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34 CFR Part 300

Assistance to States for the Education of Children With Disabilities; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 300

RIN 1820–AB51

Assistance to States for the Education of Children With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Assistance to States for the Education of Children with Disabilities program under Part B of the Individuals with Disabilities Education Act (IDEA; Part B)). This amendment is needed to implement the statutory provision that for any fiscal year in which the appropriation for section 611 ofthe IDEA exceeds $4.1 billion, a local educational agency (LEA) may treat as local funds up to 20 percent of the amount it receives that exceeds the amount it received during the prior fiscal year. The amendment is intended to ensure effective implementation of the 20 percent rule by clarifying which funds under Part B of IDEA can be included in the 20 percent calculation, and, as a result, to reduce the potential for audit exceptions.

DATES: These regulations are effective—February 9, 2001.

FOR FURTHER INFORMATION CONTACT: JoLeta Reynolds (202) 205–5507. If you use a telecommunication device for the deaf (TDD), you may call the TDD number at (202) 205–5465.

Individuals with disabilities may obtain this document in an alternate format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to Katie Mimcey, Director of the Alternate Formats Center. Telephone: (202) 205–8113.

SUPPLEMENTARY INFORMATION: On May 10, 2000, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (65 FR 30314) to amend the regulations governing the Assistance to States for the Education of Children with Disabilities program (34 CFR part 300). The NPRM proposed to implement a statutory provision regarding the permissive treatment of a portion of Part B funds by LEAs in certain fiscal years, as added by the IDEA Amendments of 1997 (see section 613(a)(2)(C) of the Act and § 300.233 of the regulations).

Under the new statutory provision, for any fiscal year (FY) for which the appropriation for section 611 of the IDEA exceeds $4.1 billion, an LEA may treat as local funds up to 20 percent of the amount it receives that exceeds the amount it received under Part B during the prior year. By treating certain Federal funds as local funds, and LEA will be able to meet the maintenance of effort requirement of § 300.231 even though it reduces the amount of other local or local and State funds, as the case may be, by an amount equal to the amount of Federal funds that may be treated as local funds. The fiscal year ending September 30, 1999 was the first year that the Part B appropriation exceeded $4.1 billion.

A key question the NPRM proposed to resolve was whether only LEA subgrant funds under section 611(g) of the Act or LEA subgrant funds and other Part B funding sources (*i.e.,* subgrants to LEAs for capacity-building and improvement under section 611(f), other funds the SEA may provide to LEAs under section 611(f) or preschool grant funds under section 619) would be affected by the 20 percent rule in section 613(a)(2)(C) of the Act (§ 300.233 of the regulations).

In the NPRM, we proposed that the 20 percent rule apply only to LEA subgrant funds under section 611(g) of the Act (§ 300.712 of the regulations), for the reasons described in the preamble to the NPRM. We believe that the position taken in the NPRM is the most appropriate and reasonable position to follow in implementing the 20 percent rule. Therefore, we have retained proposed § 300.233(a)(1), without change, in these final regulations.

There are only two significant differences between the NPRM and these final regulations:

- First, we have amended proposed § 300.233(a)(3) (which provided that if funds are being withheld from an LEA, those funds would not be included in the 20 percent calculation) to clarify that if funds that have been withheld are subsequently released to the LEA, the LEA may apply the 20 percent rule to those funds.
- Second, we have added (in a new Appendix C to the regulations for Part 300) information to assist LEAs in implementing the 20 percent rule, including a full, substantive description of the provision (with examples) that is similar to the information contained in the Background section of the preamble to the NPRM.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, six parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. In the analysis, we address substantive comments, but we do not address comments that are not directly relevant to these regulations.

Comment: The comments generally acknowledged the need for having the proposed regulation, but were varied in their recommendations for change. With respect to which funds under section 611 of the Act apply in determining the amount of money that will be treated as local funds, one commenter agreed with the position in the NPRM (*i.e.,* that the funds should be limited to LEA subgrants under section 611(g) (§ 300.712 of the regulations)). Two commenters recommended that the provision be expanded to also include funds for local capacity-building and improvement under section 611(f) of the Act (§ 300.622 of the regulations). Another commenter noted that States routinely flow through additional Part B (section 611) funds beyond the required LEA subgrants under section 611(g), and recommended that the regulations clarify that the 20 percent rule applies to all section 611 funds LEAs receive, including funds that are not retained by States for administrative purposes and other State-level activities specified under section 611(f).

