UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUL 28 2008

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OSEP 08-09

Purpose of Guidance

The Office of Special Education Programs issues this guidance to provide States with information regarding the use of funds provided under Part B of the Individuals with Disabilities Education Act by local educational agencies (LEAs) to develop and implement coordinated early intervening services (CEIS) for students who are currently not identified as needing special education.

This CEIS guidance represents the Department's current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those included under applicable laws and regulations.

If you are interested in commenting on this guidance, please email your comments to OSERSguidancecomments@ed.gov and include CEIS in the subject of your email or write us at the following address: Patricia Guard, U.S. Department of Education, Potomac Center Plaza, 550 12th Street, SW, room 4108, Washington, DC 20202.

MEMORANDUM

TO: Chief State School Officers
State Directors of Special Education

FROM: William W. Knudsen
Acting Director
Office of Special Education Programs

SUBJECT: Coordinated Early Intervening Services (CEIS) Under Part B of the Individuals with Disabilities Education Act (IDEA)

The Individuals with Disabilities Education Improvement Act amended the IDEA to allow, and sometimes require, local educational agencies (LEAs) to use funds provided under Part B of the IDEA for CEIS. This new provision, which is found in section 613(f) of the IDEA (20 U.S.C. §1413(f)) and the regulations in 34 CFR §300.226 permit LEAs

to use Part B funds to develop and provide CEIS for students who are currently not identified as needing special education. The rationale for using IDEA funds for CEIS is based on research showing that the earlier a child's learning problems or difficulties are identified, the more quickly and effectively the problems and difficulties can be addressed and the greater the chances that the child's problems will be ameliorated or decreased in severity. Conversely, the longer a child goes without assistance, the longer the remediation time and the more intense and costly services might be.

From the perspective of the interests of the child, and for administrative, fiscal, and instructional reasons, providing CEIS is a sound policy. As the Department stated in the Analysis of Comments and Changes section in the final IDEA Part B regulations, published on August 14, 2006, allowing schools to use some Part B funds for CEIS has the potential to benefit both special education and general education. CEIS can benefit general education by reducing academic and behavioral problems in the general education environment. CEIS can also benefit special education by ensuring that students are appropriately referred to special education, which would reduce referrals for special education and related services for needs that could have been addressed with relatively simple general education interventions. (71 FR 46540, 46626-46627 (Aug. 14, 2006)).

The IDEA and its implementing regulations permit LEAs to use not more than 15 percent of the amount the LEA receives under Part B of the IDEA, less any amount reduced by the LEA pursuant to 34 CFR §300.205 (adjustment to local fiscal efforts), to develop and implement CEIS. See 34 CFR §300.226. The regulations also specify:

- how CEIS funds may be spent;
- on whom CEIS funds may be spent;
- the reporting requirements for LEAs providing CEIS;
- the requirement for using CEIS funds by an LEA identified as having significant disproportionality based on race or ethnicity; and
- the relationship of CEIS to maintenance of effort requirements (34 CFR §§300.226, 300.646(b) and 300.205(d)).

The Department has received a number of requests to clarify the use of IDEA funds and other Federal funds for CEIS, including the provision in 34 CFR §300.646 that requires an LEA to reserve the maximum amount of funds available for comprehensive CEIS if there is significant disproportionality based on race or ethnicity with respect to the identification of children with disabilities; the identification of children in specific disability categories; the placement of children with disabilities in particular educational settings; or the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

The purpose of this memorandum is to provide guidance on CEIS, including the use of CEIS funds by LEAs identified as having significant disproportionality based on race or ethnicity, and on the relationship of CEIS to response to intervention (RTI). In addition to this guidance, the Department has available on its Web site, IDEA.ed.gov, several resources that might be of assistance to States and LEAs in implementing CEIS, including a topic brief, a video clip, questions and answers, and a professional

development module created and disseminated in cooperation with the National Dissemination Center for Children with Disabilities funded by the Office of Special Education Programs (OSEP).

