



Technical Assistance Checklist¹ – Eligibility Requirements found in 34 CFR Part 300

Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
Section I		
NA	No Related Statutory or Regulatory Provisions Associated with this Section	
Section II A		
1	<p>FAPE Requirements</p> <p>Sec. 300.101 Free appropriate public education (FAPE).</p> <ul style="list-style-type: none"> (a) General. A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in Sec. 300.530(d). (b) FAPE for children beginning at age 3. <ul style="list-style-type: none"> (1) Each State must ensure that-- <ul style="list-style-type: none"> (i) The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and (ii) An IEP or an IFSP is in effect for the child by that date, in accordance with Sec. 300.323(b). (2) If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin. (c) Children advancing from grade to grade. <ul style="list-style-type: none"> (1) Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade. (2) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations. 	

¹ This checklist, organized by "Sections", "Assurances", "Other Assurances", "Certifications", "Use of Funds Form", and "State Administration" is provided to assist States in the completion of OMB Information Collection 1820-0030. Use of the checklist is optional. For related information access <http://idea.ed.gov>.


Technical Assistance Checklist¹ – Eligibility Requirements found in 34 CFR Part 300

Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i> <i>(Authority: 20 U.S.C. 1412(a)(1)(A))</i></p> <p>Sec. 300.102 Limitation--exception to FAPE for certain ages.</p> <p>(a) General. The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:</p> <p>(1) Children aged 3, 4, 5, 18, 19, 20, or 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children of those ages.</p> <p>(2)(i) Children aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility--</p> <p>(A) Were not actually identified as being a child with a disability under Sec. 300.8; and</p> <p>(B) Did not have an IEP under Part B of the Act.</p> <p>(ii) The exception in paragraph (a)(2)(i) of this section does not apply to children with disabilities, aged 18 through 21, who--</p> <p>(A) Had been identified as a child with a disability under Sec. 300.8 and had received services in accordance with an IEP, but who left school prior to their incarceration; or</p> <p>(B) Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability under Sec. 300.8.</p> <p>(3)(i) Children with disabilities who have graduated from high school with a regular high school diploma.</p> <p>(ii) The exception in paragraph (a)(3)(i) of this section does not apply to children who have graduated from high school but have not been awarded a regular high school diploma.</p> <p>(iii) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with Sec. 300.503.</p> <p>(iv) As used in paragraphs (a)(3)(i) through (a)(3)(iii) of this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a general educational development credential (GED).</p> <p>(4) Children with disabilities who are eligible under subpart H of this part, but who receive early intervention services under Part C of the Act.</p> <p>(b) Documents relating to exceptions. The State must assure that the information it has provided to the Secretary</p>	

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	<p>regarding the exceptions in paragraph (a) of this section, as required by Sec. 300.700 (for purposes of making grants to States under this part), is current and accurate.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i></p> <p><i>(Authority: 20 U.S.C. 1412(a)(1)(B)-(C))</i></p> <p>Other FAPE Requirements</p> <p>Sec. 300.103 FAPE--methods and payments.</p> <ul style="list-style-type: none"> (a) Each State may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, if it is necessary to place a child with a disability in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement. (b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability. (c) Consistent with Sec. 300.323(c), the State must ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined. <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i></p> <p><i>(Authority: 20 U.S.C. 1401(8), 1412(a)(1)).</i></p> <p>Sec. 300.104 Residential placement.</p> <p>If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i></p> <p><i>(Authority: 20 U.S.C. 1412(a)(1), 1412(a)(10)(B))</i></p> <p>Sec. 300.105 Assistive technology.</p> <ul style="list-style-type: none"> (a) Each public agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in Sections 300.5 and 300.6, respectively, are made available to a child with a disability if required 	


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	<p>as a part of the child's--</p> <ul style="list-style-type: none"> (1) Special education under Sec. 300.36; (2) Related services under Sec. 300.34; or (3) Supplementary aids and services under Sections 300.38 and 300.114(a)(2)(ii). <p>(b) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i></p> <p><i>(Authority: 20 U.S.C. 1412(a)(1), 1412(a)(12)(B)(i))</i></p> <p>Sec. 300.106 Extended school year services.</p> <ul style="list-style-type: none"> (a) General. <ul style="list-style-type: none"> (1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section. (2) Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with Sections 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child. (3) In implementing the requirements of this section, a public agency may not-- <ul style="list-style-type: none"> (i) Limit extended school year services to particular categories of disability; or (ii) Unilaterally limit the type, amount, or duration of those services. (b) Definition. As used in this section, the term extended school year services means special education and related services that-- <ul style="list-style-type: none"> (1) Are provided to a child with a disability-- <ul style="list-style-type: none"> (i) Beyond the normal school year of the public agency; (ii) In accordance with the child's IEP; and (iii) At no cost to the parents of the child; and (2) Meet the standards of the SEA. <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i></p> <p><i>(Authority: 20 U.S.C. 1412(a)(1))</i></p>	


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	<p>Sec. 300.107 Nonacademic services.</p> <p>The State must ensure the following:</p> <ul style="list-style-type: none"> (a) Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities. (b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available. <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i></p> <p><i>(Authority: 20 U.S.C. 1412(a)(1))</i></p> <p>Sec. 300.108 Physical education.</p> <p>The State must ensure that public agencies in the State comply with the following:</p> <ul style="list-style-type: none"> (a) General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades. (b) Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless-- <ul style="list-style-type: none"> (1) The child is enrolled full time in a separate facility; or (2) The child needs specially designed physical education, as prescribed in the child's IEP. (c) Special physical education. If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs. (d) Education in separate facilities. The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this section. 	

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<p style="text-align: center;">2</p>	<p>Sec. 300.109 Full educational opportunity goal (FEOG).</p> <p>The State must have in effect policies and procedures to demonstrate that the State has established a goal of providing full educational opportunity to all children with disabilities, aged birth through 21, and a detailed timetable for accomplishing that goal.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i> <i>(Authority: 20 U.S.C. 1412(a)(2))</i></p> <p>Sec. 300.110 Program options.</p> <p>The State must ensure that each public agency takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i> <i>(Authority: 20 U.S.C. 1412(a)(2), 1413(a)(1))</i></p>	
<p style="text-align: center;">3</p>	<p>Sec. 300.111 Child find.</p> <p>(a) General.</p> <p>(1) The State must have in effect policies and procedures to ensure that--</p> <p>(i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and</p> <p>(ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.</p> <p>(b) Use of term developmental delay. The following provisions apply with respect to implementing the child find</p>	


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	requirements of this section: (1) A State that adopts a definition of developmental delay under Sec. 300.8(b) determines whether the term applies to children aged three through nine, or to a subset of that age range (e.g., ages three through five). (2) A State may not require an LEA to adopt and use the term developmental delay for any children within its jurisdiction. (3) If an LEA uses the term developmental delay for children described in Sec. 300.8(b), the LEA must conform to both the State's definition of that term and to the age range that has been adopted by the State. (4) If a State does not adopt the term developmental delay, an LEA may not independently use that term as a basis for establishing a child's eligibility under this part. (c) Other children in child find. Child find also must include-- (1) Children who are suspected of being a child with a disability under Sec. 300.8 and in need of special education, even though they are advancing from grade to grade; and (2) Highly mobile children, including migrant children. (d) Construction. Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in Sec. 300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act. <i>(Approved by the Office of Management and Budget under control number 1820-0030)</i> <i>(Authority: 20 U.S.C. 1401(3)); 1412(a)(3))</i>	
<p style="text-align: center;">4</p>	<p>Sec. 300.112 Individualized education programs (IEP).</p> <p>The State must ensure that an IEP, or an IFSP that meets the requirements of section 636(d) of the Act, is developed, reviewed, and revised for each child with a disability in accordance with Sec. 300.320 through 300.324, except as provided in Sec. 300.300(b)(3)(ii).</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i> <i>(Authority: 20 U.S.C. 1412(a)(4))</i></p> <p>Sec. 300.320 Definition of individualized education program.</p> <p>(a) General. As used in this part, the term individualized education program or IEP means a written statement for each</p>	

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	<p>child with a disability that is developed, reviewed, and revised in a meeting in accordance with Sections 300.320 through 300.324, and that must include--</p> <ul style="list-style-type: none"> (1) A statement of the child's present levels of academic achievement and functional performance, including-- <ul style="list-style-type: none"> (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; (2)(i) A statement of measurable annual goals, including academic and functional goals designed to-- <ul style="list-style-type: none"> (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and (B) Meet each of the child's other educational needs that result from the child's disability; (ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives; (3) A description of-- <ul style="list-style-type: none"> (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided; (4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child-- <ul style="list-style-type: none"> (i) To advance appropriately toward attaining the annual goals; (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section; (5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section; 	


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	<p>(6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and</p> <p>(ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why--</p> <p>(A) The child cannot participate in the regular assessment; and</p> <p>(B) The particular alternate assessment selected is appropriate for the child; and</p> <p>(7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.</p> <p>(b) Transition services. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include--</p> <p>(1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and</p> <p>(2) The transition services (including courses of study) needed to assist the child in reaching those goals.</p> <p>(c) Transfer of rights at age of majority. Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under Sec. 300.520.</p> <p>(d) Construction. Nothing in this section shall be construed to require--</p> <p>(1) That additional information be included in a child's IEP beyond what is explicitly required in section 614 of the Act; or</p> <p>(2) The IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.</p> <p><i>(Authority: 20 U.S.C. 1414(d)(1)(A) and (d)(6))</i></p> <p>Sec. 300.321 IEP Team.</p> <p>(a) General. The public agency must ensure that the IEP Team for each child with a disability includes--</p> <p>(1) The parents of the child;</p> <p>(2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);</p> <p>(3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;</p>	


