CHAPTER 67-23-03
FEDERAL FUNDING FOR SPECIAL EDUCATION

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67-23-03-01. Definition.

As used in this chapter, "excess costs" means those costs that are in excess of the average annual student expenditure in a local education agency during the preceding school year for an elementary or secondary school student.

History: Effective February 1, 2000.
General Authority: NDCC 15-59-05
Law Implemented: NDCC 15-59, 15-59-05; 20 USC 1400-1419

67-23-03-02. Application for federal funds under part B of IDEA.

To apply for available federal funds, each district shall file forms provided by the department relative to the December child count requirement, the IDEA data reports, and the application form prescribed by the department.

1. The December child count requirement means reporting students who have an IEP, individualized service plan, or service plan for home education, and are receiving special education and related services as of December first of the current year.

2. The IDEA data reports mean the following:

   a. Data on each student who exited special education during the past year; and

   b. A report on special education and related services personnel needed and employed.

3. Applications for federal funds include collection of the following information:

   a. Maintenance of effort, meaning expenditures from state and local sources for special education, for the most current three years;

   b. Project participants;

   c. Project narratives;

   d. Budget summary;

   e. Assurances; and

   f. Required signatures.

History: Effective February 1, 2000; amended effective January 1, 2008; January 1, 2022.
General Authority: NDCC 15.1-32-09
Law Implemented: NDCC 15.1-32-02, 15.1-32-07, 15.1-32-21; 20 USC 1400-1419

67-23-03-03. Recovery of funds for misclassified children under part B of IDEA.

1. The department shall seek to recover any funds made available under part B of IDEA as amended for services to any child who has been determined erroneously classified as eligible to be counted through the December first child count.

2. The department shall use the following procedures for implementing and monitoring child count:

   a. The department shall review annually the federal part B of IDEA regulations for conducting a statewide child count;

   b. The department shall send letters annually explaining December first child count procedures as required by part B of IDEA to all special education units;

   c. Each local education agency shall respond to the request by submitting required data in an electronic format specified by the department;

   d. Each individual responsible for collecting child count information shall verify to the best of the individual's knowledge that the child count is a true, accurate count by submitting a sworn affidavit;

   e. Data must be edited through computer checks as well as visual scanning to identify errors. Each apparent error must be checked with the local education agency from which it was submitted and changes entered into a statewide child count data base;

   f. The department shall compile all child count information on a federally required reporting form;

   g. Child count information must be submitted by special education units for analysis and comparison of data to other records collected by the department containing numbers of served students with disabilities; and

   h. The department must monitor procedures to verify accuracy of special education unit child counts as follows:

      (1) A sample of students from the current child count must be selected, with an attempt made to include all categories of disability;

      (2) The files of the selected students must be reviewed onsite for timeliness and completeness; and

      (3) Evidence of student eligibility must be based on the following criteria:

         (a) The IEP must have been in effect and the child with disabilities receiving special education and related services at the time of the child count;

         (b) That the child with disabilities has been evaluated and determined to be a child with a disability eligible to receive special education and related services; and

         (c) That the student was enrolled in school at the time of the child count.

3. The department shall request the special education units to return federal funds for all misclassified children who were included in the child count.

4. Funds for misclassified students must be returned to the department within thirty days of the department's notification to the special education unit.

5. The department shall request the return of federal per pupil allocations in a direct ratio to the percentage of error found during monitoring.

6. The request for return of funds may not be made without first affording the special education unit a review after reasonable notice has been given and the unit has had an opportunity to present information and data relating to the error calculation.

    a. If the error is substantiated, the funds in question must be returned within thirty days of the request.

    b. If the special education unit does not return the funds, the department shall suspend federal financial assistance immediately until the situation is corrected.

7. The department shall return all funds to the United States department of education office of special education programs for misclassified children who were included in the child count.

8. Final disapproval action may not be taken by the department on any applications submitted by a special education unit without first affording the applicant reasonable notice and opportunity for a hearing.

9. The following procedure, set forth under section 76.401 of the education department general administrative regulations as amended provides the procedures for an appeal:

    a. The applicant must request the hearing of the department within thirty days of the action of the department;

    b. Within thirty days after it receives a request, the department will request the assignment of an administrative law judge from the North Dakota office of administrative hearings, who shall hold a hearing on the record and shall review the department's action;

    c. No later than ten days after the hearing by the administrative law judge, the administrative law judge shall issue a written ruling, including findings of fact and reasons for the ruling.

