



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

June 11, 2014

Dear Chief State School Officer:

I am writing to remind you of an important opportunity for the upcoming school year and provide guidance on the potential impact of changes in the National School Lunch Program (NSLP)¹ on the allocation of Part B of the Individuals with Disabilities Education Act (IDEA Part B) funds to local educational agencies (LEAs). With the passage of the Healthy, Hunger-Free Kids Act of 2010 (Act), the NSLP now includes a new universal meal option, the “Community Eligibility Provision” (CEP or Community Eligibility). The CEP reduces administrative costs and paperwork, has increased school meals participation in early-adopting States, facilitates creative meal service options, and eliminates student-level meal charges. LEAs have until June 30th to decide to participate in the CEP for the upcoming school year.

IDEA Part B includes provisions that require State educational agencies (SEAs) to make subgrants to eligible LEAs (including public charter schools that operate as LEAs) based on a three-part formula that consists of a base, population, and poverty payment. 34 CFR §300.705 and 34 CFR §§300.815 and 300.816. The base payment is calculated based on the amount of IDEA Part B funds an LEA would have received in a prior year, subject to certain adjustments. After making base payments, the State must allocate 85 percent of the remaining funds based on population and 15 percent of the remaining funds based on poverty.²

As discussed in more detail below, SEAs have the discretion to define poverty for the purpose of allocating IDEA Part B funds. 34 CFR §300.705(b)(3)(ii) and 34 CFR §300.816(c)(2). SEAs often use NSLP data as the means to define “the relative numbers of children living in poverty” to allocate the poverty payment when making IDEA Part B subgrants to LEAs. The recent changes to NSLP, discussed below, do not affect that discretion, and SEAs may continue to use NSLP data or another definition of poverty for allocating the poverty payment when making subgrants under IDEA Part B section 611 pursuant to 34 CFR §300.705(b)(3)(ii) and under IDEA section 619 pursuant to 34 CFR §300.816(c)(2).

Background

CEP reduces burden at the household and local level by eliminating the need to obtain eligibility data from families through individual household applications, and permits schools, if they meet certain criteria, to provide meal service to all students at no charge to the students or their families.

¹ The changes to the NSLP detailed below are being phased in. Beginning in the 2011 – 2012 school year, LEAs and schools in Illinois, Kentucky, and Michigan were eligible to participate. In the 2012 – 2013 school year, the USDA added the District of Columbia, New York, Ohio, and West Virginia, and in the 2013 – 2014 school year, added Maryland, Massachusetts, Florida, and Georgia. Beginning in the 2014 – 2015 school year, this program will be available in all States.

² The formula for allocating section 611 subgrant funds to LEAs under the Grants to States program is in 34 CFR §300.705, and the formula for allocating section 619 subgrant funds under the Preschool Grants program to LEAs is in 34 CFR §300.816. Funds awarded under both programs are referred to as IDEA Part B funds.

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To be eligible to participate in Community Eligibility, schools must: (1) have at least 40 percent of their students qualify for free meals through “direct certification”³ in the year prior to implementing Community Eligibility; (2) agree to serve free breakfasts and lunches to all students; and, (3) agree to cover, with non-Federal funds, any costs of providing free meals to students above the amounts provided by Federal assistance.

CEP schools are not permitted to use household applications to determine a reimbursement percentage from the USDA. Rather, the USDA determines meal reimbursement for CEP schools based on “claiming percentages,” calculated by multiplying the percentage of students identified through the direct certification data by a multiplier established in the Act, which is currently 1.6. The 1.6 multiplier provides an estimate of the number of students that would be eligible for free and reduced-price meals in CEP schools if the schools determined eligibility through household applications.

Community Eligibility and IDEA Subgrant Allocations

Under 34 CFR §300.705(b)(3)(ii), States allocate a portion of their IDEA Part B section 611 funds to LEAs based, in part, on the “relative numbers of children living in poverty, as determined by the SEA.” Similarly, under 34 CFR §300.816(c)(2), States allocate a portion of their IDEA section 619 funds to LEAs based, in part, on the “relative numbers of children living in poverty, as determined by the SEA.” States must apply, on a uniform basis across all LEAs, the best data that are available to them on the numbers of children living in poverty.

As indicated above, SEAs often use NSLP data as the means for defining “the relative numbers of children living in poverty” when allocating IDEA Part B funds on the basis of poverty. The recent changes to the NSLP, discussed above, do not affect the discretion SEAs have in determining the numbers of children living in poverty, and SEAs may continue to use NSLP data or another definition of poverty when making subgrants under section 611 (pursuant to 34 CFR §300.705(b)(3)(ii)) or section 619 (pursuant to 34 CFR §300.816(c)(2)).

However, if an SEA uses NSLP data from CEP schools when making IDEA Part B subgrants to LEAs, it should not use the number of children actually receiving free meals in CEP schools to determine the relative numbers of children living in poverty because, in those schools, some children receiving free meals live in households that do not meet a definition of poverty. Therefore, OSEP recommends, but does not require, that SEAs that wish to use NSLP data for purposes of determining the number of children living in poverty in LEAs that are participating in Community Eligibility use the number of children for whom the LEA is receiving reimbursement from the USDA (direct certification total with the 1.6 multiplier), provided that the SEA does not permit LEAs to report numbers of children living in poverty that exceed the total number of children enrolled.⁴ As noted above, States must apply the definition of poverty they opt to use on a uniform basis across all LEAs.