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	<p>(4) A representative of the public agency who-- (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (ii) Is knowledgeable about the general education curriculum; and (iii) Is knowledgeable about the availability of resources of the public agency.</p> <p>(5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;</p> <p>(6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and</p> <p>(7) Whenever appropriate, the child with a disability.</p> <p>(b) Transition services participants. (1) In accordance with paragraph (a)(7) of this section, the public agency must invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under Sec. 300.320(b). (2) If the child does not attend the IEP Team meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered. (3) To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of paragraph (b)(1) of this section, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.</p> <p>(c) Determination of knowledge and special expertise. The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section must be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team.</p> <p>(d) Designating a public agency representative. A public agency may designate a public agency member of the IEP Team to also serve as the agency representative, if the criteria in paragraph (a)(4) of this section are satisfied.</p> <p>(e) IEP Team attendance. (1) A member of the IEP Team described in paragraphs (a)(2) through (a)(5) of this section is not required to attend an IEP Team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.</p>	

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	<p>(2) A member of the IEP Team described in paragraph (e)(1) of this section may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if--</p> <ul style="list-style-type: none"> (i) The parent, in writing, and the public agency consent to the excusal; and (ii) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting. <p>(f) Initial IEP Team meeting for child under Part C. In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.</p> <p><i>(Authority: 20 U.S.C. 1414(d)(1)(B)-(d)(1)(D))</i></p> <p>Sec. 300.322 Parent participation.</p> <ul style="list-style-type: none"> (a) Public agency responsibility--general. Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including- <ul style="list-style-type: none"> (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. (b) Information provided to parents. <ul style="list-style-type: none"> (1) The notice required under paragraph (a)(1) of this section must-- <ul style="list-style-type: none"> (i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and (ii) Inform the parents of the provisions in Sec. 300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and Sec. 300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act). (2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must-- <ul style="list-style-type: none"> (i) Indicate-- <ul style="list-style-type: none"> (A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with Sec. 300.320(b); and (B) That the agency will invite the student; and (ii) Identify any other agency that will be invited to send a representative. (c) Other methods to ensure parent participation. If neither parent can attend an IEP Team meeting, the public agency 	


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	<p>must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with Sec. 300.328 (related to alternative means of meeting participation).</p> <p>(d) Conducting an IEP Team meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as--</p> <ul style="list-style-type: none"> (1) Detailed records of telephone calls made or attempted and the results of those calls; (2) Copies of correspondence sent to the parents and any responses received; and (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits. <p>(e) Use of interpreters or other action, as appropriate. The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.</p> <p>(f) Parent copy of child's IEP. The public agency must give the parent a copy of the child's IEP at no cost to the parent.</p> <p><i>(Authority: 20 U.S.C. 1414(d)(1)(B)(i))</i></p> <p>Sec. 300.323 When IEPs must be in effect.</p> <p>(a) General. At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in Sec. 300.320.</p> <p>(b) IEP or IFSP for children aged three through five.</p> <ul style="list-style-type: none"> (1) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is-- <ul style="list-style-type: none"> (i) Consistent with State policy; and (ii) Agreed to by the agency and the child's parents. (2) In implementing the requirements of paragraph (b)(1) of this section, the public agency must-- <ul style="list-style-type: none"> (i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and (ii) If the parents choose an IFSP, obtain written informed consent from the parents. 	


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	<p>(c) Initial IEPs; provision of services. Each public agency must ensure that--</p> <ul style="list-style-type: none"> (1) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and (2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. <p>(d) Accessibility of child's IEP to teachers and others. Each public agency must ensure that--</p> <ul style="list-style-type: none"> 1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and (2) Each teacher and provider described in paragraph (d)(1) of this section is informed of-- <ul style="list-style-type: none"> (i) His or her specific responsibilities related to implementing the child's IEP; and (ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP. <p>(e) IEPs for children who transfer public agencies in the same State. If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either--</p> <ul style="list-style-type: none"> (1) Adopts the child's IEP from the previous public agency; or (2) Develops, adopts, and implements a new IEP that meets the applicable requirements in Sections 300.320 through 300.324. <p>(f) IEPs for children who transfer from another State. If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency--</p> <ul style="list-style-type: none"> (1) Conducts an evaluation pursuant to Sections 300.304 through 300.306 (if determined to be necessary by the new public agency); and (2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in Sections 300.320 through 300.324. <p>(g) Transmittal of records. To facilitate the transition for a child described in paragraphs (e) and (f) of this section--</p> <ul style="list-style-type: none"> (1) The new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's 	

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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to 34 CFR 99.31(a)(2); and</p> <p>(2) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency.</p> <p><i>(Authority: 20 U.S.C. 1414(d)(2)(A)-(C))</i></p> <p>Development of IEP</p> <p>Sec. 300.324 Development, review, and revision of IEP.</p> <p>(a) Development of IEP--</p> <p>(1) General. In developing each child's IEP, the IEP Team must consider--</p> <ul style="list-style-type: none"> (i) The strengths of the child; (ii) The concerns of the parents for enhancing the education of their child; (iii) The results of the initial or most recent evaluation of the child; and (iv) The academic, developmental, and functional needs of the child. <p>(2) Consideration of special factors. The IEP Team must--</p> <ul style="list-style-type: none"> (i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior; (ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP; (iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child; (iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and 	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>(v) Consider whether the child needs assistive technology devices and services.</p> <p>(3) Requirement with respect to regular education teacher. A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of--</p> <p>(i) Appropriate positive behavioral interventions and supports and other strategies for the child; and</p> <p>(ii) Supplementary aids and services, program modifications, and support for school personnel consistent with Sec. 300.320(a)(4).</p> <p>(4) Agreement.</p> <p>(i) In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.</p> <p>(ii) If changes are made to the child's IEP in accordance with paragraph (a)(4)(i) of this section, the public agency must ensure that the child's IEP Team is informed of those changes.</p> <p>(5) Consolidation of IEP Team meetings. To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.</p> <p>(6) Amendments. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in paragraph (a)(4) of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.</p> <p>(b) Review and revision of IEPs--</p> <p>(1) General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team--</p> <p>(i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and</p> <p>(ii) Revises the IEP, as appropriate, to address--</p> <p>(A) Any lack of expected progress toward the annual goals described in Sec. 300.320(a)(2), and in the general education curriculum, if appropriate;</p> <p>(B) The results of any reevaluation conducted under Sec. 300.303;</p> <p>(C) Information about the child provided to, or by, the parents, as described under Sec. 300.305(a)(2);</p> <p>(D) The child's anticipated needs; or</p>	

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<p>Related Assurances</p>	<p>Related Statutory or Regulatory Provisions</p>	<p>✓ Consistent State policies and procedures are in place.</p>
	<p>(E) Other matters.</p> <p>(2) Consideration of special factors. In conducting a review of the child's IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section.</p> <p>(3) Requirement with respect to regular education teacher. A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph (a)(3) of this section, participate in the review and revision of the IEP of the child.</p> <p>(c) Failure to meet transition objectives--</p> <p>(1) Participating agency failure. If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with Sec. 300.320(b), the public agency must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.</p> <p>(2) Construction. Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.</p> <p>(d) Children with disabilities in adult prisons--</p> <p>(1) Requirements that do not apply. The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:</p> <p>(i) The requirements contained in section 612(a)(16) of the Act and Sec. 300.320(a)(6) (relating to participation of children with disabilities in general assessments).</p> <p>(ii) The requirements in Sec. 300.320(b) (relating to transition planning and transition services) do not apply with respect to the children whose eligibility under Part B of the Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.</p> <p>(2) Modifications of IEP or placement.</p> <p>(i) Subject to paragraph (d)(2)(ii) of this section, the IEP Team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.</p> <p>(ii) The requirements of Sections 300.320 (relating to IEPs), and 300.112 (relating to LRE), do not apply with respect to the modifications described in paragraph (d)(2)(i) of this section.</p>	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p><i>(Authority: 20 U.S.C. 1412(a)(1), 1412(a)(12)(A)(i), 1414(d)(3), (4)(B), and (7); and 1414(e))</i></p> <p>Sec. 300.325 Private school placements by public agencies.</p> <p>(a) Developing IEPs.</p> <p>(1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child in accordance with Sections 300.320 and 300.324.</p> <p>(2) The agency must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.</p> <p>(b) Reviewing and revising IEPs.</p> <p>(1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.</p> <p>(2) If the private school or facility initiates and conducts these meetings, the public agency must ensure that the parents and an agency representative--</p> <p>(i) Are involved in any decision about the child's IEP; and</p> <p>(ii) Agree to any proposed changes in the IEP before those changes are implemented.</p> <p>(c) Responsibility. Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA.</p> <p><i>(Authority: 20 U.S.C. 1412(a)(10)(B))</i></p>	
5	<p>Sec. 300.114 LRE requirements.</p> <p>(a) General.</p> <p>(1) Except as provided in Sec. 300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and Sections 300.115 through 300.120.</p> <p>(2) Each public agency must ensure that--</p> <p>(i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and</p> <p>(ii) Special classes, separate schooling, or other removal of children with disabilities from the regular</p>	


