

Administrative Rules of Montana

10.16.3181 LOCAL EDUCATIONAL AGENCY FEDERAL FUNDS APPLICATIONS

(1) In order to receive federal funds under IDEA, a local educational agency shall annually submit an application to the Superintendent of Public Instruction in accordance with application instructions and within announced timelines.

(a) A local educational agency may submit a single district application if it has:

(i) an entitlement of \$7500 or more; and

(ii) established, satisfactory to the Superintendent of Public Instruction, special education and related services which provide a free appropriate public education to students with disabilities.

(b) A local educational agency that participates in an education cooperative under [20-7-451](#) and [20-7-457](#), MCA, shall submit one consolidated application through the cooperative.

(c) A local educational agency that generates an entitlement of less than \$7500 or that is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of students with disabilities shall participate in one consolidated application with other local educational agencies.

(2) A consolidated application must meet the same requirements as a single district application.

(a) If the cooperative interlocal agreement does not specifically delegate the power to apply for IDEA funds on behalf of the participating local educational agency to a prime applicant, each participating local educational agency must delegate to the prime applicant the authority to apply for IDEA funds.

(3) If a local educational agency makes a significant amendment to its application, the local educational agency shall follow the procedures for submitting an original application under IDEA. The Superintendent of Public Instruction shall follow the same review and approval procedures as required for an original application.

History: [20-7-402](#), MCA; [IMP](#), [20-7-403](#), [20-7-414](#), MCA; [NEW](#), 1993 MAR p. 1913, Eff. 8/13/93; [AMD & TRANS](#), 2000 MAR p. 1048, Eff. 7/1/00; [AMD](#), 2007 MAR p. 678, Eff. 5/25/07

10.16.3809 COOPERATIVE BOUNDARIES

(1) Boundary lines of cooperatives established for the provision of special education services are defined by the Superintendent of Public Instruction based on consultation with regional representatives.

(a) No more than 23 special education cooperatives may be established.

(b) All districts are included within the boundaries of a special education cooperative but are not required to be a participating member of that cooperative.

(c) The special education cooperative boundaries shall be established so that the districts included within the boundaries are contiguous.

(d) A district may become a member only of the cooperative within which boundaries it lies.

(2) The Superintendent of Public Instruction shall maintain an official Montana school district data file with districts identified within the cooperative boundary consistent with the requirements of [20-7-457](#), MCA.

(3) Districts or cooperatives requesting a change to the boundary lines must provide a written request to the Superintendent to change the boundary lines. The written request must clearly describe the proposed boundary line and the reasons for the requested change.

(4) The request for change must be provided to the Superintendent of Public Instruction no later than October 1 to be in effect for the ensuing fiscal year.

(5) Prior to making the change, the Superintendent will notify and request comment from all districts within the boundaries of each affected cooperative.

(6) The Superintendent must approve any boundary changes prior to January 1 in order to be in effect for the ensuing fiscal year.

(7) All changes must comply with the conditions in (1).

(8) Boundary changes for districts already participating in a cooperative must occur on timelines consistent with the district's commitment for participation in the cooperative as specified in the interlocal agreement, unless the changes:

(a) result in the creation of a new cooperative;
(b) result in the merging of existing cooperatives; or
(c) are approved by a majority of the trustees in each school district directly affected and approved by the majority of the management board of each affected cooperative.
History: [20-7-457](#), MCA; [IMP](#), [20-7-457](#), MCA; [NEW](#), 1990 MAR p. 356, Eff. 3/17/95; [TRANS](#), 2000 MAR p. 1048, Eff. 7/1/00; [AMD](#), 2002 MAR p. 1740, Eff. 6/28/02

10.16.3901 DURATION OF COOPERATIVE

(1) The interlocal agreement creating a special education cooperative must require participating districts to remain members for a term of at least three state fiscal years which have an effective date of July 1.

(2) Notification of intent to withdraw from a cooperative shall be provided no later than October 1 of every third fiscal year of the district's commitment of participation.

History: [20-7-457](#), MCA; [IMP](#), [20-7-452](#), MCA; [NEW](#), 1990 MAR p. 1252, Eff. 6/29/90; [AMD](#), 1995 MAR p. 356, Eff. 3/17/95; [TRANS](#), 2000 MAR p. 1048, Eff. 7/1/00.

