§ 222.39 How does a State educational agency identify generally comparable local educational agencies for local contribution rate purposes?

(a) To identify generally comparable LEAs within its State for LCR purposes, the State educational agency (SEA) for that State shall use data from the third fiscal year preceding the fiscal year for which the LCR is being computed to group all of its LEAs, including all applicant LEAs, as follows:

(1) *Grouping by grade span/legal classification alone.* Divide all LEAs into groups that serve the same grade span and then subdivide the grade span groups by legal classification, if the Secretary considers this classification relevant and sufficiently different from grade span within the State. As an alternative grade-span division, after consultation with the applicant LEAs in the State, divide all LEAs into elementary, secondary, or unified grade-span groups, as appropriate, within the State.

(2) *Grouping by grade span/legal classification and size.* (i) Divide all LEAs into groups by grade span (or the alternative grade-span groups described in paragraph (a)(1)) of this section and legal classification, if relevant and sufficiently different from grade span and size.

(ii) List all LEAs within each group in descending order by size as measured by ADA, placing the LEA with the *largest* ADA at the top of the list. A State that does not tabulate actual annual ADA shall use the same formula for establishing ADA for the purpose of ranking LEAs by size as the Department has approved for the purpose of calculating payments under section 8003 for applicant LEAs in the State.

(iii) After consultation with the applicant LEAs in the State, divide each group into either two subgroups or three subgroups.

(iv) To determine the subgroups, divide each list at the point(s) that will result in as nearly equal numbers of LEAs in each subgroup as possible, so that no group is more than one LEA larger than any other group.

(3) *Grouping by grade span/legal classification and location.* Divide all LEAs into groups by grade span (or the alternative grade-span groups described in paragraph (a)(1) of this section) and, if relevant and sufficiently different from grade span and location, legal classification; then subdivide these groups by location, as determined by placement inside or outside a metropolitan statistical area (MSA) as defined by the U.S. Bureau of the Census. The Department will supply SEAs with lists of MSA classifications for their LEAs, and only the classifications on those lists will be recognized by the Department for the purposes of these regulations.

(4) *Grouping by grade span/legal classification, size, and location.* (i) Divide all LEAs into groups by grade span (or the alternative grade-span groups described in paragraph (a)(1) of this section) and, if relevant and sufficiently different from grade span, size, and location, legal classification; then subdivide these groups by size (into two or three subgroups for each grade span, as described in paragraph (a)(2) of this section); and further subdivide these groups by location (inside or outside an MSA).

(ii) In using both the size and location factors, the SEA shall subdivide according to the size factor before the location factor.

(b) After applying the following restrictions, the SEA shall compute an LCR according to the provisions of § 222.41 for each group of generally comparable LEAs identified under paragraph (a) of this section, as follows:

(1) The SEA shall not, when computing an LCR, include the following "significantly impacted" LEAs in any group of generally comparable LEAs:

(i) Any LEA having—in the third fiscal year preceding the fiscal year for which the LCR is being computed—20 percent or more of its ADA composed of children identified under section 8003(a)(1)(A)–(C).

(ii) Any LEA having—in the third fiscal year preceding the fiscal year for which the LCR is being computed—50 percent or more of its ADA composed of children identified under section 8003(a)(1)(A)–(G) who were eligible under § 222.36 to be counted as the basis for payment under section 8003.

(2) The SEA may not compute an LCR for any group that contains fewer than 10 LEAs.

(c)(1) For an applicant LEA that satisfies the requirements contained in paragraph (c)(3) of this section, the SEA, in consultation with the LEA, may select a subgroup of 10 or more generally comparable LEAs from the group identified under paragraph (a)(2) of this section that includes the applicant LEA.

(2) An LEA that otherwise meets either of the requirements of paragraph (c)(3) of this section but serves a different span of grades from all other LEAs in its State (and therefore cannot match any group of generally comparable LEAs under paragraph (a)(2) of this section) must be matched, for purposes of this paragraph (c) only, to a group using legal classification and size as measured by ADA. The group identified using legal classification and size will be the applicant's group under paragraph (a)(2) of this section for purposes of this paragraph (c) only.

(3) In order to qualify under paragraph (c) (1) or (2) of this section, an applicant LEA must either—

(i)(A) Be located entirely on Federal land; and

(B) Be raising either no local revenues or an amount of local revenues the Secretary determines to be minimal; or

(ii)(A) Be located in a State where State aid makes up no more than 40 percent of the State average per pupil expenditure in the third fiscal year preceding the fiscal year for which the LCR is being computed;

(B) In its application, have federally connected children identified under section 8003(a)(1)(A)–(C) equal to at least 20 percent of its total ADA; and

(C) In its application, have federally connected children identified under section 8003(a)(1)(A)–(G) who were eligible under § 222.36 to be counted as the basis for payment under section 8003 equal to at least 50 percent of its total ADA.

