

## § 222.31

claimed. The Secretary considers significant aspects of the educational program to include administrative decisions relating to teachers, instruction, and curriculum.

(Authority: 20 U.S.C. 7703, 7709, 7713(6))

[60 FR 50778, Sept. 29, 1995, as amended at 81 FR 64741, Sept. 20, 2016]

### **§ 222.31 To which local educational agencies does the Secretary make basic support payments under section 8003(b) of the Act?**

The Secretary makes payments to an LEA with an otherwise approvable application for children claimed under section 8003(b) of the Act if—

(a) The LEA meets the requirements in subpart A of these regulations and this subpart; and

(b)(1) The LEA is responsible under applicable State or Federal law for providing a free public education to those children;

(2) The LEA is providing a free public education to those children; and

(3) The State provides funds for the education of those children on the same basis as all other public school children in the State, unless permitted otherwise under section 8009 of the Act.

(Authority: 20 U.S.C. 7703 and 7709)

### **§ 222.32 What information does the Secretary use to determine a local educational agency's basic support payment?**

(a) The Secretary determines an LEA's payment under section 8003(b) on the basis of information in the LEA's application, including information regarding the membership of federally connected children.

(b) The LEA must supply information in its timely and complete application regarding its federally connected membership on the basis of any count described in §§ 222.33 through 222.35.

(Approved by the Office of Management and Budget under control number 1810-0036)

(Authority: 20 U.S.C. 7703 and 7705)

[60 FR 50778, Sept. 29, 1995, as amended at 81 FR 64741, Sept. 20, 2016]

### **§ 222.33 When must an applicant make its first or only membership count?**

(a)(1) An applicant must select a day in the current school year as the sur-

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vey date for making the first membership count, which must be no earlier than the fourth day of the regular school year and before January 31.

(2) The applicant must use the same survey date for all schools in the LEA.

(b) As of the survey date, the applicant must—

(1) Count the membership of its federally connected children; and

(2) Count the total membership of its children—both federally connected and non-federally connected.

(c) The data on the application resulting from the count in paragraph (b) of this section must be accurate and verifiable by the application deadline.

(Approved by the Office of Management and Budget under control number 1810-0036)

(Authority: 20 U.S.C. 7703, 7705)

[60 FR 50778, Sept. 29, 1995, as amended at 80 FR 33163, June 11, 2015; 81 FR 64741, Sept. 20, 2016]

### **§ 222.34 If an applicant makes a second membership count, when must that count be made?**

(a)(1) The applicant may, but is not required to, make a second count of membership.

(2) If the applicant chooses to make a second count of membership, the applicant must select a day after January 31, but no later than May 14, as the survey date for making the second membership count, and make that count in accordance with § 222.33(b).

(3) The applicant must use the same survey date for the second membership count for all schools in the LEA.

(b) The applicant may use the information obtained from a second membership count to amend its application for assistance as described in § 222.5(b).

(Approved by the Office of Management and Budget under control number 1810-0036)

(Authority: 20 U.S.C. 7703 and 7705)

[60 FR 50778, Sept. 29, 1995, as amended at 80 FR 33163, June 11, 2015]

### **§ 222.35 How does a local educational agency count the membership of its federally connected children?**

An applicant counts the membership of its federally connected children using one of the following methods:

(a) **Parent-pupil survey.** An applicant may conduct a parent-pupil survey to

count the membership of its federally connected children, which must be counted as of the survey date.

(1) The applicant shall conduct a parent-pupil survey by providing a form to a parent of each pupil enrolled in the LEA to substantiate the pupil's place of residence and the parent's place of employment.

(2) A parent-pupil survey form must include the following:

(i) Pupil enrollment information (this information may also be obtained from school records), including—

(A) Name of pupil;

(B) Date of birth of the pupil; and

(C) Name of public school and grade of the pupil.

(ii) Pupil residence information, including:

(A) The complete address of the pupil's residence, or other acceptable location information for that residence, such as a complete legal description, a complete U.S. Geological Survey number, or complete property tract or parcel number, or acceptable certification by a Federal agency official with access to data or records to verify the location of the Federal property; and

(B) If the pupil's residence is on Federal property, the name of the Federal facility.

(3) If any of the following circumstances apply, the parent-pupil survey form must also include the following:

(i) If the parent is employed on Federal property, except for a parent who is a member of the uniformed services on active duty, parent employment information, including—

(A) Name (as it appears on the employer's payroll record) of the parent (mother, father, legal guardian or other person standing *in loco parentis*) who is employed on Federal property and with whom the pupil resides; and

(B) Name of employer, name and complete address of the Federal property on which the parent is employed (or other acceptable location information, such as a complete legal description or acceptable certification by a Federal agency).

(ii) If the parent is a member of the uniformed services on active duty, the name, rank, and branch of service of that parent.