10.16.3902 MANAGEMENT BOARD

(1) The management board is responsible for administering the cooperative and is comprised of trustees of the participating districts or their authorized representatives.

(2) Designation of the representative shall be by formal action taken annually. Formal action shall be in the form of a resolution of the trustees of a participating district which names one of the trustees or an authorized representative to serve on the management board. The same person may be the authorized representative of more than one board of trustees.

(3) The interlocal agreement shall specify the voting powers of the member districts.

History: [20-7-457](#), MCA; [IMP](#), [20-7-452](#), MCA; [NEW](#), 1990 MAR p. 1252, Eff. 6/29/90; [AMD](#), 1995 MAR p. 356, Eff. 3/17/95; [TRANS](#), 2000 MAR p. 1048, Eff. 7/1/00.

10.16.3903 NONPARTICIPATING DISTRICTS

(1) The interlocal agreement shall require annual notification of opportunity to join to nonparticipating districts within the geographic boundary of the cooperative. This annual notification must be provided to nonparticipating districts no later than October 1 of each fiscal year and must require response within 60 days from those districts who wish to join.

History: [20-7-457](#), MCA; [IMP](#), [20-7-452](#), MCA; [NEW](#), 1990 MAR p. 1252, Eff. 6/29/90; [AMD](#), 1995 MAR p. 356, Eff. 3/17/95; [TRANS](#), 2000 MAR p. 1048, Eff. 7/1/00.

10.16.3904 PROCEDURES FOR APPROVAL

(1) A draft of a new or amended interlocal agreement shall be submitted to the Superintendent of Public Instruction for review and approval. Upon approval, the cooperative contract shall be filed with the county Clerk and Recorder of the county or counties in which the school districts involved are located and with the Secretary of State.

History: [20-7-457](#), MCA; [IMP](#), [20-7-453](#), [20-7-454](#), MCA; [NEW](#), 1990 MAR p. 1252, Eff. 6/29/90; [AMD](#), 1995 MAR p. 356, Eff. 3/17/95; [TRANS](#), 2000 MAR p. 1048, Eff. 7/1/00; [AMD](#), 2010 MAR p. 1076, Eff. 4/30/10.

Montana Code Annotated

20-7-451. Authorization to create full service education cooperatives. (1) A school district may contract with one or more other school districts to establish a cooperative to perform any or all education administrative services, activities, and undertakings that the school district entering into the contract is authorized by law to perform. The cooperative contract must be authorized by the boards of trustees of the districts entering into the contract.

- (2) A cooperative contract may allow money allocated to a cooperative to be expended for:
- (a) recruitment of professionals or employees for the cooperative; and
 - (b) facility rental and supportive services, including but not limited to janitorial and communication services.

History: En. Sec. 1, Ch. 471, L. 1979; amd. Sec. 1, Ch. 156, L. 1985; amd. Sec. 2, Ch. 343, L. 1989; amd. Sec. 1, Ch. 136, L. 1991.

20-7-452. Detailed contents of full service education cooperative contracts. The contract authorized in 20-7-451 may include all necessary and proper matters but must specify the following:

- (1) its duration, which may not be less than 3 years for purposes of providing special education services;
- (2) the precise organization, composition, and nature of the cooperative;
- (3) the purpose of the cooperative;
- (4) the manner of financing the cooperative and establishing and maintaining a budget for the cooperative;
- (5) the permissible method to be employed in accomplishing the partial or complete termination of the cooperative agreement and for disposing of property upon partial or complete termination;
- (6) provision for a management board that is responsible for administering the cooperative and that is comprised of trustees of the contracting districts or their authorized representatives;
- (7) the manner of acquiring, holding, and disposing of real and personal property used by the cooperative;
- (8) any other necessary and proper matters.

History: En. Sec. 2, Ch. 471, L. 1979; amd. Sec. 3, Ch. 343, L. 1989; amd. Sec. 2, Ch. 136, L. 1991.

20-7-454. Final approval and filing of full service education cooperative contract. Prior to commencement of its performance, a full service education cooperative contract made pursuant to **20-7-451**, **20-7-452**, and **20-7-454** through **20-7-456** must be:

- (1) submitted to the superintendent of public instruction who has final approval authority pursuant to the policies of the board of public education;
- (2) filed with the county clerk and recorder of the county or counties in which the school districts involved are located; and
- (3) filed with the secretary of state.

History: En. Sec. 4, Ch. 471, L. 1979; amd. Sec. 3, Ch. 136, L. 1991; amd. Sec. 4, Ch. 94, L. 2007.

20-7-455. Authorization to appropriate funds for purpose of full service education cooperative contract. A school district entering into a full service education cooperative contract pursuant to **20-7-451**, **20-7-452**, and **20-7-454** through **20-7-456** may appropriate funds for and may sell, lease, or otherwise give or supply to the administrative officer, management board, or joint board created for the purpose of performance of the cooperative contract any material, personnel, or services that are within its legal power to furnish.

History: En. Sec. 5, Ch. 471, L. 1979; amd. Sec. 4, Ch. 136, L. 1991; amd. Sec. 5, Ch. 94, L. 2007.

20-7-456. Tenure of teachers employed by cooperatives. (1) Teachers who have tenure rights with a district and are employed by a cooperative of which their district is a member do not lose their tenure with the district.

(2) Nontenured teachers employed by a cooperative acquire tenure with a cooperative in the same manner as prescribed in 20-4-203, and the provisions of 20-4-204 through 20-4-207 are applicable to teachers employed by a cooperative.

(3) Tenure for a teacher employed by a cooperative is acquired only with the cooperative and not with a member school district of a cooperative.

(4) For the purposes of tenure of a teacher employed by a cooperative, cooperative contract renewals may not be used to limit the teacher's progress toward tenure status.

History: En. Sec. 6, Ch. 471, L. 1979; amd. Sec. 5, Ch. 136, L. 1991.

20-7-457. Funding provisions for special education purposes of cooperatives or joint boards. (1) The superintendent of public instruction shall pay directly to a cooperative or to a joint board formed under **20-3-361** prior to July 1, 1992, for special education purposes the special education allowable cost payments determined pursuant to 20-9-321.

(2) A school district that elects to participate in a cooperative for special education purposes shall agree in the cooperative contract to participate for a period of at least 3 years.

(3) A school district that elects to participate in a joint board formed under 20-3-361 for special education purposes shall confirm in writing to the joint board by October 1 of the current school fiscal year the district's intention to participate or to not participate in a joint board agreement for the next school fiscal year.

(4) A cooperative that has not met the requirements of 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction. The superintendent shall adopt rules for approval of full service education cooperatives.

(5) A full service education cooperative may establish a retirement fund, a miscellaneous programs fund, and a transportation fund, as provided for in 20-9-201, for the purposes of a full service education cooperative contract and the purposes allowed by law.

(6) The superintendent of public instruction, after consulting with regional representatives, shall define boundaries for cooperatives established for special education programs that incorporate the territory of all public school districts.

(7) Restructuring of cooperatives established for providing special education services must:

(a) be limited to a statewide total of no more than 23;

(b) include districts that are adjacent to each other and not overlapping into another cooperative's territory; and

(c) provide that all districts located within a cooperative's boundary may voluntarily become a cooperative member.

History: En. Sec. 4, Ch. 343, L. 1989; amd. Sec. 6, Ch. 136, L. 1991; amd. Sec. 4, Ch. 568, L. 1991; amd. Sec. 2, Ch. 466, L. 1993; amd. Sec. 6, Ch. 94, L. 2007.

IDEA Regulations

§ 300.200 Condition of assistance.

An LEA is eligible for assistance under Part B of the Act for a fiscal year if the agency submits a plan that provides assurances to the SEA that the LEA meets each of the conditions in §§ 300.201 through 300.213.

(Authority: 20 U.S.C. 1413(a))

§ 300.201 Consistency with State policies.

The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under §§ 300.101 through 300.163, and §§ 300.165 through 300.174.

(Approved by the Office of Management and Budget under control number 1820-0600)

(Authority: 20 U.S.C. 1413(a)(1))

§ 300.202 Use of amounts.

(a) *General.* Amounts provided to the LEA under Part B of the Act—

(1) Must be expended in accordance with the applicable provisions of this part;

(2) Must be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with paragraph (b) of this section; and

(3) Must be used to supplement State, local, and other Federal funds and not to supplant those funds.

