Proposed Comments from the Special Education Finance Section with the MO Department of Elementary and Secondary Education (DESE)

U.S.C	C.F.R	Guidance/Letters/Tools	Comment
20 USC 1401 (8) Excess Costs The term ''excess costs'' means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student, as may be appropriate, and which shall be computed after deducting— (A) amounts received— (i) under subchapter II; (ii) under part A of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6311 et seq.]; and (iii) under parts A and B of title III of that Act [20 U.S.C. 6811 et seq., 6891 et seq.]; and (B) any State or local funds expended for programs that would qualify for assistance under any of those parts.	**34 CFR 300.16 Excess Costs** Excess costs means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting— (a) Amounts received— (1) Under Part B of the Act; (2) Under Part A of title I of the ESEA; and (3) Under Parts A and B of title III of the ESEA and; (b) Any State or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section, but excluding any amounts for capital outlay or debt service. (See Appendix A to part 300 for an example of how excess costs must be calculated.)	**Plagata-Neubauer, April 8** OSEP Responses: The reference in 34 CFR §300.16 and Appendix A is to total expenditures of the LEA for elementary school students and total expenditures for secondary school students, not total expenditures for the education of elementary school students and total expenditures for the education of secondary school students. The costs of the separate programs are generally not comparable and therefore, the costs must be computed separately.	**For Repeal** This was enacted in the 1970's when the special education population was segregated from the general education population to ensure LEAs were spending the same amount on the general education of students with disabilities as they were on students without disabilities. Today, special education students are educated primarily in the general education classroom and it is meaningless to try to determine separate costs for the general education of students with and without disabilities. In addition, the CSR far exceeds the USC by indicating a formula of how excess costs must be calculated. This is burdensome to LEAs and/or States given expenditure information and student level data is not collected exactly the same in all LEAs and/or States. Furthermore, the Plagata-Neubauer guidance letter oversteps the USC and the CSR. Total expenditures referenced in the letter are not defined in either USC or the CSR. The letter also

			indicates elementary and secondary costs must be computed separately which is not defined in the USC or CSR.
(B) Exception Notwithstanding the restriction in subparagraph (A)(iii), a local educational agency may reduce the level of expenditures where such reduction is attributable to— (i) the voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel; (ii) a decrease in the enrollment of children with disabilities; (iii) the termination of the obligation of the agency, consistent with this subchapter, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the State educational agency, because the child— (I) has left the jurisdiction of the agency; (II) has reached the age at which the obligation of the agency to provide a free appropriate public education to the child has terminated; or (III) no longer needs such program of special education; or (iv) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.	**§ 300.204 Exception to maintenance of effort.** Notwithstanding the restriction in § 300.203(a), an LEA may reduce the level of expenditures by the LEA under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following: (a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel. (b) A decrease in the enrollment of children with disabilities. (c) The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child— (1) Has left the jurisdiction of the agency; (2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or (3) No longer needs the program of special education. (d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or	**Michael Lovato, Nov 23, 2015** OSEP Responses: The LEA may not take the reduction in MOE because the related service provider did not depart voluntarily, or for just cause, but rather departed because the LEA decided to terminate the contract with the related service provider as a cost-saving measure.	**For Modification** The Uniform Grant Guidance (UGG) under 2 CFR 200.319 requires districts to bid all purchases through competition. If a LEA has a cost-savings from the competition process, the LEA is not allowed to claim the cost-saving as reduction to Maintenance of Effort (MOE), even though students are receiving the same level of services. OSEP should allow cost-saving for bidding contractual services under the just cause clause of departure of special education or related personnel.

	the construction of school facilities. (e) The assumption of cost by the high cost fund operated by the SEA under § 300.704(c).		
§ 1419. Preschool grants (a) In general The Secretary shall provide grants under this section to assist States to provide special education and related services, in accordance with this subchapter— (1) to children with disabilities aged 3 through 5, inclusive; and (2) at the State's discretion, to 2-year-old children with disabilities who will turn 3 during the school year.	**Subpart H—Preschool Grants for Children with Disabilities** **§ 300.800 In general.** The Secretary provides grants under section 619 of the Act to assist States to provide special education and related services in accordance with Part B of the Act— (a) To children with disabilities aged three through five years; and (b) At a State's discretion, to two-year old children with disabilities who will turn three during the school year.	**Monitoring Tools**	**For Modification.** OSEP's interpretation of including 5 year old kindergarteners in the 619 allocation overreaches the statutory requirement. Both the statute and the regulations label the funding "Preschool Grants" as a way to provide parameters for the statutory provisions. It is quite appropriate for statute and regulation to discuss three through five-year-olds within the context of a preschool grant because many five-year-old students attend preschools. It is less logical to stretch the definition of "preschool" to include kindergarten students simply because five-year-olds also attend kindergarten. Removing funds from preschool (a voluntary program in most states with variable local support and funding) to support