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<p>Related Assurances</p>	<p>Related Statutory or Regulatory Provisions</p>	<p style="text-align: center;">✓ Consistent State policies and procedures are in place.</p>
	<p style="text-align: center;">educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.</p> <p>(b) Additional requirement--State funding mechanism--</p> <p>(1) General.</p> <p style="padding-left: 20px;">(i) A State funding mechanism must not result in placements that violate the requirements of paragraph (a) of this section; and</p> <p style="padding-left: 20px;">(ii) A State must not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP.</p> <p>(2) Assurance. If the State does not have policies and procedures to ensure compliance with paragraph (b)(1) of this section, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate that paragraph.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i></p> <p><i>(Authority: 20 U.S.C. 1412(a)(5))</i></p> <p>Sec. 300.115 Continuum of alternative placements.</p> <p>(a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.</p> <p>(b) The continuum required in paragraph (a) of this section must--</p> <p style="padding-left: 20px;">(1) include the alternative placements listed in the definition of special education under Sec. 300.38 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and</p> <p style="padding-left: 20px;">(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i></p> <p><i>(Authority: 20 U.S.C. 1412(a)(5))</i></p> <p>Sec. 300.116 Placements.</p>	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that--</p> <ul style="list-style-type: none"> (a) The placement decision-- <ul style="list-style-type: none"> (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and (2) Is made in conformity with the LRE provisions of this subpart, including Sections 300.114 through 300.118; (b) The child's placement-- <ul style="list-style-type: none"> (1) Is determined at least annually; (2) Is based on the child's IEP; and (3) Is as close as possible to the child's home; (c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled; (d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and (e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i> <i>(Authority: 20 U.S.C. 1412(a)(5))</i></p> <p>Sec. 300.117 Nonacademic settings.</p> <p>In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in Sec. 300.107, each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i> <i>(Authority: 20 U.S.C. 1412(a)(5))</i></p>	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>Sec. 300.118 Children in public or private institutions.</p> <p>Except as provided in Sec. 300.149(d) (regarding agency responsibility for general supervision for some individuals in adult prisons), an SEA must ensure that Sec. 300.114 is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures).</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i></p> <p><i>(Authority: 20 U.S.C. 1412(a)(5))</i></p> <p>Sec. 300.119 Technical assistance and training activities.</p> <p>Each SEA must carry out activities to ensure that teachers and administrators in all public agencies--</p> <ul style="list-style-type: none"> (a) Are fully informed about their responsibilities for implementing Sec. 300.114; and (b) Are provided with technical assistance and training necessary to assist them in this effort. <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i></p> <p><i>(Authority: 20 U.S.C. 1412(a)(5))</i></p> <p>Sec. 300.120 Monitoring activities.</p> <ul style="list-style-type: none"> (a) The SEA must carry out activities to ensure that Sec. 300.114 is implemented by each public agency. (b) If there is evidence that a public agency makes placements that are inconsistent with Sec. 300.114, the SEA must-- <ul style="list-style-type: none"> (1) Review the public agency's justification for its actions; and (2) Assist in planning and implementing any necessary corrective action. <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i></p> <p><i>(Authority: 20 U.S.C. 1412(a)(5))</i></p>	
6	<p>Sec. 300.121 Procedural safeguards.</p> <ul style="list-style-type: none"> (a) General. The State must have procedural safeguards in effect to ensure that each public agency in the State meets the requirements of Sections 300.500 through 300.536. (b) Procedural safeguards identified. Children with disabilities and their parents must be afforded the procedural 	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>safeguards identified in paragraph (a) of this section.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i></p> <p><i>(Authority: 20 U.S.C. 1412(a)(6)(A))</i></p> <p>Sec. 300.500 Responsibility of SEA and other public agencies.</p> <p>Each SEA must ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of Sections 300.500 through 300.536.</p> <p><i>(Authority: 20 U.S.C. 1415(a))</i></p> <p>Sec. 300.501 Opportunity to examine records; parent participation in meetings.</p> <p>(a) Opportunity to examine records. The parents of a child with a disability must be afforded, in accordance with the procedures of Sections 300.613 through 300.621, an opportunity to inspect and review all education records with respect to--</p> <ol style="list-style-type: none"> (1) The identification, evaluation, and educational placement of the child; and (2) The provision of FAPE to the child. <p>(b) Parent participation in meetings. (1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to--</p> <ol style="list-style-type: none"> (i) The identification, evaluation, and educational placement of the child; and (ii) The provision of FAPE to the child. <p>(2) Each public agency must provide notice consistent with Sec. 300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.</p> <p>(3) A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.</p> <p>(c) Parent involvement in placement decisions.</p> <ol style="list-style-type: none"> (1) Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child. 	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>(2) In implementing the requirements of paragraph (c)(1) of this section, the public agency must use procedures consistent with the procedures described in Sec. 300.322(a) through (b)(1).</p> <p>(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.</p> <p>(4) A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.</p> <p><i>(Authority: 20 U.S.C. 1414(e), 1415(b)(1))</i></p> <p>Sec. 300.502 Independent educational evaluation.</p> <p>(a) General.</p> <p>(1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.</p> <p>(2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.</p> <p>(3) For the purposes of this subpart--</p> <p>(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and</p> <p>(ii) Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with Sec. 300.103.</p> <p>(b) Parent right to evaluation at public expense.</p> <p>(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.</p> <p>(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either--</p> <p>(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or</p> <p>(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to Sections 300.507 through 300.513 that the evaluation obtained</p>	

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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>by the parent did not meet agency criteria.</p> <ul style="list-style-type: none"> (3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense. (4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation. (5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees. <p>(c) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation--</p> <ul style="list-style-type: none"> (1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and (2) May be presented by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child. <p>(d) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.</p> <p>(e) Agency criteria.</p> <ul style="list-style-type: none"> (1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. (2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. <p><i>(Authority: 20 U.S.C. 1415(b)(1) and (d)(2)(A))</i></p> <p>Sec. 300.503 Prior notice by the public agency; content of notice.</p> <ul style="list-style-type: none"> (a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency-- 	


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	<p>(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or</p> <p>(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.</p> <p>(b) Content of notice. The notice required under paragraph (a) of this section must include--</p> <p>(1) A description of the action proposed or refused by the agency;</p> <p>(2) An explanation of why the agency proposes or refuses to take the action;</p> <p>(3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;</p> <p>(4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;</p> <p>(5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;</p> <p>(6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and</p> <p>(7) A description of other factors that are relevant to the agency's proposal or refusal.</p> <p>(c) Notice in understandable language.</p> <p>(1) The notice required under paragraph (a) of this section must be--</p> <p>(i) Written in language understandable to the general public; and</p> <p>(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.</p> <p>(2) If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure--</p> <p>(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;</p> <p>(ii) That the parent understands the content of the notice; and</p> <p>(iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.</p> <p><i>(Authority: 20 U.S.C. 1415(b)(3) and (4), 1415(c)(1), 1414(b)(1))</i></p> <p>Sec. 300.504 Procedural safeguards notice.</p>	


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<p>Related Assurances</p>	<p>Related Statutory or Regulatory Provisions</p>	<p>✓ Consistent State policies and procedures are in place.</p>
	<p>(a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents--</p> <ul style="list-style-type: none"> (1) Upon initial referral or parent request for evaluation; (2) Upon receipt of the first State complaint under Sections 300.151 through 300.153 and upon receipt of the first due process complaint under Sec. 300.507 in a school year; (3) In accordance with the discipline procedures in Sec. 300.530(h); and (4) Upon request by a parent. <p>(b) Internet Web site. A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.</p> <p>(c) Contents. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under Sec. 300.148, Sections 300.151 through 300.153, Sec. 300.300, Sections 300.502 through 300.503, Sections 300.505 through 300.518, Sec. 300.520, Sections 300.530 through 300.536 and Sections 300.610 through 300.625 relating to--</p> <ul style="list-style-type: none"> (1) Independent educational evaluations; (2) Prior written notice; (3) Parental consent; (4) Access to education records; (5) Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including-- <ul style="list-style-type: none"> (i) The time period in which to file a complaint; (ii) The opportunity for the agency to resolve the complaint; and (iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures; (6) The availability of mediation; (7) The child's placement during the pendency of any due process complaint; (8) Procedures for students who are subject to placement in an interim alternative educational setting; (9) Requirements for unilateral placement by parents of children in private schools at public expense; (10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations; (11) State-level appeals (if applicable in the State); 	

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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>(12) Civil actions, including the time period in which to file those actions; and (13) Attorneys' fees. (d) Notice in understandable language. The notice required under paragraph (a) of this section must meet the requirements of Sec. 300.503(c).</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0600)</i> <i>(Authority: 20 U.S.C. 1415(d))</i></p> <p>Sec. 300.505 Electronic mail.</p> <p>A parent of a child with a disability may elect to receive notices required by Sections 300.503, 300.504, and 300.508 by an electronic mail communication, if the public agency makes that option available.</p> <p><i>(Authority: 20 U.S.C. 1415(n))</i></p> <p>Sec. 300.506 Mediation.</p> <p>(a) General. Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.</p> <p>(b) Requirements. The procedures must meet the following requirements:</p> <p>(1) The procedures must ensure that the mediation process--</p> <ul style="list-style-type: none"> (i) Is voluntary on the part of the parties; (ii) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques. <p>(2) A public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party--</p> <ul style="list-style-type: none"> (i) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act; and (ii) Who would explain the benefits of, and encourage the use of, the mediation process to the parents. 	