Coordinated Early Intervening Services (CEIS)

1. What are CEIS?

CEIS are services provided to 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 supports to succeed in a general education environment. The IDEA (20 U.S.C. §1413(f)(2)) and its regulations (34 CFR §300.226(b)) identify the activities that may be included as CEIS: (1) professional development for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and (2) providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

For example, an LEA might use CEIS to provide behavioral interventions to nondisabled students who receive a certain number of disciplinary office referrals, perhaps as a part of a Positive Behavioral Interventions and Support (PBIS) initiative. CEIS also might be used to help fund reading or math specialists to work with nondisabled students who have not reached grade-level proficiency in those subjects, or to fund after-school tutoring for nondisabled students who score below "basic" on Statewide assessments.

Section 613(f)(5) of the IDEA also states that CEIS funds may be used to carry out services aligned with activities funded by and carried out under the Elementary and Secondary Education Act of 1965, as amended (ESEA), if IDEA funds are used to supplement, and not supplant, funds made available under the ESEA for those activities. Thus, if the IDEA funds do not supplant ESEA funds, they may be used to supplement school improvement activities conducted under other programs, such as Titles I or III, that are being implemented in an LEA. For more information on the supplement not supplant requirements, please see Question 24.

2. Who may receive CEIS?

Section 613(f)(1) of the IDEA permits LEAs to use IDEA funds for CEIS 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. See also 34 CFR §300.226(a). Children who are not yet in kindergarten may not receive CEIS. The preamble to the IDEA Part B regulations clarifies that students who received special education in the past, but are not currently receiving special education, are eligible to receive CEIS. (71 FR 46540, 46626 (Aug.14, 2006)).

An LEA determines which students need additional support. For example, an LEA might consider factors such as performance on reading or math assessments, disciplinary referrals, or suspension and expulsions. If an LEA chooses to use CEIS funds to support school-wide interventions,[1] it must be able to provide documentation that CEIS funds were used to provide services only to students in need of additional support and that other funds were used to fund the school-wide intervention for special education students and students who do not need additional support.

3. When is provision of CEIS required?

Under 34 CFR §300.646(b)(2), if a State identifies significant disproportionality based on race or ethnicity in an LEA with respect to the identification of children as children with disabilities, the identification of children in specific disability categories, the placement of children with disabilities in particular educational settings, or the taking of disciplinary actions, the LEA must use the maximum amount (15 percent) of funds allowable for comprehensive CEIS for children in the LEA, particularly, but not exclusively, for children in those groups that were "significantly overidentified."

4. May an LEA limit comprehensive CEIS solely to members of the racial or ethnic group for which significant disproportionality was identified?

No. The requirement in 34 CFR §300.646(b)(2) is to provide comprehensive CEIS to serve "children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified." For example, assume an LEA's data show significant disproportionality in the identification of African-American students as children with disabilities and that the majority of these students are identified in 4th and 5th grades in six of the LEA's 15 elementary schools. In this case, one appropriate way an LEA could implement CEIS would be to direct CEIS funds to all nondisabled 3rd and 4th grade children in need of additional academic or behavioral support in those six schools. It would not be appropriate, however, for the LEA to limit eligibility for CEIS only to nondisabled 3rd and 4th grade African-American students in those schools who were in need of additional academic or behavioral support. In this example, the services would be provided to 3rd and 4th grade students in order to intervene prior to the grade when significant disproportionality was identified.

5. How may an LEA use CEIS funds for professional development?

CEIS funds may be used to provide professional development to all personnel who are responsible for students who need additional academic and behavioral supports to succeed in a general education environment, but who have not been identified as needing special education. Under limited circumstances personnel who are solely responsible for students receiving special education services or students who do not need additional support may participate in professional development funded with CEIS funds. These personnel may participate so long as the cost of the professional development does not

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[1] School-wide interventions, as used in this memorandum, are interventions that are implemented throughout a school. The reference to school-wide interventions is not a reference to school-wide programs under section 1114 of the ESEA.

increase, the quality of the professional development does not decrease, and including those personnel would not exclude other personnel who are responsible for students who need additional support but have not been identified as needing special education.