Discussion: We believe that the position taken in the NPRM—that the money that may be treated by LEAs as local funds under the section 611 appropriation should be limited to statutory subgrant funds under section 611(g)—is the most appropriate and reasonable position to follow in implementing section 613(a)(2)(C) of the Act (§ 300.233 of the regulations). There were no compelling reasons presented by commenters to do otherwise. Therefore, we have retained proposed § 300.233(a)(1), without change, in these final regulations. The reasons for taking this position were specified in the preamble to the NPRM (and are also included in a new Appendix C to these Part 300 regulations). We believe that the regulations clearly indicate that, while States may provide additional funds to LEAs from their section 611(f) set-aside, only section 611(g) funds are subject to the 20 percent rule.

Changes: None.

Comment: A commenter noted that the NPRM did not indicate at what point in the year an LEA should make its calculation (*e.g.,* at the beginning of the year or at another time), and added that the point in time when the determination is made could have an impact on the LEA, especially if the LEA has had funds withheld that are later restored. The commenter further requested that the background section from the NPRM be expanded to include more complex examples for calculating

the 20 percent formula, and to specify resources in the Department that LEAs might turn to for assistance in this regard.

Discussion: The LEA may make its calculation—and spend the 20 percent of the increase in the Federal grant as local funds—at any point from the time the LEA receives its grant under section 611(g) of the Act (§ 300.712 of the regulations), to the end of the period that these funds are available for obligation. Thus, if an LEA's Federal fiscal year 2001 funds were withheld at the beginning of a school year, but were subsequently released by the SEA on January 1, 2002, the LEA could do the calculation and spend those funds any time between January 1, 2002 and September 30, 2003.

We agree with the commenter's request for additional examples. We also believe that it is important to retain, on a permanent basis, the background section from the NPRM related to the 20 percent rule (along with the examples), so that school officials at both the State and local levels will have a technical assistance source to turn to regarding implementation of that provision. Thus, we have included the basic content of the background section in the NPRM (with examples) in a new Appendix C to the regulations for this part.

With respect to providing technical assistance on the 20 percent rule at the Federal level, we believe that it would be more appropriate for LEAs to seek advice and guidance from the SEA within each State regarding implementation of the 20 percent rule, rather than directly seeking assistance from the Department. Because each SEA is responsible for monitoring an LEA's compliance with the Part B requirements (including the 20 percent rule), it would not be appropriate for the Department to provide direct assistance to individual LEAs on this provision. On the other hand, if the SEA, in assisting an LEA to apply the 20 percent rule, needs policy guidance regarding the provision, it would be appropriate for the SEA to contact the Department for that assistance.

Changes: A new Appendix C has been added to the regulations, as described in the preceding discussion.

Comment: One commenter stated that the preamble to the NPRM suggests that the 20 percent rule would be implemented beginning with fiscal year (FY) 2000, even though FY 1999 was the first year in which the section 611 appropriation exceeded $4.1 billion. The commenter added that the statutory authority relating to this provision was established by the IDEA Amendments of 1997, and, therefore, it would be inappropriate for the regulation to exclude the FY 1999 appropriation.

Discussion: Because funds for FY 1999 had already been received (and, in many cases already obligated by LEAs), we believed that it would be inappropriate to apply this amendment to § 300.233 retroactively to FY 1999 funds). Therefore, we proposed to apply the amended regulation to FY 2000 funds and thereafter. In the NPRM, we should have definitively stated that the FY 1999 appropriation was not affected by the proposed regulations, and, therefore, States and LEAs could apply a broader interpretation of section 613(a)(2)(C) of the Act (§ 300.233 of the regulations) to the funds they received from that appropriation.

Changes: None.

Comment: A commenter disagreed with the interpretation of the year by year applicability of the 20 percent rule in the NPRM, and stated that the provision should apply throughout the entire period of appropriations availability, including the carryover year authorized by the Tydings Amendment. The commenter further recommended that the regulation be revised to allow for the 20 percent rule to be applied on a cumulative basis, so that (for example) if there is no increase in appropriations for FY 2002 from the prior year, an LEA that has not used the 20 percent rule in fiscal years 1999, 2000, and 2001 would be allowed to take advantage of the appropriations increases received in those prior years for local budgetary relief.