Technical Assistance Checklist¹ – Eligibility Requirements found in 34 CFR Part 300

Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>(3)(i) The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.</p> <p>(ii) The SEA must select mediators on a random, rotational, or other impartial basis.</p> <p>(4) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section.</p> <p>(5) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.</p> <p>(6) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that--</p> <p>(i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and</p> <p>(ii) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.</p> <p>(7) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part.</p> <p>(c) Impartiality of mediator.</p> <p>(1) An individual who serves as a mediator under this part--</p> <p>(i) May not be an employee of the SEA or the LEA that is involved in the education or care of the child; and</p> <p>(ii) Must not have a personal or professional interest that conflicts with the person's objectivity.</p> <p>(2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under Sec. 300.228 solely because he or she is paid by the agency to serve as a mediator.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0600)</i></p> <p><i>(Authority: 20 U.S.C. 1415(e))</i></p> <p>Sec. 300.507 Filing a due process complaint.</p> <p>(a) General.</p> <p>(1) A parent or a public agency may file a due process complaint on any of the matters described in Sec.</p>	


Technical Assistance Checklist¹ – Eligibility Requirements found in 34 CFR Part 300

<p>Related Assurances</p>	<p>Related Statutory or Regulatory Provisions</p>	<p style="text-align: center;">✓ Consistent State policies and procedures are in place.</p>
	<p>300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).</p> <p>(2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in Sec. 300.511(f) apply to the timeline in this section.</p> <p>(b) Information for parents. The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if--</p> <p>(1) The parent requests the information; or</p> <p>(2) The parent or the agency files a due process complaint under this section.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0600)</i></p> <p><i>(Authority: 20 U.S.C. 1415(b)(6))</i></p> <p>Sec. 300.508 Due process complaint.</p> <p>(a) General.</p> <p>(1) The public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).</p> <p>(2) The party filing a due process complaint must forward a copy of the due process complaint to the SEA.</p> <p>(b) Content of complaint. The due process complaint required in paragraph (a)(1) of this section must include--</p> <p>(1) The name of the child;</p> <p>(2) The address of the residence of the child;</p> <p>(3) The name of the school the child is attending;</p> <p>(4) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;</p> <p>(5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and</p> <p>(6) A proposed resolution of the problem to the extent known and available to the party at the time.</p> <p>(c) Notice required before a hearing on a due process complaint. A party may not have a hearing on a due process</p>	


Technical Assistance Checklist¹ – Eligibility Requirements found in 34 CFR Part 300

Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.</p> <p>(d) Sufficiency of complaint.</p> <p>(1) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section.</p> <p>(2) Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (b) of this section, and must immediately notify the parties in writing of that determination.</p> <p>(3) A party may amend its due process complaint only if--</p> <p>(i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to Sec. 300.510; or</p> <p>(ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.</p> <p>(4) If a party files an amended due process complaint, the timelines for the resolution meeting in Sec. 300.510(a) and the time period to resolve in Sec. 300.510(b) begin again with the filing of the amended due process complaint.</p> <p>(e) LEA response to a due process complaint.</p> <p>(1) If the LEA has not sent a prior written notice under Sec. 300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within 10 days of receiving the due process complaint, send to the parent a response that includes--</p> <p>(i) An explanation of why the agency proposed or refused to take the action raised in the due process complaint;</p> <p>(ii) A description of other options that the IEP Team considered and the reasons why those options were rejected;</p> <p>(iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and</p> <p>(iv) A description of the other factors that are relevant to the agency's proposed or refused action.</p> <p>(2) A response by an LEA under paragraph (e)(1) of this section shall not be construed to preclude the LEA from</p>	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>asserting that the parent's due process complaint was insufficient, where appropriate.</p> <p>(f) Other party response to a due process complaint. Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.</p> <p><i>(Authority: 20 U.S.C. 1415(b)(7), 1415(c)(2))</i></p> <p>Sec. 300.509 Model forms.</p> <p>(a) Each SEA must develop model forms to assist parents and public agencies in filing a due process complaint in accordance with Sections 300.507(a) and 300.508(a) through (c) and to assist parents and other parties in filing a State complaint under Sections 300.151 through 300.153. However, the SEA or LEA may not require the use of the model forms.</p> <p>(b) Parents, public agencies, and other parties may use the appropriate model form described in paragraph (a) of this section, or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in Sec. 300.508(b) for filing a due process complaint, or the requirements in Sec. 300.153(b) for filing a State complaint.</p> <p><i>(Authority: 20 U.S.C. 1415(b)(8))</i></p> <p>Sec. 300.510 Resolution process.</p> <p>(a) Resolution meeting.</p> <p>(1) Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under Sec. 300.511, the LEA must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that--</p> <p>(i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and</p> <p>(ii) May not include an attorney of the LEA unless the parent is accompanied by an attorney.</p> <p>(2) The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.</p> <p>(3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if--</p>	

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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	(i) The parent and the LEA agree in writing to waive the meeting; or (ii) The parent and the LEA agree to use the mediation process described in Sec. 300.506. (4) The parent and the LEA determine the relevant members of the IEP Team to attend the meeting. (b) Resolution period. (1) If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur. (2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under Sec. 300.515 begins at the expiration of this 30-day period. (3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held. (4) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in Sec. 300.322(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint. (5) If the LEA fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline. (c) Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing in Sec. 300.515(a) starts the day after one of the following events: (1) Both parties agree in writing to waive the resolution meeting; (2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible; 3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process. (d) Written settlement agreement. If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is-- (1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and (2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the SEA, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements, pursuant to Sec. 300.537.	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>(e) Agreement review period. If the parties execute an agreement pursuant to paragraph (c) of this section, a party may void the agreement within 3 business days of the agreement's execution.</p> <p><i>(Authority: 20 U.S.C. 1415(f)(1)(B))</i></p> <p>Sec. 300.511 Impartial due process hearing.</p> <p>(a) General. Whenever a due process complaint is received under Sec. 300.507 or Sec. 300.532, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in Sections 300.507, 300.508, and 300.510.</p> <p>(b) Agency responsible for conducting the due process hearing. The hearing described in paragraph (a) of this section must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA.</p> <p>(c) Impartial hearing officer.</p> <p>(1) At a minimum, a hearing officer--</p> <p>(i) Must not be--</p> <p>(A) An employee of the SEA or the LEA that is involved in the education or care of the child; or</p> <p>(B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;</p> <p>(ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;</p> <p>(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and</p> <p>(iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.</p> <p>(2) A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.</p> <p>(3) Each public agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.</p> <p>(d) Subject matter of due process hearings. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under Sec. 300.508(b), unless the other party agrees otherwise.</p> <p>(e) Timeline for requesting a hearing. A parent or agency must request an impartial hearing on their due process</p>	

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<p>Related Assurances</p>	<p>Related Statutory or Regulatory Provisions</p>	<p style="text-align: center;">✓ Consistent State policies and procedures are in place.</p>
	<p>complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.</p> <p>(f) Exceptions to the timeline. The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to--</p> <ol style="list-style-type: none"> (1) Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or (2) The LEA's withholding of information from the parent that was required under this part to be provided to the parent. <p><i>(Approved by the Office of Management and Budget under control number 1820-0600)</i> <i>(Authority: 20 U.S.C. 1415(f)(1)(A), 1415(f)(3)(A)-(D))</i></p> <p>Sec. 300.512 Hearing rights.</p> <p>(a) General. Any party to a hearing conducted pursuant to Sections 300.507 through 300.513 or Sections 300.530 through 300.534, or an appeal conducted pursuant to Sec. 300.514, has the right to--</p> <ol style="list-style-type: none"> (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, except that whether parties have the right to be represented by non-attorneys at due process hearings is determined under State law; (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses; (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing; (4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and (5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions. <p>(b) Additional disclosure of information.</p> <ol style="list-style-type: none"> (1) At least five business days prior to a hearing conducted pursuant to Sec. 300.511(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. (2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party. <p>(c) Parental rights at hearings. Parents involved in hearings must be given the right to--</p>	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<ol style="list-style-type: none"> (1) Have the child who is the subject of the hearing present; (2) Open the hearing to the public; and (3) Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents. <p><i>(Authority: 20 U.S.C. 1415(f)(2), 1415(h))</i></p> <p>Sec. 300.513 Hearing decisions.</p> <ol style="list-style-type: none"> (a) Decision of hearing officer on the provision of FAPE. <ol style="list-style-type: none"> (1) Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether a child received FAPE must be based on substantive grounds. (2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies-- <ol style="list-style-type: none"> (i) Impeded the child's right to a FAPE; (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) Caused a deprivation of educational benefit. (3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under Sections 300.500 through 300.536. (b) Construction clause. Nothing in Sections 300.507 through 300.513 shall be construed to affect the right of a parent to file an appeal of the due process hearing decision with the SEA under Sec. 300.514(b), if a State level appeal is available. (c) Separate request for a due process hearing. Nothing in Sections 300.500 through 300.536 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed. (d) Findings and decision to advisory panel and general public. The public agency, after deleting any personally identifiable information, must-- <ol style="list-style-type: none"> (1) Transmit the findings and decisions referred to in Sec. 300.512(a)(5) to the State advisory panel established under Sec. 300.167; and (2) Make those findings and decisions available to the public. <p><i>(Authority: 20 U.S.C. 1415(f)(3)(E) and (F), 1415(h)(4), 1415(o))</i></p>	