6. What are the reporting requirements for CEIS?

The regulations require, in 34 CFR §300.226(d), each LEA that implements CEIS to report to the State on the number of children who received CEIS and the number of those children who subsequently received special education and related services under Part B during the preceding two-year period (i.e., the two years after the child has received CEIS). (71 FR 46540, 46628 (Aug. 14, 2006)). States and LEAs must maintain these records for audit and monitoring purposes but are not required to report these data to the Department unless requested to do so.

7. How should an LEA count and track students who received CEIS when funds are used for professional development or a school-wide intervention initiative?

To ensure consistency across LEAs in a State, each State should develop a method for its LEAs to count and track students who are served by personnel who participated in professional development activities supported with CEIS funds. It would be appropriate for an LEA to count, and subsequently track for two years, the number of students in need of additional support who received instruction from personnel who participated in the professional development program. It would not be appropriate to count every student who was taught by these personnel if some of the students were not in need of additional support or were receiving special education services. An LEA should only count the students and the personnel who participated in the professional development program in the year(s) of or the year(s) immediately after the training, rather than counting the students and those personnel each year after the training. A similar method might be used to count students who benefit from a school-wide intervention initiative supported with CEIS funds. Students who meet the LEA's criteria of being in need of additional support and participate in the initiative should be counted as receiving CEIS in the year(s) of or the year(s) immediately following the initiative and tracked for the following two years. Students who participate in an initiative for more than one year should be counted each year they participate.

8. How should an LEA count and track students who received CEIS when funds are used to provide behavioral and educational evaluations?

LEAs may use CEIS funds to provide behavioral and educational evaluations to determine the supports that are needed by students to succeed in a general education environment. However, funds may not be used for evaluations that are intended for use in determining eligibility for special education and related services. Students who are evaluated to determine the supports necessary for success in a general education environment should be counted as receiving CEIS in the year of or the year immediately following the evaluation and tracked for the following two years.

CEIS and Response to Intervention (RTI)

9. What is RTI?

There are a number of RTI frameworks, and while the Department does not endorse a particular RTI framework, several core characteristics tend to be present in RTI. These characteristics are: (1) high-quality, evidence-based instruction in general education settings; (2) screening of all students for academic and behavioral problems; (3) two or more levels (sometimes referred to as "tiers") of instruction that are progressively more intense and based on the student's response to instruction; and (4) continuous monitoring of student performance.

10. How may CEIS funds be used to implement RTI?

CEIS funds may be used to support RTI as long as the CEIS funds are used for services to nondisabled students in need of additional academic or behavioral support and supplement, not supplant, other funds used to implement RTI. For further information on the supplement not supplant requirements for CEIS, please see Question 24. LEAs must ensure that CEIS funds are used to provide services only to students who need additional academic and behavioral support, and not to students who currently receive special education and related services. See 34 CFR §300.226(a).

For example, one RTI framework includes a three-level continuum of instructional support. In this framework, tier one applies to all students in a general education setting. It would not be appropriate to use CEIS funds for tier one activities that support these students because these activities are designed to provide high-quality instruction to the entire class or school and not principally intended to address the needs of students who are struggling. Tier two activities provide specialized small group instruction for students determined to be at risk for academic and behavioral problems. It would be appropriate to use CEIS funds to support these tier two activities for at-risk, general education students. If students who are receiving special education and related services participate in the small group instruction, it would not be appropriate for CEIS funds to be used for these students as CEIS may not be provided to students that are currently identified as needing special education or related services. Tier three includes specialized individualized instructional or behavioral support for students with intensive needs. As in the case of tier two activities, CEIS funds could be used for activities that support general education students at risk for academic and behavioral problems, but could not be used for students who are receiving special education or related services.

CEIS and Significant Disproportionality

11. What are the requirements for determining significant disproportionality and the use of IDEA funds for comprehensive CEIS?

