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FEATURE

Rethink IDEA Service and Spending Opportunities to Make the Most of Federal Funds

by Melissa Junge and Sheara Krvaric

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Rethink IDEA Service and Spending Opportunities to Make the Most of Federal Funds

Melissa Junge and Sheara Krvaric

Each year the U.S. Department of Education (ED) distributes billions of dollars to school districts around the country to support students with disabilities. This money—distributed through Part B of the Individuals with Disabilities Education Act (IDEA)—pays for resources to help students with disabilities access a free appropriate public education. But understanding IDEA can be hard. It is a complex law with many hard-to-parse technical rules, particularly when it comes to spending.

In our decades working with states and districts on federal education programs, we often see two things:

1. IDEA allows school districts to provide students with disabilities a wider range of services in a wider range of settings than is commonly realized.
2. IDEA funds can pay for many more expenses than is commonly realized and can work with other funding sources to provide coordinated supports to students with and without disabilities.

To help district leaders identify opportunities to better align spending to student needs, this article provides a brief overview of IDEA service and spending opportunities.¹ We highlight examples of services IDEA *could* support in the right circumstances. Of course, whether any particular service makes sense in any particular situation will depend on many things, including student needs, district capacity, state laws, state and local rules, and more, but our hope is that these examples can serve as a starting point for broader conversations.

Understanding IDEA Service Options

IDEA entitles students with disabilities to a free appropriate public education (FAPE) that, to the maximum extent possible, ensures access to the general education curriculum in regular classrooms.² A key part of providing FAPE is ensuring students with disabilities receive specially designed instruction that addresses their unique needs resulting from their disabilities.

Consider the following scenarios:

- A student with disabilities would benefit from working with a school counselor on social skills development, but the district does not feel this could be considered specially designed instruction and included in an IEP because those kinds of counseling services are also available to students without disabilities who need them.
- A student with disabilities would benefit from modified classroom instruction, but the district does not feel this could be considered specially designed instruction and included in an IEP because it would be delivered in the student's regular education classroom by the classroom teacher.

The districts in these scenarios might be limiting IDEA services more than required by federal law.³

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As explained by ED:

The IEP Team is responsible for determining what special education and related services are needed to address the unique needs of the individual child with a disability. The fact that some of those services may also be considered “best teaching practices” or “part of the district’s regular education program” does not preclude those services from meeting the definition of “special education” or “related services” and being included in the child’s IEP. The Local Education Agency (LEA) must provide to a child with a disability specially designed instruction that addresses the unique needs of the child that result from the child’s disability, and ensures access by the child to the general curriculum, even if that type of instruction is being provided to other children, with or without disabilities, in the child’s classroom, grade, or building.⁴

In other words, IEP teams are responsible for determining what services and supports are needed to meet a student’s individual needs, but they can choose—and include in the IEP—services that are also provided to students without disabilities or delivered through the regular education program.

But how can a service be specially designed for a student with disabilities if it is also delivered to students without disabilities and/or delivered through the regular education program?

Key Definitions

FAPE means *special education and related services* that (1) are provided at public expense, under public supervision, and without charge; (2) meet state standards and IDEA requirements; (3) include an appropriate preschool, elementary school, or secondary school education; and (4) are provided consistent with an individualized education program (IEP) that meets legal requirements. ([34 CFR § 300.17](#))

Special education is *specially designed instruction*, at no cost to the parents, to meet the unique needs of a student with a disability. ([34 CFR § 300.39](#))

Specially designed instruction means adapting . . . the content, methodology, or delivery of instruction to address the unique needs of a student with disabilities so the student can access the general curriculum. ([34 CFR § 300.39\(b\)\(3\)](#))

Related services means transportation and the developmental, corrective, and other supportive services required to assist a child with a disability to benefit from special education. ([34 CFR § 300.34](#))

Under IDEA, providing specially designed instruction means adapting the content, methodology, or delivery of instruction to address the unique needs of a student with disabilities so the student can access the general curriculum.⁵ Nothing in IDEA requires that the adaptation be delivered *only* to students with disabilities, and the fact that other students may have the same needs and would benefit from the same adaptation does not undermine its role as specially designed instruction for a student with a disability.