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<p>Related Assurances</p>	<p>Related Statutory or Regulatory Provisions</p>	<p>✓ Consistent State policies and procedures are in place.</p>
	<p>Sec. 300.514 Finality of decision; appeal; impartial review.</p> <p>(a) Finality of hearing decision. A decision made in a hearing conducted pursuant to Sections 300.507 through 300.513 or Sections 300.530 through 300.534 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and Sec. 300.516.</p> <p>(b) Appeal of decisions; impartial review.</p> <p>(1) If the hearing required by Sec. 300.511 is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.</p> <p>(2) If there is an appeal, the SEA must conduct an impartial review of the findings and decision appealed. The official conducting the review must--</p> <p>(i) Examine the entire hearing record;</p> <p>(ii) Ensure that the procedures at the hearing were consistent with the requirements of due process;</p> <p>(iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in Sec. 300.512 apply;</p> <p>(iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;</p> <p>(v) Make an independent decision on completion of the review; and</p> <p>(vi) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.</p> <p>(c) Findings and decision to advisory panel and general public. The SEA, after deleting any personally identifiable information, must--</p> <p>(1) Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under Sec. 300.167; and</p> <p>(2) Make those findings and decisions available to the public.</p> <p>(d) Finality of review decision. The decision made by the reviewing official is final unless a party brings a civil action under Sec. 300.516.</p> <p><i>(Authority: 20 U.S.C. 1415(g) and (h)(4), 1415(i)(1)(A), 1415(i)(2))</i></p> <p>Sec. 300.515 Timelines and convenience of hearings and reviews.</p> <p>(a) The public agency must ensure that not later than 45 days after the expiration of the 30 day period under Sec. 300.510(b), or the adjusted time periods described in Sec. 300.510(c)--</p>	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>(1) A final decision is reached in the hearing; and (2) A copy of the decision is mailed to each of the parties.</p> <p>(b) The SEA must ensure that not later than 30 days after the receipt of a request for a review-- (1) A final decision is reached in the review; and (2) A copy of the decision is mailed to each of the parties.</p> <p>(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.</p> <p>(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.</p> <p><i>(Authority: 20 U.S.C. 1415(f)(1)(B)(ii), 1415(g), 1415(i)(1))</i></p> <p>Sec. 300.516 Civil action.</p> <p>(a) General. Any party aggrieved by the findings and decision made under Sections 300.507 through 300.513 or Sections 300.530 through 300.534 who does not have the right to an appeal under Sec. 300.514(b), and any party aggrieved by the findings and decision under Sec. 300.514(b), has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under Sec. 300.507 or Sections 300.530 through 300.532. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.</p> <p>(b) Time limitation. The party bringing the action shall have 90 days from the date of the decision of the hearing officer or, if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by that State law.</p> <p>(c) Additional requirements. In any action brought under paragraph (a) of this section, the court-- (1) Receives the records of the administrative proceedings; (2) Hears additional evidence at the request of a party; and (3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.</p> <p>(d) Jurisdiction of district courts. The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.</p> <p>(e) Rule of construction. Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking</p>	

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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>relief that is also available under section 615 of the Act, the procedures under Sections 300.507 and 300.514 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.</p> <p><i>(Authority: 20 U.S.C. 1415(i)(2) and (3)(A), 1415(l))</i></p> <p>Sec. 300.517 Attorneys' fees.</p> <p>(a) In general.</p> <p>(1) In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to--</p> <p>(i) The prevailing party who is the parent of a child with a disability;</p> <p>(ii) To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or</p> <p>(iii) To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.</p> <p>(2) Nothing in this subsection shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.</p> <p>(b) Prohibition on use of funds.</p> <p>(1) Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 615 of the Act and subpart E of this part.</p> <p>(2) Paragraph (b)(1) of this section does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under section 615 of the Act.</p> <p>(c) Award of fees. A court awards reasonable attorneys' fees under section 615(i)(3) of the Act consistent with the following:</p> <p>(1) Fees awarded under section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.</p> <p>(2)(i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a</p>	

Technical Assistance Checklist¹ – Eligibility Requirements found in 34 CFR Part 300

Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>parent if--</p> <ul style="list-style-type: none"> (A) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins; (B) The offer is not accepted within 10 days; and (C) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement. <ul style="list-style-type: none"> (ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation described in Sec. 300.506. (iii) A meeting conducted pursuant to Sec. 300.510 shall not be considered-- <ul style="list-style-type: none"> (A) A meeting convened as a result of an administrative hearing or judicial action; or (B) An administrative hearing or judicial action for purposes of this section. <p>(3) Notwithstanding paragraph (c)(2) of this section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.</p> <p>(4) Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the Act, if the court finds that--</p> <ul style="list-style-type: none"> (i) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy; (ii) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience; (iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or (iv) The attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with Sec. 300.508. <p>(5) The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act.</p> <p><i>(Authority: 20 U.S.C. 1415(i)(3)(B)-(G))</i></p>	


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<p>Related Assurances</p>	<p>Related Statutory or Regulatory Provisions</p>	<p style="text-align: center;">✓ Consistent State policies and procedures are in place.</p>
	<p>Sec. 300.518 Child's status during proceedings.</p> <ul style="list-style-type: none"> (a) Except as provided in Sec. 300.533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under Sec. 300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement. (b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings. (c) If the complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under Sec. 300.300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency. (d) If the hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of paragraph (a) of this section. <p><i>(Authority: 20 U.S.C. 1415(j))</i></p> <p>Sec. 300.519 Surrogate parents.</p> <ul style="list-style-type: none"> (a) General. Each public agency must ensure that the rights of a child are protected when-- <ul style="list-style-type: none"> (1) No parent (as defined in Sec. 300.30) can be identified; (2) The public agency, after reasonable efforts, cannot locate a parent; (3) The child is a ward of the State under the laws of that State; or (4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)). (b) Duties of public agency. The duties of a public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method-- <ul style="list-style-type: none"> (1) For determining whether a child needs a surrogate parent; and (2) For assigning a surrogate parent to the child. (c) Wards of the State. In the case of a child who is a ward of the State, the surrogate parent alternatively may be 	


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<p>Related Assurances</p>	<p>Related Statutory or Regulatory Provisions</p>	<p style="text-align: center;">✓ Consistent State policies and procedures are in place.</p>
	<p>appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.</p> <p>(d) Criteria for selection of surrogate parents.</p> <p>(1) The public agency may select a surrogate parent in any way permitted under State law.</p> <p>(2) Public agencies must ensure that a person selected as a surrogate parent--</p> <p>(i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;</p> <p>(ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and</p> <p>(iii) Has knowledge and skills that ensure adequate representation of the child.</p> <p>(e) Non-employee requirement; compensation. A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.</p> <p>(f) Unaccompanied homeless youth. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to paragraph (d)(2)(i) of this section, until a surrogate parent can be appointed that meets all of the requirements of paragraph (d) of this section.</p> <p>(g) Surrogate parent responsibilities. The surrogate parent may represent the child in all matters relating to--</p> <p>(1) The identification, evaluation, and educational placement of the child; and</p> <p>(2) The provision of FAPE to the child.</p> <p>(h) SEA responsibility. The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.</p> <p><i>(Authority: 20 U.S.C. 1415(b)(2))</i></p> <p>Sec. 300.520 Transfer of parental rights at age of majority.</p> <p>(a) General. A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law)--</p> <p>(1)(i) The public agency must provide any notice required by this part to both the child and the parents; and</p> <p>(ii) All rights accorded to parents under Part B of the Act transfer to the child;</p> <p>(2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or</p>	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>juvenile, State or local correctional institution; and</p> <p>(3) Whenever a State provides for the transfer of rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency must notify the child and the parents of the transfer of rights.</p> <p>(b) Special rule. A State must establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the Act if, under State law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program.</p> <p><i>(Authority: 20 U.S.C. 1415(m))</i></p> <p>Discipline Procedures</p> <p>Sec. 300.530 Authority of school personnel.</p> <p>(a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.</p> <p>(b) General.</p> <p>(1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under Sec. 300.536).</p> <p>(2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.</p> <p>(c) Additional authority. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.</p>	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>(d) Services.</p> <p>(1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must--</p> <p>(i) Continue to receive educational services, as provided in Sec. 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and</p> <p>(ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.</p> <p>(2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.</p> <p>(3) A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.</p> <p>(4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under Sec. 300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in Sec. 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.</p> <p>(5) If the removal is a change of placement under Sec. 300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section.</p> <p>(e) Manifestation determination.</p> <p>(1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--</p> <p>(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or</p> <p>(ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.</p> <p>(2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of</p>	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>this section was met.</p> <p>(3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.</p> <p>(f) Determination that behavior was a manifestation. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must--</p> <p>(1) Either--</p> <p>(i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or</p> <p>(ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and</p> <p>(2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.</p> <p>(g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child--</p> <p>(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;</p> <p>(2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or</p> <p>(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.</p> <p>(h) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in Sec. 300.504.</p> <p>(i) Definitions. For purposes of this section, the following definitions apply:</p> <p>(1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).</p> <p>(2) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or</p>	

