



April 2006

## Risk Pools: State Approaches

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### Background

Historically, many state education agencies (SEAs) have formally or informally used risk pools to provide extra funds to local education agencies (LEAs) serving students with high cost special education needs. With the 2004 reauthorization of the Individuals with Disabilities Education Act (IDEA), SEAs have been encouraged to formalize their approach to establishing or operating risk pools. The purpose of this document is to describe various state approaches to maintaining risk pools, both before and after the reauthorization of IDEA.

The 2004 reauthorization includes the following provision relating to risk pools:

*RESERVATION OF FUNDS – For the purpose of assisting local educational agencies...in addressing the needs of high need children with disabilities, each State shall have the option to reserve for each fiscal year 10 percent of the amount of funds the State reserves for State-level activities under paragraph (2)(A) –*

*(I) to establish and make disbursements from the high cost fund to local educational agencies in accordance with this paragraph during the first and succeeding fiscal years of the high cost fund; and*

*(II) to support innovative and effective ways of cost sharing by the State, by a local educational agency, or among a consortium of local educational agencies, as determined by the State in coordination with representatives from local educational agencies, subject to subparagraph (B)(ii) [20 U.S.C. 1412 §611(e)(3)(A)(i)].*

Project Forum at the National Association of State Directors of Special Education (NASDSE) produced this document as part of its cooperative agreement with the U.S. Department of Education's Office of Special Education Programs (OSEP).

## Data Collection

Project Forum developed and disseminated copies of its survey on risk pools to all 61 SEAs. SEAs were given the option of responding via e-mail or using Zoomerang, an online survey provider. By February 8, 2006, 42 SEAs had responded (41 states and one nonstate jurisdiction). Survey data were analyzed using Zoomerang and findings are reported in the following section of this document.

## Findings

### Background

Thirty (71%) of the 42 respondents reported that their SEA had a risk pool policy or procedure in place prior to the 2004 reauthorization of IDEA for providing additional SEA funds to LEAs to serve children with high cost special education needs and 12 (29%) reported that they had no such policy or procedure in place. Of the 30 who did have a policy or procedure in place, 21 (70%) reported that their risk pool program was required by law, four (13%) reported that it was required by state regulation and five (17%) reported that it was informal (e.g., the SEA contributed to LEA costs but was not required to do so by state law or regulation).

### Risk Pool Plans

Survey respondents plan either to continue with their existing risk pool program, to follow the new risk pool program as outlined in Section 611 of IDEA 2004 or not to implement a risk pool program at this time.

#### *States Continuing with Existing Programs*

Of the 30 SEAs who already had a policy or procedure in place prior to IDEA 2004, 25 (83%) plan to continue with their present risk pool programs. These programs frequently contain the following types of stipulations:

- the SEA will set aside a specific proportion (e.g., 1%) of its special education appropriation for LEAs' extraordinary expenses incurred in providing special education services to one or more students;
- the SEA will provide funds to LEAs to offset the costs of serving children whose needs exceed a certain proportion of the average per pupil expenditure (e.g., four or five times the average per pupil expenditure); and/or
- the SEA will cover a certain percentage of costs (e.g., 80%) over and above a certain level (e.g., costs that exceed \$25,000) (See Appendix I for a summary of individual states' risk pool programs).

Several SEAs identified those expenditures which are eligible for reimbursement under the risk pool program. These expenditures include: personnel; evaluations recommended by the

individualized education program (IEP) team; supplementary classroom materials for the provision of specially designed instruction; assistive technology services or devices identified generically or by name on the student's IEP; equipment; construction such as ramps or handicapped accessible bathrooms; and/or special transportation.

Several survey respondents also described unique risk pool programs. For example, *Montana's* program targets a specific population of students (i.e., those receiving residential services) and *Kentucky's* reimbursement levels are disability-specific.

#### *States Following the New Federal Risk Pool Program*

The remaining five SEAs (17%) who already had a policy or procedure in place plan to follow the new risk pool program as outlined in Section 611 of IDEA 2004. Additionally, of the 12 SEAs that did *not* already have a policy or procedure in place prior to IDEA 2004, five (42%) intend to follow the new risk pool program as outlined in Section 611. Several survey respondents provided information on the procedures they are implementing to develop a new risk pool program in accordance with Section 611 (e.g., convening a committee made up of stakeholders and reviewing various risk pool models). See Appendix II for a summary of individual states' plans for following the new federal risk pool program.