(4) In the case of an applicant LEA that meets either of the requirements contained in paragraph (c)(3) of this section, the SEA, in consultation with the LEA, may select 10 or more generally comparable LEAs that share one or more common factors of general comparability with the eligible applicant LEA, as follows:

(i)(A) The SEA must consider one or more generally accepted, objectively defined factors that affect the applicant's cost of educating its children. Examples of such cost-related factors include location inside or outside an MSA, sparsity of population, an unusually large geographical area, economically depressed area, low-income families, children with disabilities, neglected or delinquent children, low-achieving children, children with limited English proficiency, and minority children.

(B) The SEA may not consider cost-related factors that can be varied at the discretion of the applicant LEA or its generally comparable LEAs or factors dependent on the wealth of the applicant LEA or its generally comparable LEAs. Examples of factors that may not be considered include special alternative curricular programs, pupil-teacher ratio, and per pupil expenditures.

(ii) The SEA must apply the factor or factors of general comparability recommended under paragraph (c)(4)(i)(A) of this section in one of the following ways in order to identify 10 or more generally comparable LEAs for the eligible applicant LEA, none of which may be significantly impacted LEAs:

(A) The SEA identifies all of the LEAs in the group to which the eligible applicant LEA belongs under paragraph (a)(2) of this section that share the recommended factor or factors. If the subgroup containing the eligible applicant LEA includes at least 10 other LEAs (excluding significantly impacted LEAs), it will be the eligible applicant LEA's new group of generally comparable LEAs. The LCR for the eligible applicant LEA shall be computed using the data for all of the LEAs in the subgroup except the eligible applicant LEA.

Example. An eligible applicant LEA contains a designated economically depressed area, and the SEA recommends ''economically depressed area'' as an additional factor of general comparability. From the group of LEAs under paragraph (a)(2) of this section that includes the eligible applicant LEA, the SEA identifies two subgroups, those LEAs

that contain a designated economically depressed area and those that do not. The entire subgroup identified by the SEA that includes the eligible applicant LEA is that LEA's new group of generally comparable LEAs if it contains at least 10 LEAs.

(B) After the SEA identifies all of the LEAs in the group that the eligible applicant LEA belongs to under paragraph (a)(2) of this section that share the recommended factor or factors, the SEA then systematically orders all of the LEAs in the group that includes the eligible applicant LEA. The SEA may further divide the ordered LEAs into subgroups by using logical division points (e.g., the median, quartiles, or standard deviations) or a continuous interval of the ordered LEAs (e.g., a percentage or a numerical range). If the subgroup containing the eligible applicant LEA includes at least 10 other LEAs (excluding significantly impacted LEAs), it will be the eligible applicant LEA's new group of generally comparable LEAs. The LCR for the eligible applicant LEA shall be computed using the data for all of the LEAs in the subgroup except the eligible applicant LEA.

Example 1. An eligible applicant LEA serves an unusually high percentage of children with disabilities, and the SEA recommends "proportion of children with disabilities" as an additional comparability factor. From the group of LEAs under paragraph (a)(2) of this section that includes the eligible applicant LEA, the SEA lists the LEAs in descending order according to the percentage of children with disabilities enrolled in each of the LEAs. The SEA divides the list of LEAs into four groups containing equal numbers of LEAs. The group containing the eligible applicant LEA is that LEA's new group of generally comparable LEAs if it contains at least 10 LEAs.

Example 2. An eligible applicant LEA serves an unusually high percentage of minority children, and the SEA recommends "proportion of minority children" as an additional comparability factor. From the group of LEAs under paragraph (a)(2) of this section that includes the eligible applicant LEA, the SEA lists the LEAs in descending order according to the percentage of minority children enrolled in each of the LEAs. The SEA chooses from the list of LEAs the 15 LEAs whose percentages of minority children are closest to the eligible applicant LEA's. These 15 LEAs will be the eligible applicant LEA's new group of generally comparable LEAs.

(C) The SEA may recommend and apply more than one factor of general comparability in selecting a new group of 10 or more generally comparable LEAs for the eligible applicant LEA. If the subgroup containing the eligible applicant LEA includes at least 10 other LEAs (excluding significantly impacted LEAs), it will be the eligible applicant LEA's new group of generally comparable LEAs. The LCR for the eligible applicant LEA shall be computed using the data from all of the LEAs in the subgroup except the eligible applicant LEA.

Example. An eligible applicant LEA is very sparsely populated and serves an unusually high percentage of children with limited English proficiency. The SEA recommends "sparsity of population" and "proportion of children with limited English proficiency" as additional comparability factors. From the group of LEAs under paragraph (a)(2) of this section that includes the eligible applicant LEA, the SEA identifies all LEAs that are sparsely populated. The SEA further subdivides the sparsely populated LEAs into two groups, those that serve an unusually high percentage of children with limited English proficiency and those that do not. The subgroup of at least 10 sparsely populated LEAs that serve a high percentage of children with limited English proficiency is the eligible applicant LEA's new group of generally comparable LEAs.