Discussion: An LEA can take advantage of the 20 percent rule at any point throughout the period in which the LEA can use its section 611(g) funds, including the carryover year under the Tydings Amendment. (The Tydings Amendment allows States to obligate their grant funds for one additional year after the initial period of availability. See General Education Provisions Act, section 421.) However, there is no statutory authority to allow the provision to be applied on a cumulative basis. The Act makes it clear that the provision applies only on a year to year basis (*i.e.,* section 613(a)(2)(C) specifies that, for any fiscal year for which the amounts appropriated to carry out section 611 exceeds $4.1 billion, an LEA ''may treat as local funds * * * up to 20 percent of the amount of funds it receives under this part *that exceeds the amount it received under this part for the previous fiscal year.*''). Emphasis added.

Changes: None.

Comment: A commenter stated that § 300.233(a)(3) of the NPRM—which provides that an LEA is not eligible to receive funds that have been withheld under § 300.197 or § 300.587—is overbroad, and ignores the fact that funds that have been withheld may subsequently be released when compliance has been achieved. The commenter recommended that the provision be deleted, noting, further, that it does not coincide with section 613(a)(2)(C)(ii) of the Act (§ 300.233(b) of the regulations), which provides that an SEA may prohibit an LEA from applying the 20 percent rule only if it is authorized to do so by State constitution or statute.

Discussion: We agree with the commenter that proposed new § 300.233(a)(3) does not appropriately reflect the requirements of the Act. It should have indicated that funds that have been withheld may subsequently be released when compliance has been achieved, and that the 20 percent rule may be applied to those funds during their period of availability. This is consistent with our intent in the NPRM. However, we continue to believe that it is necessary to provide guidance in this area.

Upon further review of proposed § 300.233(a)(3), we believe that it needs to be revised to clarify that during any period in which Part B funds are withheld from an LEA because of a finding of noncompliance under § 300.197 or § 300.587, the LEA may not implement the 20 percent rule. However, if the funds are subsequently released to the LEA during the grant award period, the LEA may spend those funds consistent with the 20 percent rule.

Changes: Section 300.233(c) has been amended, consistent with the preceding discussion.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those we have determined as necessary for administering these programs effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section, we identify and explain any burdens specifically associated with the information collection requirements. See the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and

qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM (65 FR 30314).

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations will not have significant economic impact on a substantial number of small entities. The small entities affected will be small LEAs. The regulations will benefit the small entities affected by clarifying the statutory requirements and reducing the possibility of audit exceptions. By ensuring consistency, the regulations will promote more effective and efficient program administration.

Paperwork Reduction Act of 1995

These final regulations do not contain any information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of our specific plans and actions for this program.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. ''Federalism implications'' means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Since these regulations relate solely to implementation of the statutory 20 percent rule, we do not believe these regulations have federalism implications as defined in Executive Order 13132. In addition, these regulations do not preempt State law. Accordingly, the Secretary has determined that these final regulations do not contain policies that have federalism implications or that preempt State law.

Assessment of Educational Impact

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number: 84.027 Assistance to States for the Education of Children with Disabilities)

List of Subjects

Administrative practice and procedure, Education of individuals with disabilities, Elementary and secondary education, Equal educational opportunity, Grant programs—education, Privacy, Private schools, Reporting and recordkeeping requirements.

Dated: December 12, 2000.

Richard W. Riley,

Secretary of Education.

For the reasons described in the preamble, the Secretary amends title 34, part 300, of the Code of Federal Regulations as follows:

PART 300—ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES PROGRAM

1. The authority citation for part 300 continues to read as follows:

Authority: 20 U.S.C. 1411—1420, unless otherwise noted.

2. Section 300.233 is amended by revising paragraph (a)(1), and by adding a new paragraph (a)(3), to read as follows:

§ 300.233 Treatment of Federal funds in certain fiscal years.

(a)(1) Subject to paragraphs (a)(2), (a)(3), and (b) of this section, for any fiscal year for which amounts appropriated to carry out section 611 of the Act exceed $4.1 billion, an LEA may treat as local funds up to 20 percent of the amount of funds it is eligible to receive under § 300.712 from that appropriation that exceeds the amount from funds appropriated for the previous fiscal year that the LEA was eligible to receive under § 300.712.

* * * * *

(3) For purposes of this section:

(i)(A) An LEA is not eligible to receive funds during any period in which those funds under this part are withheld from the LEA because of a finding of noncompliance under § 300.197 or § 300.587.