#### *States that Do Not Plan to Implement a Risk Pool Program*

The remaining seven (58%) of the 12 SEAs who did not already have a policy or procedure in place prior to IDEA 2004 do *not* have any plans to implement a risk pool at this time. Reasons for this include the following:

- A risk pool would compromise the state's equitable distribution of funds.
- The state advisory council chose not to implement a risk pool at this time.
- Current distribution of funds is through intermediate units (IUs), and LEAs have the option of establishing risk pools at the IU level.
- SEAs that are also LEAs (e.g., *Hawaii* and nonstate jurisdictions) have no need to establish a formal risk pool because the SEA is ultimately responsible programmatically and financially.

### **Barriers to Implementation of Provision**

Twenty-nine SEAs described barriers and/or challenges to implementing this provision. These included the following:

- distribution of funds in a fair and equitable manner;
- determination of what types of expenses are eligible for reimbursement;
- establishment of criteria for LEA participation that would effectively allow for coverage of excessive costs without eliminating all LEA responsibility;
- monitoring of LEAs' annual requests for funds;

- lack of a cap on state contributions;
- inadequate state appropriations for covering the costs of reimbursing LEAs;
- the need to pass legislation and develop agreements among stakeholders;
- maintenance of data across LEAs on students with high-cost special education needs; and
- the fact that some costs arise from sources other than students with high cost special education needs (e.g., unexpected numbers of students moving into an LEA).

### Concluding Remarks

The majority of survey respondents reported that their state had a risk pool program in place prior to the 2004 reauthorization of IDEA and most plan to continue with their existing programs. Of the SEAs that did *not* already have a risk pool program in place, many have opted to adopt the federal risk pool program as outlined in Section 611 of IDEA 2004. Significantly, several survey respondents noted that clear guidelines regarding eligibility for reimbursement through the risk pool can help reduce confusion among LEAs.

IDEA addresses, although it does not resolve, the challenge of having no cap on SEA contributions since it allows states the option of reserving up to 10% of state-level IDEA discretionary funds for risk pools. However, other state and agency appropriations, as well as legislation, would provide a stronger foundation for state risk pool programs.

This report was supported by the U.S. Department of Education (Cooperative Agreement No. H326F000001). However, the opinions expressed herein do not necessarily reflect the position of the U.S. Department of Education, and no official endorsement by the Department should be inferred.

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## Appendix I Existing Risk Pool Programs Being Continued by States

*Arkansas* – An LEA is eligible for reimbursement under these rules for a catastrophic occurrence when the costs associated with an individual student, after offsets from other available revenue sources equal or exceed \$15,000.

*Connecticut* – LEAs are reimbursed for costs that are more than four and one-half times the per pupil cost of the LEA for LEA-determined placements and reimbursed for costs more than per pupil cost for SEA-placed students. Reimbursement is paid within the current year up to the budgeted amount in the state budget. If claims exceed the budget, payments to LEAs are prorated.

*Kansas* – An LEA is eligible for a 75% reimbursement of costs exceeding \$25,000.

*Kentucky* – The system for funding schools has an exceptional children add-on that is weighted based on the exceptionality of the student.

*Maryland* – The SEA provides a formularized reimbursement for LEAs up to 80% of the costs of placements by LEAs after the local cost contribution to the placement.

*Massachusetts* – Through the state’s “circuit breaker” program, LEAs are eligible for reimbursements for students whose programs cost greater than four times the statewide foundation budget (\$30,340 in FY 2005). By law, LEAs are reimbursed for 75% of the costs greater than four times the statewide foundation, subject to appropriation. In addition, during FY 2005, LEAs were allowed to claim for extraordinary relief if their FY 2005 eligible costs exceeded their fiscal year 2004 eligible costs by 25%.

*Missouri* – LEAs are reimbursed for students whose educational costs exceed five times the district’s average cost for all children. The reimbursement is 100% federal dollars.

*Montana* – The state’s annual appropriations bill gives the SEA the authority to disperse to LEAs funds that are left once the SEA has met its obligation to cover the educational costs of children in residential treatment centers and children’s psychiatric hospitals. Left over funds, ranging from \$300,000 to \$400,000, are targeted to students with significant physical or emotional needs. The fund is not limited to children served under IDEA and might include a conduct-disordered child in need of enhanced supervision. Furthermore, the way these funds are administered allows for instances when a school has experienced a significant fiscal impact from multiple students, who, by themselves, might not be considered “high cost.” For example, an LEA that recently opened a group home might be eligible for these funds.