For example, ED has said that students with and without disabilities who need the same reading intervention can receive the same services, and even be grouped together, without running afoul of IDEA.⁶ There are limits to how much IDEA could *pay for* in that situation (see more about that below), but the fact that students with and without disabilities receive the same intervention does not prohibit it from being considered an IDEA service possibly eligible for some IDEA funding.

Understanding IDEA Spending Options

School districts may use IDEA, Part B funds to pay for the excess cost of providing special education and related services to students with disabilities.⁷ Misunderstandings about the “excess cost” test, however, often limit IDEA spending.

IDEA’s “Excess Cost” Requirement

School districts spend a certain amount of money each year to educate their students regardless of disability status. The idea behind the excess cost rule is that IDEA should *add* to this spending to help defray the additional expense of providing special education and related services to students with disabilities.

To satisfy IDEA’s excess cost requirements, IDEA requires districts to calculate a baseline spending target for non-IDEA funds each year through a formula set out in IDEA regulations.⁸ (See sidebar.) For example, if after factoring out special education and certain other types of spending, a district spent an average of \$7,362 per elementary student in 2022-2023, then it must spend at least that amount in non-IDEA funds in 2023-2024.⁹

Districts that meet this spending baseline may then spend IDEA, Part B funds on any reasonable cost to deliver special education and related services to eligible students with

disabilities without the need to demonstrate that any individual cost itself is “excess.”

In short, compliance with IDEA’s excess cost requirement is accomplished by analyzing a district’s *aggregate spending*. Districts are often advised, however, that compliance with excess cost is determined through a three-part test that evaluates whether each IDEA-funded cost (1) exists only because of the need for special education and related services, (2) relates to a service exclusively provided to students with disabilities, and (3) connects to an individual student’s IEP. ***This test does not come from federal law and may needlessly limit IDEA spending.***

For example, as noted above, students with and without disabilities who need additional academic supports often benefit from the same interventions. Nothing about IDEA’s excess cost rule would prohibit districts from using IDEA funds to deliver the intervention to students with disabilities while using another funding source to deliver it to students without disabilities. In fact, ED itself encourages this type of coordination “to improve outcomes for all students, including students with disabilities.”¹⁰

Calculating Excess Cost

To meet IDEA’s excess cost requirement, districts must determine how much, on average, they spent per student in the last school year, after deducting:

- Capital outlay and debt services;
- Costs paid with IDEA, Part B; Title I, Part A; and Title III, Part A funds;
- Costs paid with state and local funds for programs under Title I, Part A; Title III, Part A; and
- Costs paid with state and local funds for children with disabilities. ([IDEA regulations, Appendix A](#))

The resulting amount represents the minimum an LEA must spend in the next school year with non-IDEA funds (that is, state, local, and/or other federal funds).

Another IDEA fiscal rule that is often misunderstood in ways that limit spending is “supplement not supplant.” Like excess cost, “supplement not supplant” means IDEA funds must add to, not replace, state and local spending. In some ED programs, for example, Title I, Part C’s migrant program, “supplement not supplant” means an ED program cannot pay for (1) activities required by law, (2) activities that were previously supported with state or local funds, or (3) activities for eligible students if another funding source pays for the same activity for non-eligible students.¹¹ This is *not* how supplement not supplant is tested in IDEA. In IDEA, a district that meets its “maintenance of effort” obligations also satisfies its supplement not supplant obligations. Districts do not have to demonstrate individual costs supported with IDEA funds are “supplemental.”¹²

Limiting IDEA spending only to services that are exclusive to special education in order to demonstrate they are “excess” or “supplemental” has implications for both students with and without disabilities who need support. For more information about these implications, and IDEA’s excess cost and supplement not supplant requirements, see the Council of Chief State School Officers resource, “Restart and Recovery: IDEA and Covid.”¹³

IDEA’s Spending Options

As ED has advised, IDEA funds can “be used for a wide variety of strategies to improve student outcomes,”¹⁴ which means districts have many more spending options than is commonly realized.

