

281—41.202(256B,34CFR300) Use of amounts.

41.202(1) General. Amounts provided to the AEA or LEA under Part B of the Act must be:

- a. Expended in accordance with the applicable provisions of Part B of the Act and this chapter;
- b. Used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with subrule 41.202(2); and
- c. Used to supplement state, local, and other federal funds, and not to supplant those funds.

41.202(2) Excess cost requirement.

a. *General.*

(1) The excess cost requirement prevents an AEA or LEA from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to subparagraph 41.202(2)“a”(2).

(2) The excess cost requirement does not prevent an AEA or LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability aged 3 to 5 or 18 to 20 if no local or state funds are available for nondisabled children of these ages. However, the AEA or LEA must comply with the nonsupplanting and other requirements of Part B of the Act and of this chapter in providing the education and services for these children.

b. *Meeting excess cost requirement.*

(1) An AEA or LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.

(2) The amount described in subparagraph 41.202(2)“b”(1) is determined in accordance with the definition of excess costs in rule 281—41.16(256B,34CFR300). That amount may not include capital outlay or debt service.

c. *Joint establishment of eligibility.* If two or more AEAs or LEAs jointly establish eligibility in accordance with rule 281—41.223(256B,34CFR300), the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in rule 281—41.16(256B,34CFR300) in those agencies for elementary or secondary school students, as the case may be.

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