(B) An LEA is eligible to receive funds that have been withheld under § 300.197 or § 300.587 but are subsequently released to the LEA within the period of the funds availability.

(ii) An LEA is not eligible to receive funds that have been reallocated to other LEAs under § 300.714.

3. Part 300 is further amended by adding a new Appendix C—Implementation of the 20 Percent Rule under § 300.233, to read as follows:

APPENDIX C TO PART 300—IMPLEMENTATION OF THE 20 PERCENT RULE UNDER § 300.233

This appendix is intended to assist States and LEAs to implement the ''20 percent rule'' under Part B (section 613(a)(2)(C)) of the Individuals with Disabilities Education Act (IDEA), and, specifically, the regulation implementing that provision in § 300.233. The purposes of the appendix are to—(1) provide background information about the 20 percent rule and its intended effect, including specifying which funds under Part B of the Act are covered by the provision (as described in § 300.233), and the basis for the Department's decision regarding those funds; and (2) include examples showing how the 20 percent rule would apply in several situations.

A. Background

1. *Purpose of 20 Percent Rule.* The IDEA Amendments of 1997 (Pub. L. 105–17) added

a provision related to the permissive treatment of a portion of Part B funds by LEAs for maintenance of effort and non-supplanting purposes in certain fiscal years (see section 613(a)(2)(C) of the Act and § 300.233). Under that provision, for any fiscal year (FY) for which the appropriation for section 611 of IDEA exceeds $4.1 billion, an LEA may treat as local funds, for maintenance of effort and non-supplanting purposes, up to 20 percent of the amount it receives that exceeds the amount it received under Part B during the prior year.

Thus, under § 300.233, an LEA is able to meet the maintenance of effort requirement of § 300.231 and the non-supplanting requirement of § 300.230(c) even though it reduces the amount it spends of other local or local and State funds, as the case may be, by an amount equal to the amount of Federal funds that may be treated as local funds.

2. *20 Percent Rule Applies Only to LEA Subgrants.* Following enactment of the IDEA Amendments of 1997 (and publication of Part B regulations on March 12, 1999), State and local educational agency officials stated that it is not clear from the Act and regulations whether the funds affected by the 20 percent rule are only those that an LEA receives through statutory subgrants under section 611(g), or whether the provision also applies to other Part B funding sources (*i.e.*, subgrants to LEAs for capacity-building and improvement under section 611(f)(4); other funds the SEA may provide to LEAs under section 611(f); or funds provided under section 619 (Preschool Grants program)).

Further, because section 613(a)(2)(C) refers to an amount of funds that an LEA ''receives'' in one fiscal year compared to the amount it ''received'' in the prior fiscal year (and because agencies may, at any one point in time, be using funds appropriated in several Federal fiscal years), agency officials were uncertain as to how to determine that an LEA had ''received'' Federal funds.

Because the statute and regulations were not sufficiently clear with respect to which precise funds are affected by the 20 percent rule, this could have resulted in the provision being interpreted and applied differently from LEA to LEA. If that situation were to occur, it could result in a significant increase in the number of audit exceptions against LEAs.

Given the confusion about which funding sources are affected by the 20 percent rule, there was a critical need to set out in the regulations a clear interpretation of section 613(a)(2)(C) in order to support its consistent application across LEAs and States, and to reduce the potential for audit exceptions. Thus, on June 10, 2000, the Department published a notice of proposed rulemaking (NPRM) regarding this provision (65 FR 30314). The NPRM stated that—

In light of the statutory structure for distribution of Federal funds to LEAs, we believe that the most reasonable interpretation is to apply that provision *only to subgrants to LEAs under section 611(g)* of the Act (§ 300.712 of the regulations) from funds appropriated from one Federal fiscal year compared to funds appropriated for the prior Federal fiscal year. (Emphasis added.)