Section 618(d) of the IDEA and the implementing regulations in 34 CFR §300.646 require States to collect and examine data to determine if significant disproportionality based on race or ethnicity is occurring in States and LEAs with respect to the following: (1) the identification of children as children with disabilities; (2) the identification of

children as children with a particular disability; (3) the placement of children with disabilities in particular educational settings; and (4) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions. This requirement is different from the requirement to determine disproportionate representation based on inappropriate identification that is reported in the IDEA State Performance Plan (SPP) and Annual Performance Reports (APR) in Indicators 9 and 10.[2] One important difference is that the determination of significant disproportionality does not include a review to determine whether the disproportionality is the result of inappropriate identification, as does the determination of disproportionate representation as the result of inappropriate identification. In the case of a determination of significant disproportionality, a State must require any LEA identified as having significant disproportionality in any of the four above-mentioned analysis categories to reserve the maximum amount of funds for comprehensive CEIS.

12. How may States define significant disproportionality and disproportionate representation?

OSEP's April 24, 2007 memorandum, Disproportionality of Racial and Ethnic Groups in Special Education,[3] provides important guidance on the disproportionate representation requirements in 34 CFR §300.600(d)(3) and the significant disproportionality requirements in 34 CFR §300.646. States are required to provide a definition of "disproportionate representation that is the result of inappropriate identification" in the SPP pursuant to 34 CFR §300.600(d)(3).

States have a separate obligation, under 34 CFR §300.646, to examine data to determine whether significant disproportionality based on race or ethnicity is occurring, as described above. While it is permissible for States to use the same or similar definitions for both "disproportionate representation" and "significant disproportionality," States' definitions are usually different. For example, one possible way to set different, but coordinated, definitions is through a multi-level approach in which one level could be any numerical disproportionality; another level could be numerical disproportionality defined by the State to be disproportionate representation, which triggers a review to determine whether the disproportionate representation is the result of inappropriate identification; and another level could be numerical disproportionality that the State defines as significant disproportionality, which triggers the requirement to set aside the maximum amount for comprehensive CEIS.

It is important to consider some distinct differences between the requirements of 34 CFR §§300.600(d)(3) and 300.646. For example, under 34 CFR §300.600(d)(3), SPP Indicators 9 and 10 only require States to look at identification data, including by disability category, and are only concerned with disproportionality that is the result of inappropriate identification. In contrast, for purposes of determining whether an LEA

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[2] More information on Indicators 9 and 10 of the SPP and APR can be found in the SPP and APR forms, available online at: http://www.ed.gov/policy/speced/guid/idea/monitor/index.html.

[3] This memorandum is available online at: http://www.rrfcnetwork.org/images/stories/FRC/spp_mat/2007_October/dr%20memorandum%20final%204-24%20signed.doc.

must set aside 15 percent of its IDEA funds for comprehensive CEIS under 34 CFR §300.646(b)(2), States must examine the numerical data in four analysis categories -- identification of children with disabilities, identification of children with disabilities in a particular impairment category, placement of children in particular educational settings, and the taking of disciplinary actions. Further, 34 CFR §300.646 requires the identification of all significant disproportionality, whether or not it is the result of inappropriate identification.

13. Should States consider both overrepresentation and underrepresentation of racial and ethnic minorities when determining significant disproportionality under 34 CFR §300.646?

No. For purposes of §300.646, it is acceptable for States to consider only overrepresentation by race or ethnicity, rather than underrepresentation by race or ethnicity. During its deliberations on section 618(d) of the 2004 amendments to the IDEA, Congress expressed concern with the overrepresentation of racial and ethnic minorities in the identification, placement, or discipline of children with disabilities. The House Committee Report, H.R. Rep. No. 108-77, at 122 (2003), stated, "...the Committee's desire to see the problems of overidentification of minority children strongly addressed...." Additionally, in drafting the language in section 618(d)(1) of the Act, Congress expressly provided that States must require LEAs identified with significant disproportionality to reserve the maximum amount of funds under section 613(f) to provide comprehensive CEIS to children in the LEA, "particularly, but not exclusively, children in those groups that were significantly overidentified."