			kindergarten students (mandatory in most states) weakens states' ability to build the level of financial support needed for viable preschool programs.
	§ 300.705(b)(2) and 300.816(b) Subgrants to LEAs. (2) Base payment adjustments. any fiscal year after 1999— (i) If a new LEA is created, the State must divide the base allocation determined under paragraph (b)(1) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under § 300.703(b), currently provided special education by each of the LEAs; (ii) If one or more LEAs are combined into a single new LEA, the State must combine the base allocations of the merged LEAs; (iii) If, for two or more LEAs, geographic boundaries or administrative responsibility for	**Department of Education Nonregulatory Guidance 34 CFR Part 76, Subpart H December 2000** 79. Do the requirements for base payment adjustments apply to charter school LEAs that significantly expand their enrollment in a subsequent academic year? Yes. Based on section 10306 of the ESEA, which was enacted after the IDEA Amendments of 1997, and the final regulations implementing section 10306, the requirements for base payment adjustments also apply to charter school LEAs that experience a significant expansion in enrollment, as defined at 34 CFR §76.787 of the final regulations.	**For Modification.** Nothing in 34 CFR §300.705(b)(2) and 300.816(b) or Subpart H of 34 CFR Part 76 indicates base payment adjustments of IDEA Part B section 611 and section 619 funds are required for a significantly expanding charter school LEA. The only guidance on base payment adjustments for significantly expanding charter school LEAs is outlined in the Department of Education's December 2000 FAQ which is nonregulatory. Furthermore, base payment adjustments are not required for non-charter LEAs that significantly expand enrollment according to the State's definition of significant expansion. Thus, it is not consistent that base payment adjustments are required for

	providing services to children with disabilities ages 3 through 21 change, the base allocations of affected LEAs must be redistributed among affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under §300.703(b), currently provided special education by each affected LEA; and (iv) If an LEA received a base payment of zero in its first year of operation, the SEA must adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any children with disabilities. The State must divide the base allocation determined under paragraph (b)(1) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the LEA, among the LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 currently provided special education by each of the LEAs.		significantly expanding charter LEAs but no other significantly expanding LEA. Calculating base payment adjustments for significantly expanding charters not only creates a burden on SEAs, but also decreases Federal funding for affected non-charter LEAs that cannot be recovered unless one of the four reasons for a base payment adjustment applies to the LEA. As a result, the LEA is required to spend more State and/or local funds to provide special education and related services which increases the LEA's MOE.

	§ 300.646(d) Comprehensive coordinated early intervening services. Except as provided in paragraph (e) of this section, the State or the Secretary of the Interior shall require any LEA identified under paragraphs (a) and (b) of this section to reserve the maximum amount of funds under section 613(f) of the Act to provide comprehensive coordinated early intervening services to address factors contributing to the significant disproportionality. (1) In implementing comprehensive coordinated early intervening services an LEA - (i) May carry out activities that include professional development and educational and behavioral evaluations, services, and supports. (ii) Must identify and address the factors contributing to the significant disproportionality, which may include, among other identified factors, a lack of access to scientifically based instruction; economic, cultural, or linguistic barriers to appropriate identification	**Significant Disproportionality (Equity in IDEA) Essential Questions and Answers March 2017** Question C-3-5: May an LEA identified with significant disproportionality reserve 15 percent of its IDEA section 619 funds, IDEA section 611 funds, or both? Answer C-3-5: While the amount of the 15 percent reservation must be calculated on the basis of both the LEA's section 611 and 619 allocations, the LEA retains full flexibility regarding whether the reservation is made with section 611 funds, section 619 funds, or both. That is, IDEA does not specify the source from which an LEA is required to reserve funds. The LEAs retain Questions and Answers on IDEA Part B—Significant Disproportionality, Equity in IDEA this flexibility regardless of the age of the children who will be receiving comprehensive CEIS. Question C-3-6: Does the LEA have flexibility in how these	**For Repeal.** The new requirements for CCEIS will cause unreasonable burden on both SEAs and LEAs. Response to Questions C-3-5, C-3-6, and C-3-10: Allowing LEAs to retain full flexibility on what source of funds to use regardless of the age of the children who will be receiving CCEIS is inconsistent with the regulations specifying use of 611 and 619 funds. It does not make sense to allow an LEA to use 619 funds to serve students in 8th grade identified for CCEIS. In addition, having LEAs accurately track not only which funding (611, 619 or both) and what fiscal year funds are being used to provide CCEIS places unreasonable burden and confusion on the LEAs as well as the SEAs to monitor the use of funds with fidelity.