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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>used under any other authority under that Act or under any other provision of Federal law.</p> <p>(3) Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.</p> <p>(4) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.</p> <p><i>(Authority: 20 U.S.C. 1415(k)(1) and (7))</i></p> <p>Sec. 300.531 Determination of setting.</p> <p>The child's IEP Team determines the interim alternative educational setting for services under Sec. 300.530(c), (d)(5), and (g).</p> <p><i>(Authority: 20 U.S.C. 1415(k)(2))</i></p> <p>Sec. 300.532 Appeal.</p> <p>(a) General. The parent of a child with a disability who disagrees with any decision regarding placement under Sections 300.530 and 300.531, or the manifestation determination under Sec. 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to Sections 300.507 and 300.508(a) and (b).</p> <p>(b) Authority of hearing officer.</p> <p>(1) A hearing officer under Sec. 300.511 hears, and makes a determination regarding an appeal under paragraph (a) of this section.</p> <p>(2) In making the determination under paragraph (b)(1) of this section, the hearing officer may--</p> <p>(i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of Sec. 300.530 or that the child's behavior was a manifestation of the child's disability; or</p> <p>(ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.</p> <p>(3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.</p> <p>(c) Expedited due process hearing.</p>	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>(1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of Sections 300.507 and 300.508(a) through (c) and Sections 300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section.</p> <p>(2) The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.</p> <p>(3) Unless the parents and LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in Sec. 300.506--</p> <p>(i) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and</p> <p>(ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.</p> <p>(4) A State may establish different State-imposed procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in paragraph (c)(3) of this section, the State must ensure that the requirements in Sections 300.510 through 300.514 are met.</p> <p>(5) The decisions on expedited due process hearings are appealable consistent with Sec. 300.514.</p> <p><i>(Authority: 20 U.S.C. 1415(k)(3) and (4)(B), 1415(f)(1)(A))</i></p> <p>Sec. 300.533 Placement during appeals.</p> <p>When an appeal under Sec. 300.532 has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in Sec. 300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.</p> <p><i>(Authority: 20 U.S.C. 1415(k)(4)(A))</i></p> <p>Sec. 300.534 Protections for children not determined eligible for special education and related services.</p> <p>(a) General. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with paragraph (b) of this section)</p>	


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<p>Related Assurances</p>	<p>Related Statutory or Regulatory Provisions</p>	<p>✓ Consistent State policies and procedures are in place.</p>
	<p>that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.</p> <p>(b) Basis of knowledge. A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred--</p> <p>(1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;</p> <p>(2) The parent of the child requested an evaluation of the child pursuant to Sections 300.300 through 300.311; or</p> <p>(3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.</p> <p>(c) Exception. A public agency would not be deemed to have knowledge under paragraph (b) of this section if--</p> <p>(1) The parent of the child--</p> <p>(i) Has not allowed an evaluation of the child pursuant to Sections 300.300 through 300.311; or</p> <p>(ii) Has refused services under this part; or</p> <p>(2) The child has been evaluated in accordance with Sections 300.300 through 300.311 and determined to not be a child with a disability under this part.</p> <p>(d) Conditions that apply if no basis of knowledge.</p> <p>(1) If a public agency does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with paragraph (d)(2) of this section.</p> <p>(2)(i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under Sec. 300.530, the evaluation must be conducted in an expedited manner.</p> <p>(ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.</p> <p>(iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of Sections 300.530 through 300.536 and section 612(a)(1)(A) of the Act.</p> <p><i>(Authority: 20 U.S.C. 1415(k)(5))</i></p>	

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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>Sec. 300.535 Referral to and action by law enforcement and judicial authorities.</p> <p>(a) Rule of construction. Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.</p> <p>(b) Transmittal of records.</p> <p>(1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.</p> <p>(2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.</p> <p><i>(Authority: 20 U.S.C. 1415(k)(6))</i></p> <p>Sec. 300.536 Change of placement because of disciplinary removals.</p> <p>(a) For purposes of removals of a child with a disability from the child's current educational placement under Sections 300.530 through 300.535, a change of placement occurs if--</p> <p>(1) The removal is for more than 10 consecutive school days; or</p> <p>(2) The child has been subjected to a series of removals that constitute a pattern--</p> <p>(i) Because the series of removals total more than 10 school days in a school year;</p> <p>(ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and</p> <p>(iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.</p> <p>(b)(1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.</p> <p>(2) This determination is subject to review through due process and judicial proceedings.</p> <p><i>(Authority: 20 U.S.C. 1415(k))</i></p>	
7	Sec. 300.122 Evaluation.	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>Children with disabilities must be evaluated in accordance with Sections 300.300 through 300.311 of subpart D of this part. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(7))</p> <p>Sec. 300.300 Parental consent.</p> <p>a) Parental consent for initial evaluation.</p> <p>(1)(i) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under Sec. 300.8 must, after providing notice consistent with Sections 300.503 and 300.504, obtain informed consent, consistent with Sec. 300.9, from the parent of the child before conducting the evaluation.</p> <p>(ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.</p> <p>(iii) The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.</p> <p>(2) For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if--</p> <p>(i) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;</p> <p>(ii) The rights of the parents of the child have been terminated in accordance with State law; or</p> <p>(iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.</p> <p>(3)(i) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (a)(1) of this section, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E of this part (including the mediation procedures under Sec. 300.506 or the due process procedures under Sections 300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent.</p> <p>(ii) The public agency does not violate its obligation under Sec. 300.111 and Sections 300.301 through 300.311 if it declines to pursue the evaluation.</p>	


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<p>Related Assurances</p>	<p>Related Statutory or Regulatory Provisions</p>	<p style="text-align: center;">✓ Consistent State policies and procedures are in place.</p>
	<p>(b) Parental consent for services.</p> <p>(1) A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.</p> <p>(2) The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.</p> <p>(3) If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency--</p> <p style="padding-left: 20px;">(i) May not use the procedures in subpart E of this part (including the mediation procedures under Section 300.506 or the due process procedures under Sections 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;</p> <p style="padding-left: 20px;">(ii) Will not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide the child with the special education and related services for which the public agency requests consent; and</p> <p style="padding-left: 20px;">(iii) Is not required to convene an IEP Team meeting or develop an IEP under Sections 300.320 and 300.324 for the child for the special education and related services for which the public agency requests such consent.</p> <p>(4) If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency--</p> <p style="padding-left: 20px;">(i) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with Section 300.503 before ceasing the provision of special education and related services;</p> <p style="padding-left: 20px;">(ii) May not use the procedures in subpart E of this part (including the mediation procedures under Section 300.506 or the due process procedures under Sections 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;</p> <p style="padding-left: 20px;">(iii) Will not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide the child with the special education and related services for which the public agency requests consent; and</p> <p style="padding-left: 20px;">(iv) Is not required to convene an IEP Team meeting or develop an IEP under Sections 300.320 and</p>	

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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>300.324 for the child for the special education and related services for which the public agency requests such consent.</p> <p>(c) Parental consent for reevaluations.</p> <p>(1) Subject to paragraph (c)(2) of this section, each public agency--</p> <p>(i) Must obtain informed parental consent, in accordance with Sec. 300.300(a)(1), prior to conducting any reevaluation of a child with a disability.</p> <p>(ii) If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) of this section.</p> <p>(iii) The public agency does not violate its obligation under Sec. 300.111 and Sections 300.301 through 300.311 if it declines to pursue the evaluation or reevaluation.</p> <p>(2) The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the public agency can demonstrate that--</p> <p>(i) It made reasonable efforts to obtain such consent; and</p> <p>(ii) The child's parent has failed to respond.</p> <p>(d) Other consent requirements.</p> <p>(1) Parental consent is not required before--</p> <p>(i) Reviewing existing data as part of an evaluation or a reevaluation; or</p> <p>(ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.</p> <p>(2) In addition to the parental consent requirements described in paragraph (a) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.</p> <p>(3) A public agency may not use a parent's refusal to consent to one service or activity under paragraphs (a) or (d)(2) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.</p> <p>4)(i) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures (described in paragraphs (a)(3) and (c)(1) of this section); and</p>	

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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>(ii) The public agency is not required to consider the child as eligible for services under Sections 300.132 through 300.144.</p> <p>(5) To meet the reasonable efforts requirement in paragraphs (a)(1)(iii), (a)(2)(i), (b)(2), and (c)(2)(i) of this section, the public agency must document its attempts to obtain parental consent using the procedures in Sec. 300.322(d).</p> <p><i>(Authority: 20 U.S.C. 1414(a)(1)(D) and 1414(c))</i></p> <p>Evaluations and Reevaluations</p> <p>Sec. 300.301 Initial evaluations.</p> <p>(a) General. Each public agency must conduct a full and individual initial evaluation, in accordance with Sections 300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part.</p> <p>(b) Request for initial evaluation. Consistent with the consent requirements in Sec. 300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.</p> <p>(c) Procedures for initial evaluation. The initial evaluation--</p> <p>(1)(i) Must be conducted within 60 days of receiving parental consent for the evaluation; or</p> <p>(ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and</p> <p>(2) Must consist of procedures--</p> <p>(i) To determine if the child is a child with a disability under Sec. 300.8; and</p> <p>(ii) To determine the educational needs of the child.</p> <p>(d) Exception. The timeframe described in paragraph (c)(1) of this section does not apply to a public agency if--</p> <p>(1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or</p> <p>(2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under Sec. 300.8.</p> <p>(e) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.</p>	