Based on Congress' expressed desire to address the issue of overrepresentation, States' resources may be better spent (1) collecting and analyzing data only on significant disproportionality that constitutes overrepresentation based on race or ethnicity in the identification, placement, or discipline of children with disabilities, and (2) ensuring that where such overrepresentation exists, the policies, practices, and procedures are reviewed and revised to comply with the Act, and LEAs use 15 percent of their Part B funds to provide comprehensive CEIS.

14. What must States consider in the analysis of significant disproportionality in the identification and placement of children with disabilities required in 34 CFR §300.646?

In each of its LEAs, a State must examine data to determine if significant disproportionality based on race or ethnicity exists in each of the four analysis categories required by 34 CFR §300.646. When examining data to determine if significant disproportionality exists with respect to the identification of children with particular impairments, it is acceptable for a State to examine the data with regard to children with impairments in only the following six disability categories: specific learning disabilities, mental retardation, speech or language impairments, other health impairments, autism, and emotional disturbance. Because the remaining disability categories typically have very small numbers of children, the Department does not deem disproportionality in the number of children with these disabilities to be significant. However, if a State has identified a problem or has reason to believe that there are issues with other disability

categories (i.e., through written complaints, due process filings, etc.), then the State should explore the problems with those categories.

Additionally, with regard to data on placement of children with disabilities in particular educational settings, a State, using the data it collects for reporting under section 618 of the IDEA must, at a minimum, examine data for three of the section 618 reporting categories: children who received educational and related services in the regular class no more than 79 percent of the day and no less than 40 percent of the day; children who received special education and related services in the regular class for less than 40 percent of the day; and children who received special education and related services in separate schools and residential facilities. A State is not required to examine data for children who received special education and related services in homebound or hospital settings, correctional facilities, or in private schools (as a result of parental placement of the child in a private school) because those numbers are typically very small and an LEA generally has little, if any, control over these placements. Additionally, a State is not required to examine data for children who received special education and related services in the regular class for more than 79 percent of the day because the IDEA requires children with disabilities to be placed in the least restrictive environment and, therefore, presumes that placement in the regular classroom is the preferred educational setting.

15. What must States consider in the collection and examination of disciplinary data in 34 CFR §300.646?

The regulations in 34 CFR §300.646(a)(3) require States to annually collect and examine data to determine if significant disproportionality based on race or ethnicity is occurring with respect to the incidence, duration, and type of disciplinary action, including suspensions and expulsions. We interpret the term "incidence" to refer to the number of times children with disabilities ages 3 through 21 were subject to disciplinary actions. We interpret the term "duration" to refer to the length of suspensions or expulsions. The type of disciplinary action refers to, at a minimum, data on both in-school and out-of-school suspensions and expulsions, but could also include other disciplinary actions (e.g., exclusion from extracurricular activities). In order to determine if significant disproportionality exists for discipline, a State must consider all three areas (incidence, duration, and disciplinary actions) when examining its data. For example, a State could meet this requirement by determining whether significant disproportionality based on race or ethnicity is occurring in: the number of out-of-school suspensions of 10 days or less; the number of out-of-school suspensions (including expulsions) of greater than 10 days; the number of in-school suspensions of 10 days or less; the number of in-school suspensions of greater than 10 days; and the total number of disciplinary removals.

16. What funds must be reserved by the LEA for comprehensive CEIS if a State determines significant disproportionality?

A State must determine significant disproportionality annually and require any LEA that is found to have significant disproportionality based on race or ethnicity to reserve the maximum amount of funds under section 613(f) of the IDEA (15 percent) for comprehensive CEIS either from the funds awarded following the date on which

significant disproportionality was determined or from funds awarded from the appropriation for a prior Federal fiscal year (FFY).

