

Wyoming Department of Education  
Special Programs Division

Reference Guide:

**IDEA Funding Exceptions:  
Incidental Benefit & Coordinated Early Intervening Services**

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As a general rule, Part B of the Individuals with Disabilities Education Act (IDEA) provides funding to states to pay the excess costs of providing special education and related services to students with disabilities. IDEA Part B funds may not be used for non-special education instruction in the general education classroom, instructional materials for use with non-disabled children, or for professional development of general education teachers not related to meeting the needs of children with disabilities, subject to these exceptions: Incidental Benefit and Coordinated Early Intervening Services (CEIS). The exceptions, each with its own distinct rules, allow IDEA Part B funds to be used to benefit regular education students.

**The Regulatory Structure**

*34 C.F.R. §300.202(a)*: Amounts provided to the Local Education Agency (LEA) under Part B of the IDEA

1. Must be expended in accordance with the applicable provisions of the implementing federal regulations;
2. Must be used only to pay the excess costs of providing special education and related services to children with disabilities; and
3. Must be used to supplement State, local, and other Federal funds and not to supplant those funds.

An 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 using any IDEA Part B funds. *34 C.F.R. §300.202(b)(2)(i)*.

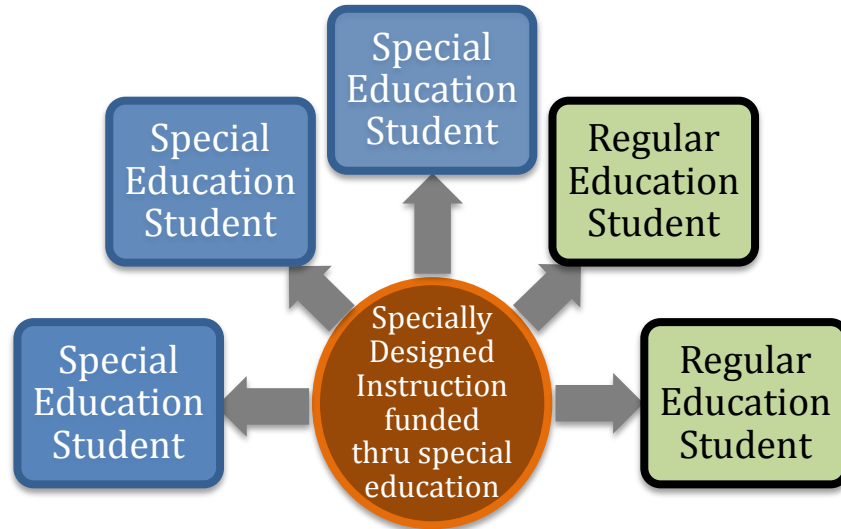
*34 C.F.R. §300.208(a)(1)*: Funds provided to an LEA under Part B of the IDEA may be used for the costs of special education and related services, and supplementary aids and services, even if one or more nondisabled children benefit from those services. In practice, the benefit received by the nondisabled student is considered *incidental benefit*.

*34 C.F.R. §§300.208(a)(2) and 300.226*: An LEA may use up to 15 percent of the amount the LEA receives under Part B of the IDEA to develop and implement coordinated, early intervening services 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.

*W.S. §21-3-321(a)(ii)*: "Special education programs and services" means programs and services for students with disabilities as identified under the federal Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.

*WDE Chapter 8 Rules, Section 15(a) and (b)*: Reimbursement for expenditures incurred to provide special education programs and services to children with disabilities shall not duplicate any other reimbursement or revenue source used to offset district special education costs. Special education reimbursement shall be limited to those actual costs required to provide special education programs and services to children with disabilities.

## Incidental Benefit Model



### Conditions:

1. The special education teacher is fully funded through Part B or state special education funds.
2. There is no specific ratio of special education student(s) to regular education student(s).
3. Specially Designed Instruction is delivered according to the IEPs of the special education student(s). (Type, amount, duration, etc.)
4. The special education teacher DOES NOT perform any extra duties or responsibilities on behalf of the regular education students. (Grading papers, assigning grades, attending parent-teacher conferences, etc.)
5. The LEA continually monitors its Child Find obligation for regular education student(s).

## Incidental Benefit in Practice

In order to understand the practical implications and limitations of incidental benefit, it is important to remember the basics:

- Special education is defined, in relevant part, as specially designed instruction delivered in accordance with an Individualized Education Plan (IEP) for a student with an IDEA disability. *34 C.F.R. §300.39.*
- The type, amount, frequency and duration of IEP services must be based on an individual student's educational need as determined through comprehensive evaluation. *34 C.F.R. §300.320.*
- The IEP must be reviewed at least annually by the full IEP team, and must be amended sooner to address a student's changing needs. *34 C.F.R. §300.324.*

The basics are immutable; meaning that a school district's multi-tiered system of support, staff shortages, administrative oversight, or any other factors cannot alter the fact that special education funds can only be used consistent with the IDEA. In practice, special education teachers funded through Part B or state special education funds must provide special education services to IDEA eligible students consistent with their IEPs. Regular education students may *incidentally* benefit from this instruction in limited circumstances.