Districts usually spend their IDEA funds to hire special educators, hire or contract with related service providers, purchase materials and supplies to support IEP services, and the like.

But IDEA can also pay for comprehensive strategies like training general educators to better meet the needs of students with disabilities in their classrooms and creating inclusive learning environments that meet the needs of all students, including students with disabilities. For more examples, see guidance ED released in 2009 on spending additional IDEA, Part B funds appropriated through the American Recovery and Reinvestment Act: *Using ARRA Funds Provided Through Part B of the Individuals with Disabilities Education Act (IDEA) to Drive School Reform and Improvement*.¹⁵ Although this guidance is now archived on ED’s website, the spending options described are still relevant to IDEA spending.

IDEA can coordinate with other funding sources to ensure that services for students with and without disabilities are coherent, aligned, and fully integrated into district programming.

For example, a district could use a combination of IDEA and other funding to train all its kindergarten and first-grade teachers on evidence-based reading instruction. IDEA could pay the share of costs related to special education teachers and another funding source—such as state or local funds or ESEA, Title II, Part A funds—could pay the rest. For more information about this type of funding coordination, see the *2009 IDEA Improvement Guidance*.

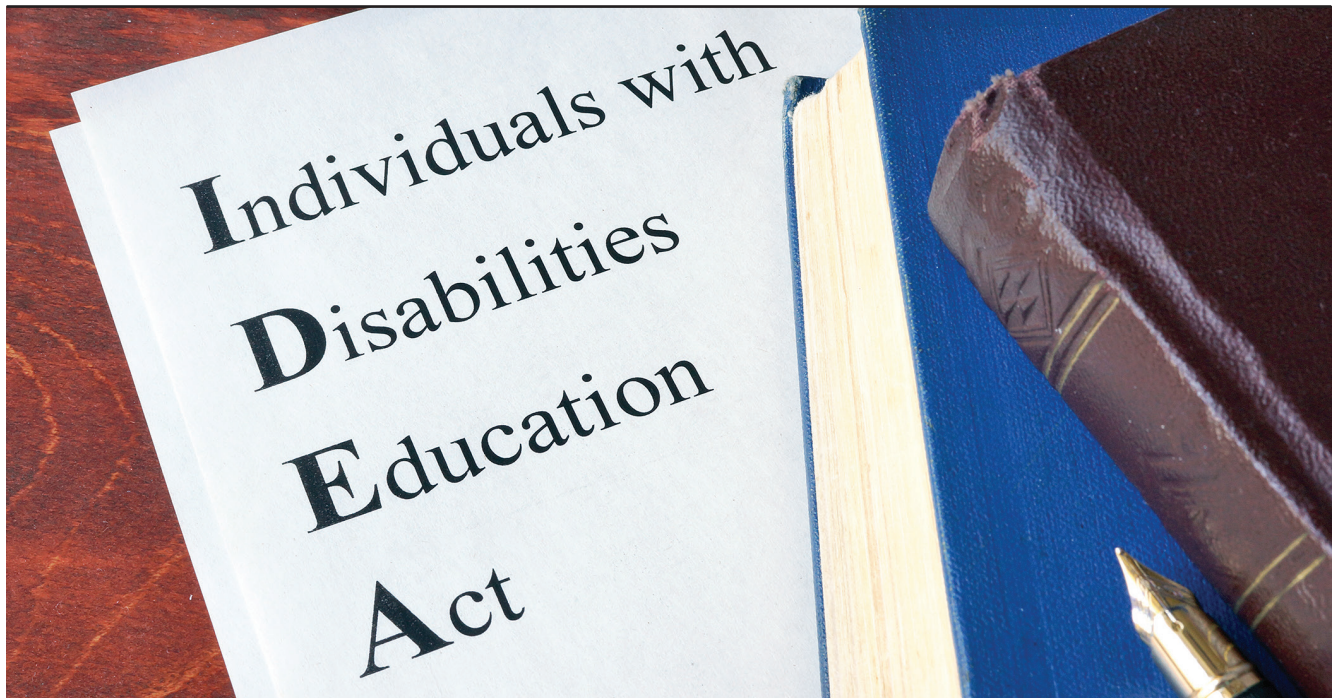


IDEA, Part B Grant Funding

IDEA, Part B provides supplemental funding to districts to help pay the added costs of providing FAPE to children with disabilities. The grant is awarded in two parts:

- **Section 611 funds** support students with disabilities ages 3 to 21.
- **Section 619 funds** support students with disabilities ages 3 to 5.