(b) *Excess cost requirement*—(1) *General.* (i) The excess cost requirement prevents an 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 paragraph (b)(1)(ii) of this section.

(ii) The excess cost requirement does not prevent an LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or State funds are available for nondisabled children of these ages. However, the LEA must comply with the nonsupplanting and other requirements of this part in providing the education and services for these children.

(2)(i) 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 funds under Part B of the Act are used.

(ii) The amount described in paragraph (b)(2)(i) of this section is determined in accordance with the definition of *excess costs* in § 300.16. That amount may not include capital outlay or debt service.

(3) If two or more LEAs jointly establish eligibility in accordance with § 300.223, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in § 300.16 in those agencies for elementary or secondary school students, as the case may be.

(Approved by the Office of Management and Budget under control number 1820–0600)

(Authority: 20 U.S.C. 1413(a)(2)(A))

§ 300.203 Maintenance of effort.

(a) *General.* Except as provided in §§ 300.204 and 300.205, funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

(b) *Standard.* (1) Except as provided in paragraph (b)(2) of this section, the SEA must determine that an LEA complies with paragraph (a) of this section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:

(i) Local funds only.

(ii) The combination of State and local funds.

(2) An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section.

(3) The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA in determining an LEA's compliance with the requirement in paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1820–0600)

(Authority: 20 U.S.C. 1413(a)(2)(A))

§ 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 the construction of school facilities.
- (e) The assumption of cost by the high cost fund operated by the SEA under § 300.704(c).
(Approved by the Office of Management and Budget under control number 1820–0600)
(Authority: 20 U.S.C. 1413(a)(2)(B))

§ 300.205 Adjustment to local fiscal efforts in certain fiscal years.

(a) *Amounts in excess.*

Notwithstanding § 300.202(a)(2) and (b) and § 300.203(a), and except as provided in paragraph (d) of this section and § 300.230(e)(2), for any fiscal year for which the allocation received by an LEA under § 300.705 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by § 300.203(a) by not more than 50 percent of the amount of that excess.

(b) *Use of amounts to carry out activities under ESEA.* If an LEA exercises the authority under paragraph (a) of this section, the LEA must use an amount of local funds equal to the reduction in expenditures under paragraph (a) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities.

(c) *State prohibition.* Notwithstanding paragraph (a) of this section, if an SEA determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirements of section 613(a) of the Act and this part or the SEA has taken action against the LEA under section 616 of the Act and subpart F of these regulations, the SEA must prohibit the LEA from reducing the level of expenditures under paragraph (a) of this section for that fiscal year.

(d) *Special rule.* The amount of funds expended by an LEA for early intervening services under § 300.226 shall count toward the maximum amount of expenditures that the LEA may reduce under paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1820–0600)

(Authority: 20 U.S.C. 1413(a)(2)(C))

§ 300.206 Schoolwide programs under title I of the ESEA.

(a) *General.* Notwithstanding the provisions of §§ 300.202 and 300.203 or any other provision of Part B of the Act, an LEA may use funds received under Part B of the Act for any fiscal year to carry out a schoolwide program under section 1114 of the ESEA, except that the amount used in any schoolwide program may not exceed—

(1)(i) The amount received by the LEA under Part B of the Act for that fiscal year; divided by (ii) The number of children with disabilities in the jurisdiction of the LEA; and multiplied by

(2) The number of children with disabilities participating in the schoolwide program.

(b) *Funding conditions.* The funds described in paragraph (a) of this section are subject to the following conditions:

(1) The funds must be considered as Federal Part B funds for purposes of the calculations required by § 300.202(a)(2) and (a)(3).

(2) The funds may be used without regard to the requirements of § 300.202(a)(1).

(c) *Meeting other Part B requirements.*

Except as provided in paragraph (b) of this section, all other requirements of Part B of the Act must be met by an LEA using Part B funds in accordance with paragraph (a) of this section, including ensuring that children with disabilities in schoolwide program schools—

(1) Receive services in accordance with a properly developed IEP; and

(2) Are afforded all of the rights and services guaranteed to children with disabilities under the Act.

(Approved by the Office of Management and Budget under control number 1820–0600)

(Authority: 20 U.S.C. 1413(a)(2)(D))

§ 300.207 Personnel development.