³ “Direct certification” is a process by which schools identify students as eligible for free meals using data from, among other sources, the Supplemental Nutrition Assistance Program (SNAP) or the Temporary Assistance for Needy Families (TANF) program.

⁴ Recently the U.S. Department of Education (ED) issued similar guidance regarding CEP and Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (Title I, Part A). In contrast to IDEA Part B subgrants, CEP data generally are not used in determining subgrants to LEAs under Title I, Part A. Rather, SEAs

The following examples explain this calculation:

Example 1: An LEA has an enrollment of 100,000 children. In this LEA, all the schools participate in Community Eligibility. The LEA identifies 60,000 children through direct certification data as eligible for the NSLP. The LEA multiplies 60,000 by 1.6, and that result is 96,000. The LEA would receive reimbursement through the NSLP for meals for 96,000 children, and the SEA would allocate IDEA Part B funds to that LEA on the basis of 96,000 children living in poverty in that LEA.

	CEP Schools	Non-CEP Schools
Total Enrollment	100,000	0
# NSLP Students – Direct Certification	60,000	0
CEP Total (Direct Certification x 1.6)	96,000	--
# NSLP Students – Household Applications	--	0
TOTAL # NSLP Students	96,000	0

of Children for which LEA is reimbursed by USDA 96,000

of Children Living in Poverty for IDEA Part B Allocation..... 96,000

generally use statutorily determined formula child counts based primarily on poverty estimates provided by the U.S. Census Bureau to allocate funds to LEAs under Title I, Part A. CEP data primarily come into play for school-level allocations within an LEA. To give LEAs maximum flexibility in determining allocations to their schools, ED’s Title I, Part A CEP guidance provides three options for determining relative numbers of children living in poverty. However, in the context of IDEA Part B where SEAs are not comparing individual schools, we recommend using the number of children for whom an LEA is receiving reimbursement from the USDA. Note that, because of differences in the statutory requirements of IDEA Part B and Title I, Part A, when determining the relative numbers of children living in poverty for the purposes of allocating IDEA Part B funds to LEAs, an SEA may use a methodology that differs from the one used by an LEA to determine its schools’ poverty percentages under Title I, Part A. Please see <http://www2.ed.gov/programs/titleiparta/13-0381guidance.doc> for a further description of the CEP’s application to Title I, Part A.

Example 2: An LEA has an enrollment of 100,000 children. In this LEA, all the schools participate in Community Eligibility. The LEA identifies 80,000 children through direct certification data as eligible for the NSLP. The LEA multiplies 80,000 by 1.6, and that result is 128,000. However, because there are only 100,000 children enrolled within the jurisdiction of the LEA, the LEA would only receive reimbursement through the NSLP for meals for 100,000 children, and the SEA would allocate IDEA Part B funds to this LEA on the basis of 100,000 children living in poverty in that LEA.

	CEP Schools	Non-CEP Schools
Total Enrollment	100,000	0
# NSLP Students – Direct Certification	80,000	0
CEP Total (Direct Certification x 1.6)	128,000	--
# NSLP Students – Household Applications	--	0
TOTAL # NSLP Students	100,000	0

of Children for which LEA is reimbursed by USDA 100,000

of Children Living in Poverty for IDEA Part B Allocation..... 100,000

Example 3: An LEA has an enrollment of 120,000 children. Only some of the schools in this LEA participate in Community Eligibility. The schools that participate in Community Eligibility identify 60,000 children through direct certification as eligible for the NSLP. The LEA multiplies 60,000 by 1.6, and that result is 96,000. The schools that do not participate in Community Eligibility report 15,000 children living in poverty through the use of other NSLP data (i.e., a combination of direct certification counts and household applications). The LEA adds 15,000 children plus 96,000 children and that totals 111,000 children. The LEA would receive reimbursement through the NSLP for meals for 111,000 children, and the SEA would allocate IDEA Part B funds to that LEA on the basis of 111,000 children living in poverty in that LEA.

	CEP Schools	Non-CEP Schools
Total Enrollment	100,000	20,000
# NSLP Students – Direct Certification	60,000	10,000
CEP Total (Direct Certification x 1.6)	96,000	--
# NSLP Students – Household Applications	--	5,000
TOTAL # NSLP Students	96,000	15,000

of Children for which LEA is reimbursed by USDA 111,000

of Children Living in Poverty for IDEA Part B Allocation..... 111,000

We provide these examples to demonstrate that, in States exercising the Community Eligibility Provision, SEAs may continue to use NSLP data to determine the relative numbers of children living in poverty for the purpose of allocating poverty payments when making IDEA Part B subgrants to LEAs. If you have additional questions, please feel free to contact Gregg Corr,

Director, Monitoring and State Improvement Planning, at 202-245-7309, or by e-mail at Gregg.Corr@ed.gov.

Sincerely,
Melody Musgrove, Ed.D.
Director
Office of Special Education Programs

cc: State Director of Special Education
State Section 619 Coordinator