The following examples illustrate how funds could be reserved. (Note: The Department expects to begin making awards from FFY 2009 funds on July 1, 2009. FFY 2009 funds, which will begin to become available on July 1, 2009, will be available for obligation at the State and LEA levels until September 30, 2011.)

a. The State uses data on discipline collected for school year 2007-08, and which is reported in November 2008, to make a determination in February 2009 (prior to when FFY 2009 funds begin to become available on July 1, 2009) that an LEA must set aside funds for comprehensive CEIS. The LEA has three options. The LEA may set aside: (1) 15 percent of the funds that it receives from the FFY 2009 appropriation (available for obligation from July 1, 2009 through September 30, 2011); (2)15 percent of the funds that it received from the FFY 2008 appropriation (available for obligation from July 1, 2008 through September 30, 2010); *or* (3) 15 percent of the funds that it received from the FFY 2007 appropriation (available for obligation from July 1, 2007 through September 30, 2009).

b. The State uses data on enrollment or placement collected as of some time between October 1 and December 1, 2008, and which is reported in February 2009, to make a determination in August 2009 (after FFY 2009 funds begin to become available on July 1, 2009) that an LEA must set aside funds for comprehensive CEIS. In this case, the LEA has four options: the three options described above plus one additional option. Because the determination was not made until August, after the funds from the FFY 2009 appropriation have been awarded, the LEA may set aside 15 percent of the funds that it receives from the FFY 2010 appropriation (available for obligation from July 1, 2010 through September 30, 2012).

17. May multiple years of data be used to determine significant disproportionality?

A State must determine significant disproportionality annually. It is appropriate for a State's determination of significant disproportionality to be based on multiple years of data. While a State may aggregate previous years' data or look at trend data, the analysis must include data for the most recent fiscal year as described in Question 16.

18. May a State calculate significant disproportionality differently for the four analysis categories?

It is permissible for a State to use different calculation methods to determine significant disproportionality in the four analysis categories so long as the State can justify the calculation methods for each of the analysis categories and demonstrate that the methods are statistically sound. We recognize that there may be small numbers of students counted in some of the analysis categories, which might impact the reliability and validity of a calculation method. In such cases, a State might need to use a method of identifying

significant disproportionality that is different from the method used for another analysis category. For example, a State might choose to use a "risk-ratio formula" to identify significant disproportionality in placement data and a "composition index" to identify significant disproportionality in identification data. In addition, a State may set its risk ratio or composition index at different points for the four analysis categories. For example, a State might decide to use a risk ratio for placement data that is higher than its threshold for discipline data as long as these differences can be justified. The Department encourages States to use the guidance provided by the Department on methods for calculating disproportionality. This guidance is found at: http://www.ideadata.org/docs/Disproportionality%20Technical%20Assistance%20Guide.pdf.

Additionally, if data appear not to be representative in a district that provides services for students with certain disabilities who come from several surrounding districts, it would be appropriate when calculating significant disproportionality to count those students in the "sending district" (i.e., the district that is responsible for ensuring that the student's individualized education program (IEP) is implemented) and not in the district that is providing services.

19. May a State change its definition of significant disproportionality over time?

Yes. There are circumstances in which it may be appropriate for a State to modify its definition of significant disproportionality over time. For example, a State may make its definition broader as its LEAs improve in the areas of analysis, in order to identify more disproportionality than in previous years. If a State chooses to modify its definition of significant disproportionality for the analyses required under 34 CFR §300.646, the State is not required to recalculate data from previous years based on the revised definition.

20. Should States report on significant disproportionality in the SPP and APR?

States are not required to report on significant disproportionality and CEIS in the SPP/APR unless required by OSEP to do so because of previously identified noncompliance. As described above, the analysis of data to determine significant disproportionality required in 34 CFR §300.646 and the reservation of funds for comprehensive CEIS are separate from the requirement in 34 CFR §300.600(d)(3), which is the basis for Indicators 9 and 10 in the SPP and APR.