(4)(i) Using the new group of generally comparable LEAs selected under paragraph (c)(4) of this section, the SEA shall compute the LCR for the eligible applicant LEA according to the provisions of § 222.41.

(ii) The SEA shall submit the resulting LCR to the Secretary and provide the Secretary a description of the additional factor or factors of general comparability and the data used to identify the new group of generally comparable LEAs.

(iii) The Secretary reviews the data submitted by the SEA, and accepts the LCR for the purpose of use under section 8003(b)(1)(C)(iii) in determining the LEA's maximum payment under section 8003 if the Secretary determines that it meets the purposes and requirements of the Act and this part.

(d) This section does not apply to applicant LEAs located in—

(1) Puerto Rico;

(2) Wake Island;

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(3) Guam;

(4) American Samoa;

(5) Any outlying area; and

(6) Any State in which there is only one LEA.

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

(Authority: 20 U.S.C. 7703(b)(1)(C)(iii))

§ 222.40 How does a local educational agency select a local contribution rate based on generally comparable local educational agencies?

(a) In selecting an LCR based upon generally comparable LEAs, an LEA shall use the following steps:

(1) *Step 1.* The LEA shall select the factor or factors in § 222.39 the LEA wishes to use as the basis for general comparability.

(2) *Step 2.* Using State-supplied data, the LEA shall identify within the State the entire group of LEAs (containing at least 10 LEAs exclusive of significantly impacted LEAs described in § 222.39(b)(1)) that matches the factor or factors selected in Step 1 and that contains the applicant LEA or would contain the applicant LEA if it were not significantly impacted.

(3) *Step 3.* The LEA shall recommend to the Secretary the LCR, which the SEA has computed according to the provisions of § 222.39, based on the group identified in Step 2.

(b) A significantly impacted LEA described in § 222.39(b)(1) may—

(1) Apply for assistance under this program; and

(2) Under the generally comparable LEA method, recommend for itself the LCR of any group in which it would be included based on grade span/legal classification, size, location, or a combination of these factors, if it were not excluded as significantly impacted in § 222.39(b)(1).

Example. An LEA applies for assistance under section 8003 and wishes to recommend to the Secretary an LCR based on generally comparable LEAs within its State.

1. Characteristics of Applicant LEA

The grade span of the applicant LEA is kindergarten through grade 8 (K–8). In the applicant's State, legal classification of LEAs is based on grade span, and thus does not act to further subdivide groups of LEAs.

The ADA of the applicant LEA is above the median ADA of LEAs serving only K–8 in the State.

The applicant LEA is located outside an MSA.

2. Characteristics of Other LEAs Serving Same Grade Span

The SEA of the applicant's State groups all LEAs in its State according to the factors in § 222.39.

(a) The SEA identifies the following groups:

(i) One hundred and one LEAs serve only K–8. The SEA has identified a group of 50 LEAs having an ADA above the median ADA for the group of 101, one LEA having an ADA at the median, and a group of 50 LEAs having an ADA below the median ADA; and according to § 222.39(a)(2)(i), the SEA considers 51 LEAs to have an ADA below the median ADA.

(ii) Of the 101 LEAs in the group, the SEA has identified a group of 64 LEAs as being inside an MSA and a group of 37 LEAs as being outside an MSA.

(iii) Among the group of 50 LEAs having an ADA above the median, the SEA has identified a group of 35 LEAs as being inside an MSA and a group of 15 LEAs as being outside an MSA.

(iv) Among the group of 51 LEAs having an ADA at or below the median, the SEA has identified a group of 29 LEAs as being inside an MSA and 22 LEAs as being outside an MSA.

(v) One LEA has 20 percent of its ADA composed of children identified under section 8003(a)(1)(A)–(C) and, therefore, must be excluded from any group it falls within before the SEA computes an LCR for the group. The LEA has an ADA below the median ADA and is located outside an MSA.

(b) On the basis of § 222.41, the SEA computes the LCR for each group of generally comparable LEAs that the SEA has identified.

3. Selection of Generally Comparable LEAs

The applicant LEA selects the group of generally comparable LEAs matching the factor or factors it wishes to use as the basis for general comparability. Under the requirements of § 222.39, the applicant LEA must begin with the group that includes all LEAs with its grade span, and, if relevant and sufficiently different, legal classification. In this case, grade span and legal classification happen to be the same. Thus, the group would include 100 LEAs, after excluding the one significantly impacted LEA. The applicant LEA then has several options:

(a) *Option 1.* The applicant LEA may select as its group of generally comparable LEAs on which to base its recommended LCR the entire group of 100 LEAs serving K–8, after