The United States Department of Education, Office of Special Education Programs (OSEP) offers the following guidance on incidental benefit:

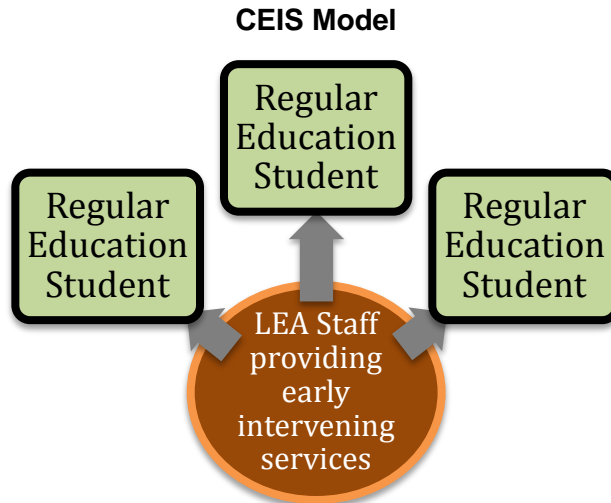
Pursuant to 34 C.F.R. §300.208(a), special education teachers fully funded by Part B (non-CEIS) funds may perform duties for children without disabilities **if they would already be performing these same duties** in order to provide special education and related services to children with disabilities. However, if fully funded by Part B IDEA (non-CEIS) funds, **this teacher may not grade papers, spend time on parent teacher conferences, or perform any functions for the children without disabilities not otherwise required as part of the provision of special education and related services to children with disabilities.** In other words, 34 CFR § 300.208(a) does not permit special education teachers fully funded by Part B (non-CEIS) funds to perform duties other than special education and related services. *Letter to Couillard*, 61 IDELR 112 (OSEP 2013). (Emphasis added.)

Regular education students may incidentally benefit from special education services individually designed for an IDEA eligible student (as opposed to a pre-set core curriculum or core replacement instructional block of time) and delivered according to a student’s IEP as long as no extra duties are performed on behalf of the regular education students. OSEP has not identified any particular ratio of special education to regular education students, nor has it identified a maximum duration of time incidental benefit may be received. However, LEAs must keep in mind the overarching *Child Find* obligation pursuant to 34 C.F.R. §300.111, which places an affirmative duty on LEAs to identify, locate, and evaluate any student suspected of having an IDEA disability and the need for special education. In the incidental benefit context, if the only way a regular education student makes educational progress is by benefitting from a special education student’s specially designed instruction, this may serve as evidence of a mature child find obligation.

When determining if it is permissible for special education personnel funded through Part B or state special education funds to perform an instructional task or assignment with or on behalf of a nondisabled student, the following guiding questions may be helpful: (Adapted from the Wisconsin Department of Public Instruction 2013 Guidance on *Letter to Couillard*)

1. Is the reason for the special education teacher performing the task related to specific needs of at least one child with a disability as outlined in his or her IEP?
  - If no, it is not permissible for the special education teacher to perform the task.
  - If yes, it may be permissible for the special education teacher to perform the task.
2. Will the task require additional time beyond what is required to address the needs of at least one child with a disability as outlined in his or her IEP?
  - If yes, it is not permissible for the special education teacher to perform the task.
  - If no, it may be permissible for the special education teacher to perform the task.
3. Will the provision of free appropriate public education (FAPE) or any IEP services be compromised if the special education teacher performs the task?
  - If yes, it is not permissible for the special education teacher to perform the task.
  - If no, it may be permissible for the special education teacher to perform the task.
4. Will the task result in a student or students not currently identified as needing special education and related services receiving instruction beyond the scope of incidental benefit by the special education teacher?
  - If yes, it is not permissible for the special education teacher to perform the task.
  - If no, it may be permissible for the special education teacher to perform the task.

In summary, if a Part B (or state special education) funded special education teacher will perform duties for regular education students beyond incidental benefit, it will be necessary for the LEA to use other funding sources in addition to the special education funds to pay the cost of the teacher.



**Conditions:**

1. The LEA has set aside up to 15% of its Part B funds for CEIS activities.
2. Staff providing CEIS activities must document time spent in a Personnel Activity Report (PAR) in order to align staff time with the CEIS cost objective.
3. CEIS activities are only funded from the percentage of Part B funds specifically reserved for that purpose by the LEA. State funds are not used for CEIS activities.
4. CEIS services are ONLY provided to students who do NOT receive special education or related services under IDEA.

**Coordinated Early Intervening Services in Practice**

CEIS are services provided to students, particularly those in kindergarten through grade three, who are not currently identified as needing special education or related services, but who need additional academic or behavioral supports to succeed in a general education setting. *34 C.F.R. §300.226(a)*. LEAs may choose to use up to 15% of Part B funds to support its multi-tiered system of support model or Response to Intervention (RTI) model (except in circumstances of significant disproportionality, which is beyond the scope of this current guidance). OSEP offered the following guidance:

However, those funds may only be used to pay for tiered instruction or intervention services for **nondisabled** students needing extra support. In implementing CEIS, an LEA may carry out activities that include: (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 to at-risk students. 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**. *Letter to Dale*, 60 IDELR 166 (OSEP 2012). (Emphasis added.)

In practice, CEIS funds cannot be used to fund a multi-tiered system of support or RTI model if already identified special education students will benefit from those services. If a Part B (or state special education) funded special education teacher will perform duties in a CEIS model for already identified special education students, it will be necessary for the LEA to use other funding sources in addition to the special education funds to pay the costs of CEIS activities.