*New Hampshire* – The state board of education distributes aid to LEAs serving students for whom the costs of special education in the fiscal year exceed three and one-half times the estimated state average expenditure per pupil for the school year preceding the distribution. The

SEA is liable for 80% of the cost above the three and one-half times the estimated state average expenditure per pupil for the school year preceding the year of distribution and is liable for *all* costs in excess of 10 times the estimated state average expenditure per pupil for the school year preceding the year of distribution.

*North Dakota* – If, in the opinion of an IEP team, a student is unable to attend a public school in the special education unit to which the student’s LEA of residence belongs, the student’s LEA can contract with another public school. The contract must provide that the student’s LEA of residence agrees to pay the LEA in which the student receives services, an amount equal to two and one-half times the state average per student elementary or high school expenditure, depending upon the student’s level of enrollment, plus 20% of all remaining costs. The SEA reimburses the LEA in which the student receives services an amount equal to 80% of the remainder of the actual cost of educating the student with disabilities not covered by other payments or credits.

*Pennsylvania* – The SEA sets aside 1% of the special education appropriation for extraordinary expenses incurred in providing a special education program or service to one or more students with disabilities as approved by the Secretary of Education.

*South Carolina* – The SEA provides additional funds to LEAs for students residing in alternate residences, most of whom have been placed by other state agencies. The SEA distributes these dollars based on an annual count submitted by LEAs. This policy is not in state statute, but has been in practice for three years in an effort to support these highly mobile and high needs students who are relocated by state agencies other than the SEA.

*Virginia* – A 1993 state law provides for the pooling of eight specific funding streams used to purchase services for high-risk youth. These funds are returned to LEAs with a required state/local match and are managed by local interagency teams. The purpose of the act is to provide high quality, child-centered, family focused, cost effective, community-based services to high-risk youth and their families.

*West Virginia* – An LEA may request the use of funds from the High Needs Expenditure Fund for a student with a disability who meets certain criteria, including that the cost for the student’s education is equal to or greater than \$70,000 per fiscal year or \$7,000 per month based on 10 months. This cost includes the average per pupil expenditure amount for students in the LEA and the excess costs for educating the student.

## Appendix II

### New Federal Risk Pool Plans

*Louisiana* – LEAs will be eligible for reimbursement through the SEA’s risk pool program in the event that the cost of serving a student exceeds seven times the state’s average per pupil expenditure (currently \$7,248) for the school year preceding the year of distribution. The cost of services must also utilize, at a minimum, five percent of the total operating budget of the LEA providing services.

*Oklahoma* – The SEA has set aside \$2,351,736 for disbursements from its high-cost fund, as well as \$13,653 for disbursements to support innovative and effective ways of cost sharing. Currently, the SEA (with the input of a stakeholder group) has established the definition of a child with high-cost special education needs, but is currently working on establishing eligibility criteria for LEA participation in the high cost fund.

*Tennessee* – Additional funds may be used to assist in the provision of such a high cost program when the excess cost is 250% greater than the total funds available for a specific child.

*Texas* – A committee of SEA staff is working to develop a new risk pool plan. The state plans to convene a committee with a broader pool of stakeholders to review the process and provide input for the 2006-2007 high cost risk pool process.

*Utah* – The state will collect data on high cost students from each LEA. The amount exceeding three times the state average per pupil expenditure will be tabulated and distributed to LEAs as described in Section 611 of IDEA.

*Washington* – The SEA plans to continue its high cost fund system (known as State Safety Net) and to explore the establishment of a risk pool as an additional proactive system of loss mitigation. The tentative plan is for the Risk Management Committee to identify two or more risk pools models. The SEA will provide the committee with relevant statutory language and regulations that describe how a pool may be constituted. The committee will identify the advantages and disadvantages of different types of pools and how they are managed. By May 2006, a proposal for the development of a risk pool will be submitted to the state director of special education.

*Wyoming* – The SEA is using the risk pool to provide reimbursement to LEAs as a cost sharing for high need, low incidence, catastrophic or extraordinary aid. The LEA is required to complete an application that describes the nature of the need based upon the criteria set forth in Section 611 of IDEA and the state’s definition of high need.