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<p>Related Assurances</p>	<p>Related Statutory or Regulatory Provisions</p>	<p style="text-align: center;">✓ Consistent State policies and procedures are in place.</p>
	<p><i>(Authority: 20 U.S.C. 1414(a))</i></p> <p>Sec. 300.302 Screening for instructional purposes is not evaluation.</p> <p>The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.</p> <p><i>(Authority: 20 U.S.C. 1414(a)(1)(E))</i></p> <p>Sec. 300.303 Reevaluations.</p> <p>(a) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with Sections 300.304 through 300.311--</p> <p>(1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or</p> <p>(2) If the child's parent or teacher requests a reevaluation.</p> <p>(b) Limitation. A reevaluation conducted under paragraph (a) of this section--</p> <p>(1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and</p> <p>(2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.</p> <p><i>(Authority: 20 U.S.C. 1414(a)(2))</i></p> <p>Sec. 300.304 Evaluation procedures.</p> <p>(a) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with Sec. 300.503, that describes any evaluation procedures the agency proposes to conduct.</p> <p>(b) Conduct of evaluation. In conducting the evaluation, the public agency must--</p> <p>(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining--</p> <p>(i) Whether the child is a child with a disability under Sec. 300.8; and</p> <p>(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);</p> <p>(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with</p>	


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<p>Related Assurances</p>	<p>Related Statutory or Regulatory Provisions</p>	<p style="text-align: center;">✓ Consistent State policies and procedures are in place.</p>
	<p>a disability and for determining an appropriate educational program for the child; and</p> <p>(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.</p> <p>(c) Other evaluation procedures. Each public agency must ensure that--</p> <p>1) Assessments and other evaluation materials used to assess a child under this part--</p> <p>(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;</p> <p>(ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;</p> <p>(iii) Are used for the purposes for which the assessments or measures are valid and reliable;</p> <p>(iv) Are administered by trained and knowledgeable personnel; and</p> <p>(v) Are administered in accordance with any instructions provided by the producer of the assessments.</p> <p>(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.</p> <p>(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).</p> <p>(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;</p> <p>(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with Sec. 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.</p> <p>(6) In evaluating each child with a disability under Sections 300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.</p> <p>(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.</p>	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p><i>(Authority: 20 U.S.C. 1414(b)(1)-(3), 1412(a)(6)(B))</i></p> <p>Sec. 300.305 Additional requirements for evaluations and reevaluations.</p> <p>(a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must--</p> <p>(1) Review existing evaluation data on the child, including--</p> <ul style="list-style-type: none"> (i) Evaluations and information provided by the parents of the child; (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and (iii) Observations by teachers and related services providers; and <p>(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--</p> <ul style="list-style-type: none"> (i)(A) Whether the child is a child with a disability, as defined in Sec. 300.8, and the educational needs of the child; or (B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child; (ii) The present levels of academic achievement and related developmental needs of the child; (iii)(A) Whether the child needs special education and related services; or (B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and (iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum. <p>(b) Conduct of review. The group described in paragraph (a) of this section may conduct its review without a meeting.</p> <p>(c) Source of data. The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.</p> <p>(d) Requirements if additional data are not needed.</p> <p>(1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of--</p> <ul style="list-style-type: none"> (i) That determination and the reasons for the determination; and (ii) The right of the parents to request an assessment to determine whether the child continues to be a 	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p style="text-align: center;">child with a disability, and to determine the child's educational needs.</p> <p>(2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.</p> <p>(e) Evaluations before change in eligibility.</p> <p>(1) Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with Sections 300.304 through 300.311 before determining that the child is no longer a child with a disability.</p> <p>(2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.</p> <p>(3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.</p> <p><i>(Authority: 20 U.S.C. 1414(c))</i></p> <p>Sec. 300.306 Determination of eligibility.</p> <p>(a) General. Upon completion of the administration of assessments and other evaluation measures--</p> <p>(1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in Sec. 300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and</p> <p>(2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.</p> <p>(b) Special rule for eligibility determination. A child must not be determined to be a child with a disability under this part--</p> <p>(1) If the determinant factor for that determination is--</p> <p>(i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);</p> <p>(ii) Lack of appropriate instruction in math; or</p> <p>(iii) Limited English proficiency; and</p> <p>(2) If the child does not otherwise meet the eligibility criteria under Sec. 300.8(a).</p> <p>(c) Procedures for determining eligibility and educational need.</p>	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>(1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under Sec. 300.8, and the educational needs of the child, each public agency must--</p> <p>(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and</p> <p>(ii) Ensure that information obtained from all of these sources is documented and carefully considered.</p> <p>(2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with Sections 300.320 through 300.324.</p> <p><i>(Authority: 20 U.S.C. 1414(b)(4) and (5))</i></p> <p>Additional Procedures for Identifying Children With Specific Learning Disabilities</p> <p>Sec. 300.307 Specific learning disabilities.</p> <p>(a) General. A State must adopt, consistent with Sec. 300.309, criteria for determining whether a child has a specific learning disability as defined in Sec. 300.8(c)(10). In addition, the criteria adopted by the State--</p> <p>(1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in Sec. 300.8(c)(10);</p> <p>(2) Must permit the use of a process based on the child's response to scientific, research-based intervention; and</p> <p>(3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in Sec. 300.8(c)(10).</p> <p>(b) Consistency with State criteria. A public agency must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability.</p> <p><i>(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))</i></p> <p>Sec. 300.308 Additional group members.</p> <p>The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in Sec. 300.8, must be made by the child's parents and a team of qualified professionals, which must include--</p> <p>(a)(1) The child's regular teacher; or</p> <p>(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or</p>	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>(3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and</p> <p>(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.</p> <p><i>(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))</i></p> <p>Sec. 300.309 Determining the existence of a specific learning disability.</p> <p>(a) The group described in Sec. 300.306 may determine that a child has a specific learning disability, as defined in Sec. 300.8(c)(10), if--</p> <p>(1) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:</p> <ul style="list-style-type: none"> (i) Oral expression. (ii) Listening comprehension. (iii) Written expression. (iv) Basic reading skill. (v) Reading fluency skills. (vi) Reading comprehension. (vii) Mathematics calculation. (viii) Mathematics problem solving. <p>(2)(i) The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child's response to scientific, research-based intervention; or</p> <ul style="list-style-type: none"> (ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with Sections 300.304 and 300.305; and <p>(3) The group determines that its findings under paragraphs (a)(1) and (2) of this section are not primarily the result of--</p> <ul style="list-style-type: none"> (i) A visual, hearing, or motor disability; (ii) Mental retardation; (iii) Emotional disturbance; 	


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	<ul style="list-style-type: none"> (iv) Cultural factors; (v) Environmental or economic disadvantage; or (vi) Limited English proficiency. <p>(b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in Sections 300.304 through 300.306--</p> <ul style="list-style-type: none"> (1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and (2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents. <p>(c) The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in Sections 300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in Sec. 300.306(a)(1)--</p> <ul style="list-style-type: none"> (1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and (2) Whenever a child is referred for an evaluation. <p><i>(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))</i></p> <p>Sec. 300.310 Observation.</p> <ul style="list-style-type: none"> (a) The public agency must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty. (b) The group described in Sec. 300.306(a)(1), in determining whether a child has a specific learning disability, must decide to-- <ul style="list-style-type: none"> (1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or (2) Have at least one member of the group described in Sec. 300.306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with Sec. 300.300(a), is obtained. (c) In the case of a child of less than school age or out of school, a group member must observe the child in an 	

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	<p>environment appropriate for a child of that age.</p> <p><i>(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))</i></p> <p>Sec. 300.311 Specific documentation for the eligibility determination.</p> <p>(a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in Sec. 300.306(a)(2), must contain a statement of--</p> <ol style="list-style-type: none"> (1) Whether the child has a specific learning disability; (2) The basis for making the determination, including an assurance that the determination has been made in accordance with Sec. 300.306(c)(1); (3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning; (4) The educationally relevant medical findings, if any; (5) Whether-- <ol style="list-style-type: none"> (i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with Sec. 300.309(a)(1); and (ii)(A) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with Sec. 300.309(a)(2)(i); or <ol style="list-style-type: none"> (B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development consistent with Sec. 300.309(a)(2)(ii); (6) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and (7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention-- <ol style="list-style-type: none"> (i) The instructional strategies used and the student-centered data collected; and (ii) The documentation that the child's parents were notified about-- <ol style="list-style-type: none"> (A) The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; (B) Strategies for increasing the child's rate of learning; and (C) The parents' right to request an evaluation. 	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	(b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions. <i>(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))</i>	
<p style="text-align: center;">8</p>	<p>Sec. 300.123 Confidentiality of personally identifiable information.</p> <p>The State must have policies and procedures in effect to ensure that public agencies in the State comply with Sec. 300.610 through 300.626 related to protecting the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the Act.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i></p> <p><i>(Authority: 20 U.S.C. 1412(a)(8); 1417(c))</i></p> <p>Sec. 300.610 Confidentiality.</p> <p>The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of the Act, and consistent with Sections 300.611 through 300.627.</p> <p><i>(Authority: 20 U.S.C. 1417(c))</i></p> <p>Sec. 300.611 Definitions.</p> <p>As used in Sections 300.611 through 300.625--</p> <ul style="list-style-type: none"> (a) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable. (b) Education records means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)). (c) Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act. <p><i>(Authority: 20 U.S.C. 1221e-3, 1412(a)(8), 1417(c))</i></p>	