(iii) If the parent is both an official of, and accredited by a foreign government, and a foreign military officer, the name, rank, and country of service.

(iv) If the parent is a civilian employed on a Federal vessel, the name of the vessel, hull number, homeport, and name of the controlling agency.

(4)(i) Every parent-pupil survey form must include the signature of the parent supplying the information, except as provided in paragraph (a)(4)(ii) of this section, and the date of such signature, which must be on or after the survey date.

(ii) An LEA may accept an unsigned parent-pupil survey form, or a parent-pupil survey form that is signed by a person other than a parent, only under unusual circumstances. In those instances, the parent-pupil survey form must show why the parent did not sign the survey form, and when, how, and from whom the residence and employment information was obtained. Unusual circumstances may include, but are not limited to:

(A) A pupil who, on the survey date, resided with a person without full legal guardianship of the child while the pupil's parent or parents were deployed for military duty. In this case, the person with whom the child is residing may sign the parent-pupil survey form.

(B) A pupil who, on the survey date, was a ward of the juvenile justice system. In this case, an administrator of the institution where the pupil was held on the survey date may sign the parent-pupil survey form.

(C) A pupil who, on the survey date, was an emancipated youth may sign his or her own parent-pupil survey form.

(D) A pupil who, on the survey date, was at least 18 years old but who was not past the 12th grade may sign his or her own parent-pupil survey form.

(iii) The Department does not accept a parent-pupil survey form signed by an employee of the school district who is not the student's mother, father, legal guardian or other person standing *in loco parentis*.

(b) **Source check.** A source check is a type of survey tool that groups children being claimed on the Impact Aid application by Federal property. This form is used in lieu of the parent-pupil

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survey form to substantiate a pupil's place of residence or parent's place of employment on the survey date.

(1) The source check must include sufficient information to determine the eligibility of the Federal property and the individual children claimed on the form.

(2) A source check may also include:

(i) Certification by a parent's employer regarding the parent's place of employment;

(ii) Certification by a military or other Federal housing official as to the residence of each pupil claimed;

(iii) Certification by a military personnel official regarding the military active duty status of the parent of each pupil claimed as active duty uniformed services; or

(iv) Certification by the Bureau of Indian Affairs (BIA) or authorized tribal official regarding the eligibility of Indian lands.

(c) Another method approved by the Secretary.

(Approved by the Office of Management and Budget under control number 1810-0036)

(Authority: 20 U.S.C. 7703)

[81 FR 64741, Sept. 20, 2016]

## § 222.36 How many federally connected children must a local educational agency have to receive a payment under section 8003?

(a) An LEA is eligible to receive a payment under section 8003 for a fiscal year only if the total number of eligible federally connected children for whom it provided a free public education for the preceding fiscal year was—

(1) At least 400 who were in average daily attendance (ADA); or

(2) At least 3 percent of the total number of children in ADA.

(b) An LEA is eligible to receive a payment under section 8003 for a fiscal year on behalf of federally connected children described in section 8003(a)(1)(F) or (G) only if the total number of those children for whom it provided a free public education for the preceding fiscal year was—

(1) At least 1,000 in ADA; or

(2) At least 10 percent of the total number of children in ADA.

(c) Children described in paragraph (b) of this section are counted for the

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purposes of paragraph (a) of this section only if the applicant LEA is eligible to receive a payment on behalf of those children under section 8003.

(Authority: 20 U.S.C. 7703(a)(3) and (b)(1)(B))

[60 FR 50778, Sept. 29, 1995, as amended at 62 FR 35415, July 1, 1997; 80 FR 33163, June 11, 2015]

## § 222.37 How does the Secretary calculate the average daily attendance of federally connected children?

(a) This section describes how the Secretary computes the ADA of federally connected children for each category in section 8003 to determine an applicant's payment.

(b)(1) For purposes of this section, actual ADA means raw ADA data that have not been weighted or adjusted to reflect higher costs for specific types of students for purposes of distributing State aid for education.

(2) If an LEA provides a program of free public summer school, attendance data for the summer session are included in the LEA's ADA figure in accordance with State law or practice.

(3) An LEA's ADA count includes attendance data for children who do not attend the LEA's schools, but for whom it makes tuition arrangements with other educational entities.

(4) Data are not counted for any child—

(i) Who is not physically present at school for the daily minimum time period required by the State, unless the child is—

(A) Participating via telecommunication or correspondence course programs that meet State standards; or

(B) Being served by a State-approved homebound instruction program for the daily minimum time period appropriate for the child; or

(ii) Attending the applicant's schools under a tuition arrangement with another LEA.

(c) An LEA may determine its average daily attendance calculation in one of the following ways:

(1) If an LEA is in a State that collects actual ADA data for purposes of distributing State aid for education, the Secretary calculates the ADA of that LEA's federally connected children for the current fiscal year payment as follows: