] This document addresses the final regulatory requirements regarding early intervening services.

IDEA Regulations

1. **Add "early intervening services" to the regulations under local educational agency (LEA) eligibility.**

   An LEA may not use more than 15 percent of the amount the LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the LEA pursuant to 34 CFR 300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

[34 CFR 300.226(a)] [20 U.S.C. 1413(f)(1)]

2. **Allow activities in implementing coordinated, early intervening services by LEAs.**

   In implementing coordinated, early intervening services under 34 CFR 300.226, an LEA may carry out activities that include:

   - Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based[2] academic and behavioral interventions, including scientifically based literacy

[1] Topics in this series include: Alignment With the *No Child Left Behind (NCLB) Act*; Changes in Initial Evaluation and Reevaluation; Children Enrolled by Their Parents in Private Schools; Discipline; Disproportionality and Overidentification; Early Intervening Services; Highly Qualified Teachers; Identification of Specific Learning Disabilities; Individualized Education Program (IEP) Team Meetings and Changes to the IEP; Individualized Education Program (IEP); Local Funding; Monitoring, Technical Assistance and Enforcement; *National Instructional Materials Accessibility Standard (NIMAS)*; Part C Amendments in *IDEA* 2004; Part C Option: Age 3 to Kindergarten Age; Procedural Safeguards: Surrogates, Notice and Consent; Procedural Safeguards: Mediation; Procedural Safeguards: Resolution Meetings and Due Process Hearings; Secondary Transition; State Complaint Procedures; State Funding; and Statewide and Districtwide Assessments. Documents are available on the *IDEA* Web site at: http://IDEA.ed.gov.

[2] Scientifically based research has the meaning given the term in section 9101(37) of the *Elementary and Secondary Education Act* (*ESEA*) of 1965. Section 9101(37) of *ESEA*, as amended by the *NCLB*, defines scientifically based research as "research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs." The statute then explains that this kind of research: (1) Employs systematic, empirical

instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

- Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

[34 CFR 300.226(b)] [20 U.S.C. 1413(f)(2)]

3. Clarify the relationship between free appropriate public education (FAPE) and early intervening services.

Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.

[34 CFR 300.226(c)] [20 U.S.C. 1413(f)(3)]

4. Establish reporting requirements.

Each LEA that develops and maintains coordinated, early intervening services under 34 CFR 300.226 must annually report to the State educational agency (SEA) on:

- The number of children served under 34 CFR 300.226 who received early intervening services; and
- 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 the Act during the preceding two year period.

[34 CFR 300.226(d)] [20 U.S.C. 1413(f)(4)]

5. Establish coordination with the *ESEA*[3].

Funds made available to carry out 34 CFR 300.226 may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the *ESEA* if those funds are used to supplement, and not supplant, funds made available under the *ESEA* for the activities and services assisted under 34 CFR 300.226.

[34 CFR 300.226(e)] [20 U.S.C. 1413(f)(5)]

6. Permit the use of funds for early intervening services.

The amount of funds expended by an LEA for early intervening services under 34 CFR 300.226 shall count toward the maximum amount of expenditures that the LEA may reduce under 34 CFR 300.205(a) of this section.

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methods that draw on observation or experiment; (2) Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn; (3) Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators; (4) Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls; (5) Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and (6) Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review. (Note: practitioner journals or education magazines are *not* the same as peer-reviewed academic journals.)

[3] For purposes of this document, the *NCLB* is referred to as the *ESEA* of 1965, as amended.

[34 CFR 300.205(d)] [20 U.S.C. 1413(a)(2)(C)(i)]

7. **Require early intervening services in the case of significant disproportionality.**

In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with 34 CFR 300.646(a), [Note that 34 CFR §300.646(a) addresses identification, placement and disciplinary actions.] the State or the Secretary of the Interior must...require any LEA identified under 34 CFR 300.646(a) to reserve the maximum amount of funds under section 613(f) of the Act [34 CFR 300.226] to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified under 34 CFR 300.646(a) of this section.

[34 CFR 300.646(b)(2)] [20 U.S.C. 1418(d)(2)(B)]

8. **Establish a relationship between maintenance of effort and early intervening services.**

LEAs that seek to reduce their local maintenance of effort in accordance with 34 CFR 300.205(d) and use some of their Part B funds for early intervening services under 34 CFR 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 34 CFR 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 34 CFR 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 34 CFR 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 34 CFR 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 34 CFR 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).

[Appendix D to 34 CFR 300]