Thus, the NPRM proposed to exclude the other Federal funds under Part B of the Act (*i.e.,* Subgrants to LEAs for capacity-building and improvement under section 611(f)(4) (§ 300.622); other funds the SEA may provide to LEAs under section 611(f) (§ 300.602); and preschool grant funds under section 619 (34 CFR part 301)) from the funds that could be treated as local funds. The reasons for excluding these other Part B funds were stated in the NPRM, as follows:

- If IDEA funds that States have the authority to provide to LEAs on a discretionary basis (such as those identified in the preceding paragraph) are included in the 20 percent calculation, it would result in some LEAs receiving a proportionately greater benefit from this provision than other LEAs, based on receipt of funds that may be earmarked for a specific, time-limited purpose. This would lead to inequitable results of the § 300.233 exception across LEAs in a State.
- Including section 619 formula grant funds (34 CFR part 301) in the calculation does not appear to be justified as the ''trigger'' appropriation amount applies only with respect to the amount appropriated under section 611.

The Department subsequently determined that the position taken in the NPRM (that the provision under § 300.233 should apply only to LEA subgrant funds under section 611(g) of the Act) is the most appropriate and reasonable position to follow in implementing the 20 percent rule. Therefore, the proposed provision in § 300.233(a)(1) was retained, without change, in the final regulations.

B. Application of the 20 percent rule

1. Examples Related to Implementing the 20 percent rule

The following are examples showing how the 20 percent provision would apply under several situations:

- *Example 1:* An LEA receives $100,000 in Federal LEA Subgrant funds under section 611(g) of the Act from the appropriation for one fiscal year (FY–1), and $120,000 in section 611(g) funds from the appropriation for the following fiscal year (FY–2). The LEA may spend and treat as local funds up to 20 percent of the $20,000 in section 611(g) funds it receives from FY–2 (i.e., up to $4,000), since this is the amount that exceeds the amount it received from the prior year.
- *Example 1–A:* In Example 1, an LEA in FY–2 is uncertain whether to exercise its option to treat as local funds during FY–2 up to $4,000 of its section 611(g) funds received from FY–2, and wishes to wait until the carry-over year to make a decision. If the LEA decides to exercise its option during the carry-over period regarding the $4,000 from the FY–2 appropriation, it could do so as long as those funds are used within the carry-over period for FY–2.
- *Example 1–B:* An LEA receives $100,000 in section 611(g) funds from FY–1, $120,000 from FY–2 and $140,000 from FY–3. The LEA may spend and treat as local funds up to 20 percent of the $20,000 from FY–2 funds and $20,000 of FY–3 funds (*i.e.,* up to $4,000 for each year). Thus, if its FY–2 funds are not used until FY–3, and the LEA so chooses, it may spend and treat as local funds during FY–3 a total of up to $8,000 in section 611(g) funds (*i.e.,* $4,000 from FY–2 and $4,000 from FY–3), provided those funds are obligated by the end of FY–3.
- *Example 2:* An LEA from one fiscal year (FY–1) receives $100,000 in section 611(g) funds and $20,000 in SEA discretionary funds under section 611(f) of the Act; and from the following year (FY–2) receives $120,000 in section 611(g) funds, but does not receive any funds under section 611(f). The LEA may spend and treat up to 20 percent of the $20,000 in section 611(g) funds it receives from FY–2 (i.e. up to $4,000), since $20,000 is the amount of section 611(g) funds that exceeds the amount it received from FY–1.
- *Example 3:* An LEA had all of its section 611(g) funds ($100,000) withheld from one fiscal year (FY–1); but in the next fiscal year (FY–2), the LEA received a total of $220,000 in section 611(g) funds (*i.e.,* $100,000 from FY–1, plus $120,000 from FY–2). Because the LEA would have been entitled to $100,000 in FY–1, the LEA may spend and treat as local funds up to 20 percent of the $20,000 from FY–2 that exceeded the FY–1 allotment (*i.e.,* up to $4,000).
- *Example 4:* An LEA received $100,000 under section 611(g) from one fiscal year (FY–1), and would have received $120,000 in section 611(g) funds for the next fiscal year (FY–2); but the LEA has had all of its section 611(g) funds withheld in FY–2 because of a finding of noncompliance under § 300.197 or § 300.587. The LEA would have no section 611(g) funds that could be spent or treated as local funds until those funds are released.
- *Example 4–A:* In example 4, the SEA subsequently determines that the LEA is in compliance, and releases the FY–2 funds to the LEA later in that fiscal year. The LEA could then spend and treat as local funds up to 20 percent of the $20,000 that exceeds the amount it received in FY–1 (i.e., up to $4,000). Those funds could be used by the LEA for the remainder of FY–2 and through the end of the carry-over period for FY–2 funding.