The LEA must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of § 300.156 (related to personnel qualifications) and section 2122 of the ESEA.

(Approved by the Office of Management and Budget under control number 1820–0600)
(Authority: 20 U.S.C. 1413(a)(3))

§ 300.208 Permissive use of funds.

(a) *Uses.* Notwithstanding §§ 300.202, 300.203(a), and 300.162(b), funds provided to an LEA under Part B of the Act may be used for the following activities:

(1) *Services and aids that also benefit nondisabled children.* For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefit from these services.

(2) *Early intervening services.* To develop and implement coordinated, early intervening educational services in accordance with § 300.226.

(3) *High cost special education and related services.* To establish and implement cost or risk sharing funds, consortia, or cooperatives for the LEA itself, or for LEAs working in a consortium of which the LEA is a part, to pay for high cost special education and related services.

(b) *Administrative case management.*

An LEA may use funds received under Part B of the Act to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities, that is needed for the implementation of those case management activities.

(Approved by the Office of Management and Budget under control number 1820–0600)

(Authority: 20 U.S.C. 1413(a)(4))

§ 300.209 Treatment of charter schools and their students.

(a) *Rights of children with disabilities.*

Children with disabilities who attend public charter schools and their parents retain all rights under this part.

(b) *Charter schools that are public schools of the LEA.* (1) In carrying out Part B of the Act and these regulations with respect to charter schools that are public schools of the LEA, the LEA must—

(i) Serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and

(ii) Provide funds under Part B of the Act to those charter schools—

(A) On the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and

(B) At the same time as the LEA distributes other Federal funds to the LEA's other public schools, consistent with the State's charter school law.

(2) If the public charter school is a school of an LEA that receives funding under § 300.705 and includes other public schools—

(i) The LEA is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity; and

(ii) The LEA must meet the requirements of paragraph (b)(1) of this section.

(c) *Public charter schools that are LEAs.* If the public charter school is an LEA, consistent with § 300.28, that receives funding under § 300.705, that charter school is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity.

(d) *Public charter schools that are not an LEA or a school that is part of an LEA.* (1) If the public charter school is not an LEA receiving funding under § 300.705, or a school that is part of an LEA receiving funding under § 300.705, the SEA is responsible for ensuring that the requirements of this part are met.

(2) Paragraph (d)(1) of this section does not preclude a State from assigning initial responsibility for ensuring the requirements of this part are met to another entity. However, the SEA must maintain the ultimate responsibility for ensuring compliance with this part, consistent with § 300.149.

(Approved by the Office of Management and Budget under control number 1820–0600)

(Authority: 20 U.S.C. 1413(a)(5))

§ 300.210 Purchase of instructional materials.

(a) *General.* Not later than December 3, 2006, an LEA that chooses to coordinate with the National

Instructional Materials Access Center (NIMAC), when purchasing print instructional materials, must acquire those instructional materials in the same manner, and subject to the same conditions as an SEA under § 300.172.

(b) *Rights of LEA.* (1) Nothing in this section shall be construed to require an LEA to coordinate with the NIMAC.

(2) If an LEA chooses not to coordinate with the NIMAC, the LEA must provide an assurance to the SEA that the LEA will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(3) Nothing in this section relieves an LEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities in § 300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

(Approved by the Office of Management and Budget under control number 1820–0600)

(Authority: 20 U.S.C. 1413(a)(6))

§ 300.211 Information for SEA.

The LEA must provide the SEA with information necessary to enable the SEA to carry out its duties under Part B of the Act, including, with respect to §§ 300.157 and 300.160, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act.

(Approved by the Office of Management and Budget under control number 1820–0600)

(Authority: 20 U.S.C. 1413(a)(7))

§ 0.212 Public information.

The LEA must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part B of the Act.

(Approved by the Office of Management and Budget under control number 1820–0600)

(Authority: 20 U.S.C. 1413(a)(8))

§ 300.213 Records regarding migratory children with disabilities.

The LEA must cooperate in the Secretary's efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the States, health and educational information regarding those children.

(Approved by the Office of Management and Budget under control number 1820–0600)

(Authority: 20 U.S.C. 1413(a)(9))