        (1) If the administrative law judge determines that its action was contrary to state or federal statutes or regulations that govern the applicable program, the department shall rescind its action; or

        (2) If the department does not rescind its final action after a review, the applicant may appeal to the secretary of the United States Department of Education, 400 Maryland Avenue Southwest, Washington, DC 20202-0002. The applicant must file a notice of the appeal with the secretary within twenty days after the applicant has been notified by the department of the results of the department's review. For purposes of appeal, the notice must state a description of the violation, the corrective action sought by the department, and the relief sought by the applicant. If supported by substantial evidence, findings of fact of the department are final; and

    d. The department shall make available at reasonable times and places to each applicant all records of the agency pertaining to any review or appeal the applicant is conducting under this section, including records of other applicants.

History: Effective February 1, 2000.
General Authority: NDCC 15-59-05
Law Implemented: NDCC 15-59-05, 15-59-05.1, 15-59-05.2; 20 USC 1400-1419

67-23-03-04. Authorized use of part B of IDEA funds.

1. After the special education unit has documented through an amendment to its current approved plan and on its part B of IDEA application for federal funds that it has met the excess costs and maintenance of effort requirements, the part B funds may be used for whatever special services and activities are necessary to meet the requirements of part B of the Individuals With Disabilities Education Act.

2. For purposes of this section, maintenance of effort means that funds provided to a local education agency under part B of IDEA may not be used to reduce the level of expenditures for the education of children with disabilities made by the local education agency from local funds below the level of those expenditures for the preceding fiscal year.

3. Any other use of funds under part B of IDEA unless expressly authorized by the department or the United States department of education is prohibited.

History: Effective February 1, 2000.
General Authority: NDCC 15-59-05
Law Implemented: NDCC 15-59-05, 15-59-05.1, 15-59-05.2; 20 USC 1400-1419

67-23-03-05. Excess cost requirement under part B of IDEA.

1. The excess cost requirement means that the local education agency must spend a certain minimum amount, as specified in part B of IDEA and as calculated in section 67-23-03-06, for the education of its disabled children before IDEA part B funds may be used.

2. After a local education agency has shown on an annual amendment to its current approved plan that, on the average, it has spent the minimum for the education of its children with disabilities, the local education agency has met the excess cost requirement and all additional costs are excess costs.

3. Part B of IDEA funds may then be used to pay for those additional costs.

History: Effective February 1, 2000.
General Authority: NDCC 15-59-05
Law Implemented: NDCC 15-59-05, 15-59-05.1, 15-59-05.2; 20 USC 1400-1419

67-23-03-06. Recordkeeping for funds under part B of IDEA.

A local educational agency shall keep records to show that it has spent at least the minimum amount or average amount determined through the formula process on the education of its students with disabilities. The formula process to determine the minimum or average amount is as follows:

1. Add all local educational agency expenditures in the preceding year, except capital outlay and debt service;

2. Subtract federal, state, and local funds spent in the preceding year for three categories of children disabled, educationally deprived, and bilingual; and

3. Divide the result by the average daily membership of students enrolled in the local educational agency, computing elementary and secondary into different computations.

History: Effective February 1, 2000.
General Authority: NDCC 15-59-05
Law Implemented: NDCC 15-59-05, 15-59-05.1, 15-59-05.2; 20 USC 1400-1419

67-23-03-07. School district or organization opportunity for hearing under part B of IDEA.

1. When a school district or organization has been notified that it is not compliant and is not eligible for funding under part B of IDEA, the school district or organization may request an opportunity for a hearing.

2. The request must be in writing to the superintendent within thirty days of the date of the department's notice of noncompliance and must include a description of the violation, corrective action required by the department, and the relief sought by the applicant.

3. The withholding of funding under part B of IDEA specified in the department's original notice must remain in effect as identified in the notice.

4. Upon receipt of the hearing request, the department will request the assignment of an administrative law judge from the North Dakota office of administrative hearings. The administrative law judge may modify, suspend, or keep in effect the withholding of funding under part B of IDEA specified in the original notice to the school district or organization until after the hearing and final decision.

5. Any final decision of the administrative law judge, which must contain findings of fact and reasons for the ruling, must be issued within thirty days of the request for a hearing, unless all parties are in agreement to a request for extension of the timeline.

History: Effective February 1, 2000.
General Authority: NDCC 15-59-05
Law Implemented: NDCC 15-59-05, 15-59-05.1, 15-59-05.2; 20 USC 1413(c)(d)