Some Fiscal Considerations when Implementing CEIS

21. What amount of IDEA funds may an LEA use for CEIS?

It is important to consider that many of the following fiscal considerations relating to CEIS only apply when an LEA is required to reserve funds for comprehensive CEIS following the identification of significant disproportionality, pursuant to 34 CFR §300.646(b)(2). If a State identifies significant disproportionality in an LEA, the LEA must reserve the maximum amount of funds for comprehensive CEIS. The funds must be used during the period of their availability for obligation and must be used for comprehensive CEIS regardless of whether the significant disproportionality is resolved

during the time that the funds are available. If significant disproportionality is not identified and an LEA chooses to use funds for CEIS, the LEA may use up to the maximum amount allowed for CEIS (15 percent) and may reallocate any unspent funds during the time that the funds are available for obligation.

22. Should the 15 percent be calculated prior to reductions based on other IDEA requirements?

Funds awarded to an LEA under both sections 611 and 619 of the IDEA must be included when calculating the 15 percent. An LEA may not reduce the amount it uses for this calculation by any other amount required by the IDEA. For example, an LEA may not deduct funds for equitable services for students parentally-placed in private schools before calculating the 15 percent. An LEA that is required to use funds for comprehensive CEIS because of significant disproportionality must use 15 percent of the total Part B funds awarded to the LEA. An LEA that is not identified as having significant disproportionality but chooses to use Part B funds for CEIS may use up to 15 percent of the total amount, less any funds reduced by the LEA pursuant to 34 CFR §300.205. See 34 CFR §300.226(a).

23. How does an LEA's use of IDEA funds for CEIS affect its maintenance of effort obligation under IDEA?

If an LEA is required or chooses to use part of its Part B funds for CEIS, it must consider the effect that the decrease in the available Part B funds might have on the LEA's maintenance of effort obligation. States and LEAs should review the requirements in 34 CFR §§300.205(d) and 300.226(a), and the examples provided in Appendix D to the Part B regulations, to better understand how CEIS and maintenance of effort calculations might affect one another. If an LEA uses additional local funds, or State and local funds, for special education and related services for children with disabilities in place of the Part B funds that are being used to provide CEIS to children who have not been identified as children with disabilities, the higher level of local, or State and local, expenditures becomes the LEA's new maintenance of effort base for the subsequent year.

24. What are the supplement not supplant requirements for CEIS funds?

The general non-supplant requirement for IDEA funds in 34 CFR §300.202(a)(3) states that funds provided to LEAs under Part B of the IDEA must be used to supplement State, local, and other Federal funds and not to supplant those funds. This requirement applies to all Part B funds including any used for CEIS. In addition, 34 CFR §300.226(e) states that CEIS funds may be used to carry out CEIS aligned with activities funded 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 using CEIS funds. The Department will presume that an LEA is in violation of the IDEA's supplement not supplant provisions if it uses IDEA funds in one of the following ways: (1) to provide services that are otherwise required by Federal, State or local law; or (2) to provide services that were paid for with other funds in a prior year, including, if the IDEA funds are used for CEIS activities coordinated with activities funded under the ESEA, and the

IDEA funds are used to provide services that were paid for with ESEA funds in the prior year. CEIS may not include services that were provided with other funds in a prior year, including services that were paid with ESEA funds. An LEA might be able to rebut these presumptions through the presentation of evidence that, even without CEIS funds, the other funds would not have been used in the current year for the activities now paid for with CEIS funds. Additional supplement not supplant provisions apply to Federal funds provided under Titles I and III of the ESEA.[4] If an LEA chooses to use CEIS funds for activities aligned with activities funded under Titles I and III, it must meet those requirements.

Conclusion

The Department recognizes the complexities of implementing the requirements related to CEIS. We encourage States to utilize the technical assistance resources developed by the Department and available at IDEA.ed.gov. If you have further questions about CEIS and RTI or CEIS and significant disproportionality, please contact your OSEP Part B State contact. As noted above, we welcome your comments on this guidance.

[4] See section 1120A of Title I and sections 3111 and 3115(g) of Title III regarding the supplement not supplant provisions.