2. Auditing for Compliance with § 300.231 and the 20 percent rule in § 300.233

The following provides guidance for use by auditors in determining if LEAs are in compliance with the maintenance of effort requirement in § 300.231 and the 20 percent rule in § 300.233:

a. *Meeting the Maintenance of Effort Requirement.* In order to be eligible to receive an IDEA-Part B subgrant in any particular fiscal year, an LEA is required to demonstrate that it has budgeted an amount of State and local funds, or just local funds, to be spent on special education and related services that equals or exceeds (on either an aggregate or per capita basis) the amount of those funds spent by the LEA for those purposes in the prior fiscal year, or in the most recent prior fiscal year for which information is available. 34 CFR 300.231.

b. *Auditing Compliance with § 300.231.* Auditors, in determining if an LEA has complied with § 300.231 in any particular fiscal year, review the actual level of expenditures of State and local funds, or just local funds, on special education and related services for the year in question and the prior

year. For example, consider an LEA that, in the LEA's FY–1, spent a total of $1,000,000 of local funds on special education and related services to serve 100 students with disabilities. (For this discussion, assume that the LEA does not receive any State funds for any year for special education and related services.) An auditor, in trying to determine if the LEA, in its FY–2, had complied with § 300.231, would review the LEA's expenditure of local funds on special education and related services. If, in the LEA's FY–2, the LEA served 100 students with disabilities and spent $1,000,000 or more in local funds on special education and related services, it would have met the requirements of § 300.231 for FY–2.

c. *Application of the 20 percent rule to § 300.231.* If the LEA in the preceding example had spent only $996,000 of local funds on special education and related services for its 100 students with disabilities in its FY–2 (not counting any section 611(g) subgrant funds that could be considered local funds under the 20 percent rule), then it would have failed to meet its obligation under § 300.231, and an auditor would question $4,000 of the LEA's IDEA-Part B subgrant expenditures in that year.

This questioned cost, however, could be avoided, if the LEA had available, and spent, $4,000 of Federal funds under the 20 percent rule during its FY–2. These funds may be available from a variety of sources (see Examples in paragraph 1). If, as described in Example 1 of paragraph 1 the LEA had received from the Federal FY–2 appropriation, a section 611(g) subgrant that was $20,000 greater than the subgrant it received from the Federal FY–1 appropriation, then up to $4,000 of that subgrant could be treated as local funds. The LEA, however, would have to spend at least $4,000 of its Federal FY–2 section 611(g) subgrant during its FY–2 in order for those funds to count as part of its local expenditures for that year for purposes of § 300.231.

In this example, if the LEA had carried over all of its Federal FY–2 section 611(g) subgrant to the LEA's FY–3 (and thus did not spend any of those funds during its FY–2), then none of the section 611(g) subgrant funds subject to the 20 percent rule could be considered as local funds for purposes of determining compliance with § 300.231. (The reason for this is that auditors, in determining an LEA's compliance with § 300.231, examine State and local, or local funds the LEA actually spent on special education and related services, and *not* those funds that the LEA could, but did not, spend for those purposes.)

If the LEA, in its FY–2, spent $4,000 of its Federal FY–2 section 611(g) subgrant, then the LEA could count those expenditures and bring itself into compliance with § 300.231 (i.e., $996,000 of the LEA's own local funds spent on special education and related services plus the $4,000 of Federal FY–2 section 611(g) funds that can be counted as local funds equals a total of $1,000,000 of local expenditures on special education in its FY–2—the amount of local expenditures needed to comply with § 300.231). However, if the LEA elected to take this step, it could not count any of the Federal FY–2 section 611(g) subgrant funds that it will spend in its FY–3 as local funds.

If the LEA, in its FY–2, spent only $3,000 of its Federal FY–2 section 611(g) subgrant funds, then those funds could be counted by the LEA as local funds in calculating its compliance with § 300.231 for its FY–2. If the remaining $1,000 of Federal FY–2 funds available to be considered local funds were spent in the LEA's FY–3, those funds could be considered in determining the LEA's compliance with § 300.231 for its FY–3. (Note, However, that if in its FY–2 the LEA had only spent $996,000 of local funds and $3,000 of its Federal funds, it would not have met the requirements of § 300.231. In this case the auditor would have $1,000 of questioned costs ($1,000,000 − [$996,000+$3,000]=$1,000) for FY–2).

[FR Doc. 01–431 Filed 1–5–01; 8:45 am]

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