Districts that meet certain fiscal tests may spend IDEA, Part B funds on any reasonable cost to deliver special education and related services to eligible students with disabilities. Section 611 funds can support costs for eligible students ages 3 to 21, and Section 619 funds can support costs for eligible students ages 3 to 5.



Conclusion

Ultimately, supporting students with disabilities effectively requires consideration of all available service delivery options. Understanding IDEA's service options, and the many types of costs IDEA can pay for, can help districts better target services to student needs, whether through adapting general education classrooms or delivering high-quality interventions or other supports to help students with disabilities succeed. In our work we have seen districts rethink IDEA to expand and improve services for students with disabilities. Navigating the program's rules is hard, but the results are rewarding. ♦

NOTES

¹ Please note that while this article is based on federal law, regulations, and guidance, it is not legal advice. Readers should not act on information in this article without first consulting legal counsel familiar with your particular circumstances.

² IDEA, 20 U.S.C. §§ 1400(c)(5), 1412(a)(5), 1414(d)(1)(A)(i)(II)(aa), last modified on November 7, 2019.

³ U.S. Department of Education, *Letter to Chambers*, 2012.

⁴ U.S. Department of Education, *Letter to Chambers*, 2012.

⁵ 34 CFR § 300.39(b)(3).

⁶ U.S. Department of Education, *Letter to Couillard*, 2013.

⁷ 34 CFR § 300.202.

⁸ 34 CFR § 300.202(b)(2)(ii).

⁹ 34 CFR Part 300, Appendix A.

¹⁰ U.S. Department of Education, *Non-Regulatory Guidance on Using ARRA Funds Provided Through Part B of the Individuals with Disabilities Education Act (IDEA) to Drive School Reform and Improvement (2009)*, 2; hereafter cited as *2009 IDEA Improvement Guidance*. Please note ED developed this guidance to help school districts spend the additional IDEA Part B funds appropriated through the American Recovery and Reinvestment Act, the guidance applied to regular IDEA Part B funds as well.

¹¹ Historically, this three-part supplanting test applied to the Title I, Part A program, but Title I, Part A's supplanting test changed with the Every Student Succeeds Act. Districts now satisfy Title I, Part A's supplement not supplant requirement by demonstrating that the methodology they use to allocate state and local funds to schools provides each Title I school with all of the state and local money it would receive if it did not participate in the Title I program; individual Title I costs are no longer tested. For more information, please see U.S. Department of Education, *Supplement Not Supplant Under Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act Non-Regulatory Informational Document*, 2019.

¹² See, for example, U.S. Department of Education, *Letter to Kennedy*, 2008.

¹³ Council of Chief State School Officers, "Restart and Recovery: IDEA and Covid" (October 2020), https://ccsso.org/sites/default/files/2020-10/CCSSO_RR_IDEA-v2.pdf.

¹⁴ *2009 IDEA Improvement Guidance*, 4.

¹⁵ U.S. Department of Education, *American Recovery and Reinvestment Act of 2009: Using ARRA Funds Provided Through Part B of the Individuals with Disabilities Education Act (IDEA) to Drive School Reform and Improvement*.



Melissa Junge and **Sheara Krvaric** are co-founders of **Federal Education Group, PLLC**, a law and consulting firm that helps states, school districts, and other educational organizations understand federal law so they can use federal money to achieve their goals while maintaining compliance. FEG's practice areas include all major federal K-12 education programs, including Covid relief programs, ESEA, IDEA, and Perkins, as well as federal grants management requirements. Before founding FEG in 2009, Melissa and Sheara served as in-house counsel for an SEA, and had previously been in private practice at an education law firm.