	or placement in particular educational settings; inappropriate use of disciplinary removals; lack of access to appropriate diagnostic screenings; differences in academic achievement levels; and policies, practices, or procedures that contribute to the significant disproportionality. (iii) Must address a policy, practice, or procedure it identifies as contributing to the significant disproportionality, including a policy, practice or procedure that results in a failure to identify, or the inappropriate identification of, a racial or ethnic group (or groups). (2) An LEA may use funds reserved for comprehensive coordinated early intervening services to serve children from age 3 through grade 12, particularly, but not exclusively, children in those groups that were significantly overidentified under paragraph (a) or (b) of this section, including - (i) Children who are not	funds are allocated and expended within the LEA? Answer C-3-6: Yes, as long as funds are used in accordance with the requirements in §300.646(d), the LEA may distribute the IDEA Part B funds reserved for comprehensive CEIS to its schools to carry out comprehensive CEIS, and the LEA retains discretion about how to allocate those funds within the LEA. As such, if an LEA determines that it is best able to address the factors contributing to the identified significant disproportionality by providing a portion of its reserved funds to a particular subset of schools for comprehensive CEIS, it is permitted to do so. Whatever it chooses to do, the LEA must document that 15 percent of its IDEA Part B funds were reserved and used to provide comprehensive CEIS in accordance with §300.646(d). See also 34 C.F.R. §76.731. Question C-3-10: What Federal Fiscal Year's IDEA Part B funds can an LEA reserve for comprehensive CEIS and how	

	currently identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment; and (ii) Children with disabilities. (3) An LEA may not limit the provision of comprehensive coordinated early intervening services under this paragraph to children with disabilities.	does it affect the LEA's ability to take the MOE reduction in §300.205? Answer C-3-10: Generally, an LEA may reserve IDEA Part B funds that it is required to reserve for comprehensive CEIS either from the funds awarded for the Federal fiscal year (FFY) following the date on which the State identified the significant disproportionality or from funds awarded from the appropriation for a prior FFY. For example, State X uses data on identification collected for school year 2015-2016, which is reported in April 2016, to make a determination in February 2017 that LEA Y has significant disproportionality related to identification and therefore must set aside 15 percent of its IDEA Part B funds for comprehensive CEIS. The State makes this determination before FFY 2017 funds become available on July 1, 2017. The LEA has the following three options. The LEA may set aside: (1) 15 percent of the funds that the LEA receives from its FFY 2017 IDEA Part B allocation (available for obligation from Jul	

		1, 2017, through September 30, 2019); (2) 15 percent of the funds that the LEA received from its FFY 2016 IDEA Part B allocation (available for obligation from July 1, 2016, through September 30, 2018); or (3) 15 percent of the funds that it received from the FFY 2015 IDEA Part B allocation (available for obligation from July 1, 2015 through September 30, 2017) only if the LEA did not use the adjustment to reduce its required level of effort in the fiscal year covering school year (FY) 2015-16 under 34 C.F.R. §300.205. If an LEA selects option 1, the LEA will not be able to use the adjustment to reduce its required level of effort under 34 C.F.R. §300.205 in FY 2017–18. If an LEA selects option 2, the LEA will not be able to use the adjustment to reduce its required level of effort under 34 C.F.R. §300.205 in FY 2016–17. An LEA can only select option 3 if the LEA did not use the adjustment in 34 C.F.R. §300.205 to reduce its required level of effort in FY 2015–2016. Because FY 2015-16 would have	

		ended at the time the LEA is identified with significant disproportionality in February 2017, the LEA would already know whether it used the adjustment in 34 C.F.R. §300.205 to reduce its required level of effort in FY 2015-20, and if it had done so, could not use its FFY 2015 IDEA Part B funds to provide comprehensive CEIS because of the way the MOE adjustment provision and the authority to use IDEA Part B funds for comprehensive CEIS are interconnected. Finally, an LEA must reserve IDEA Part B funds received from a single FFY IDEA Part B allocation, and not from multiple FFY Part B allocations. For example, if an LEA is required to reserve funds for comprehensive CEIS, it must reserve funds from a single year's allocation. The LEA could reserve $100 from its FFY 2017 IDEA Part B funds, but it could not reserve $50 of its FFY 2016 IDEA Part B funds and $50 of its FFY 2017 IDEA Part B funds to provide comprehensive CEIS. Once the LEA chooses to reserve funds from a particular	

		FFY, it must reserve the entire amount for comprehensive CEIS from that FFY. Further, the LEA must expend the funds reserved to provide comprehensive CEIS.	