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<p>Related Assurances</p>	<p>Related Statutory or Regulatory Provisions</p>	<p style="text-align: center;">✓ Consistent State policies and procedures are in place.</p>
	<p>Sec. 300.612 Notice to parents.</p> <p>(a) The SEA must give notice that is adequate to fully inform parents about the requirements of Sec. 300.123, including--</p> <ol style="list-style-type: none"> (1) A description of the extent that the notice is given in the native languages of the various population groups in the State; (2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information; (3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and (4) A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR part 99. <p>(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.</p> <p><i>(Authority: 20 U.S.C. 1412(a)(8); 1417(c))</i></p> <p>Sec. 300.613 Access rights.</p> <p>(a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to Sec. 300.507 or Sections 300.530 through 300.532, or resolution session pursuant to Sec. 300.510, and in no case more than 45 days after the request has been made.</p> <p>(b) The right to inspect and review education records under this section includes--</p> <ol style="list-style-type: none"> (1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records; (2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and (3) The right to have a representative of the parent inspect and review the records. <p>(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless</p>	

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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.</p> <p><i>(Authority: 20 U.S.C. 1412(a)(8); 1417(c))</i></p> <p>Sec. 300.614 Record of access.</p> <p>Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.</p> <p><i>(Authority: 20 U.S.C. 1412(a)(8); 1417(c))</i></p> <p>Sec. 300.615 Records on more than one child.</p> <p>If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.</p> <p><i>(Authority: 20 U.S.C. 1412(a)(8); 1417(c))</i></p> <p>Sec. 300.616 List of types and locations of information.</p> <p>Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.</p> <p><i>(Authority: 20 U.S.C. 1412(a)(8); 1417(c))</i></p> <p>Sec. 300.617 Fees.</p> <ul style="list-style-type: none"> (a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. (b) A participating agency may not charge a fee to search for or to retrieve information under this part. <p><i>(Authority: 20 U.S.C. 1412(a)(8); 1417(c))</i></p> <p>Sec. 300.618 Amendment of records at parent's request.</p> <ul style="list-style-type: none"> (a) A parent who believes that information in the education records collected, maintained, or used under this part is 	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.</p> <ul style="list-style-type: none"> (b) The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. (c) If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under Sec. 300.619. <p><i>(Authority: 20 U.S.C. 1412(a)(8); 1417(c))</i></p> <p>Sec. 300.619 Opportunity for a hearing.</p> <p>The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.</p> <p><i>(Authority: 20 U.S.C. 1412(a)(8); 1417(c))</i></p> <p>Sec. 300.620 Result of hearing.</p> <ul style="list-style-type: none"> (a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing. (b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent's right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency. (c) Any explanation placed in the records of the child under this section must-- <ul style="list-style-type: none"> (1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and (2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party. <p><i>(Authority: 20 U.S.C. 1412(a)(8); 1417(c))</i></p> <p>Sec. 300.621 Hearing procedures.</p>	


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<p>Related Assurances</p>	<p>Related Statutory or Regulatory Provisions</p>	<p style="text-align: center;">✓ Consistent State policies and procedures are in place.</p>
	<p>A hearing held under Sec. 300.619 must be conducted according to the procedures in 34 CFR 99.22. <i>(Authority: 20 U.S.C. 1412(a)(8); 1417(c))</i></p> <p>Sec. 300.622 Consent.</p> <ul style="list-style-type: none"> (a) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b)(1) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99. (b)(1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part. <ul style="list-style-type: none"> (2) Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with Sec. 300.321(b)(3). (3) If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence. <p><i>(Authority: 20 U.S.C. 1412(a)(8); 1417(c))</i></p> <p>Sec. 300.623 Safeguards.</p> <ul style="list-style-type: none"> (a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. (b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information. (c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under Sec. 300.123 and 34 CFR part 99. (d) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information. <p><i>(Authority: 20 U.S.C. 1412(a)(8); 1417(c))</i></p>	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>Sec. 300.624 Destruction of information.</p> <ul style="list-style-type: none"> (a) The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child. (b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. <p><i>(Authority: 20 U.S.C. 1412(a)(8); 1417(c))</i></p> <p>Sec. 300.625 Children's rights.</p> <ul style="list-style-type: none"> (a) The SEA must have in effect policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability. (b) Under the regulations for FERPA in 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the student at age 18. (c) If the rights accorded to parents under Part B of the Act are transferred to a student who reaches the age of majority, consistent with Sec. 300.520, the rights regarding educational records in Sections 300.613 through 300.624 must also be transferred to the student. However, the public agency must provide any notice required under section 615 of the Act to the student and the parents. <p><i>(Authority: 20 U.S.C. 1412(a)(8); 1417(c))</i></p> <p>Sec. 300.626 Enforcement.</p> <p>The SEA must have in effect the policies and procedures, including sanctions that the State uses, to ensure that its policies and procedures consistent with Sections 300.611 through 300.625 are followed and that the requirements of the Act and the regulations in this part are met.</p> <p><i>(Authority: 20 U.S.C. 1412(a)(8); 1417(c))</i></p>	
9	<p>Sec. 300.124 Transition of children from the Part C program to preschool programs.</p> <p>The State must have in effect policies and procedures to ensure that--</p>	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>(a) Children participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the Act;</p> <p>(b) By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with Sec. 300.323(b) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with Sec. 300.101(b); and</p> <p>(c) Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10) of the Act.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i> <i>(Authority: 20 U.S.C. 1412(a)(9))</i></p> <p>Sec. 300.323 When IEPs must be in effect.</p> <p>(b) IEP or IFSP for children aged three through five.</p> <p>(1) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is--</p> <p>(i) Consistent with State policy; and</p> <p>(ii) Agreed to by the agency and the child's parents.</p> <p>(2) In implementing the requirements of paragraph (b)(1) of this section, the public agency must--</p> <p>(i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and</p> <p>(ii) If the parents choose an IFSP, obtain written informed consent from the parents.</p> <p><i>(Authority: 20 U.S.C. 1414(d)(2)(A)-(C))</i></p>	
10	Sec. 300.129 State responsibility regarding children in private schools.	

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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>The State must have in effect policies and procedures that ensure that LEAs, and, if applicable, the SEA, meet the private school requirements in Sections 300.130 through 300.148.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i> <i>(Authority: 20 U.S.C. 1412(a)(10))</i></p> <p>Children With Disabilities Enrolled by Their Parents in Private Schools</p> <p>Sec. 300.130 Definition of parentally-placed private school children with disabilities.</p> <p>Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in Sec. 300.13 or secondary school in Sec. 300.36, other than children with disabilities covered under Sections 300.145 through 300.147.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i> <i>(Authority: 20 U.S.C. 1412(a)(10)(A))</i></p> <p>Sec. 300.131 Child find for parentally-placed private school children with disabilities.</p> <ul style="list-style-type: none"> (a) General. Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, in accordance with paragraphs (b) through (e) of this section, and Sections 300.111 and 300.201. (b) Child find design. The child find process must be designed to ensure-- <ul style="list-style-type: none"> (1) The equitable participation of parentally-placed private school children; and (2) An accurate count of those children. (c) Activities. In carrying out the requirements of this section, the LEA, or, if applicable, the SEA, must undertake activities similar to the activities undertaken for the agency's public school children. (d) Cost. The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under Sec. 300.133. (e) Completion period. The child find process must be completed in a time period comparable to that for students attending public schools in the LEA consistent with Sec. 300.301. (f) Out-of-State children. Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school 	


Technical Assistance Checklist¹ – Eligibility Requirements found in 34 CFR Part 300

Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>children who reside in a State other than the State in which the private schools that they attend are located.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i></p> <p><i>(Authority: 20 U.S.C. 1412(a)(10)(A)(ii))</i></p> <p>Sec. 300.132 Provision of services for parentally-placed private school children with disabilities--basic requirement.</p> <ul style="list-style-type: none"> (a) General. To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with Sec. 300.137, unless the Secretary has arranged for services to those children under the by-pass provisions in Sections 300.190 through 300.198. (b) Services plan for parentally-placed private school children with disabilities. In accordance with paragraph (a) of this section and Sections 300.137 through 300.139, a services plan must be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under this part. (c) Record keeping. Each LEA must maintain in its records, and provide to the SEA, the following information related to parentally-placed private school children covered under Sections 300.130 through 300.144: <ul style="list-style-type: none"> (1) The number of children evaluated; (2) The number of children determined to be children with disabilities; and (3) The number of children served. <p><i>(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600)</i></p> <p><i>(Authority: 20 U.S.C. 1412(a)(10)(A)(i))</i></p> <p>Sec. 300.133 Expenditures.</p> <ul style="list-style-type: none"> (a) Formula. To meet the requirement of Sec. 300.132(a), each LEA must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities: <ul style="list-style-type: none"> (1) For children aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under section 611(f) of the Act as the number of private school children with disabilities aged 3 through 21 who are 	


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<p>Related Assurances</p>	<p>Related Statutory or Regulatory Provisions</p>	<p>✓ Consistent State policies and procedures are in place.</p>
	<p>enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.</p> <p>(2)(i) For children aged three through five, an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through five.</p> <p>(ii) As described in paragraph (a)(2)(i) of this section, children aged three through five are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in Sec. 300.13.</p> <p>(3) If an LEA has not expended for equitable services all of the funds described in paragraphs (a)(1) and (a)(2) of this section by the end of the fiscal year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year.</p> <p>(b) Calculating proportionate amount. In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools under Sec. 300.134, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the LEA. (See Appendix B for an example of how proportionate share is calculated).</p> <p>(c) Annual count of the number of parentally-placed private school children with disabilities.</p> <p>(1) Each LEA must--</p> <p>(i) After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with Sec. 300.134), determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA; and</p> <p>(ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.</p> <p>(2) The count must be used to determine the amount that the LEA must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.</p> <p>(d) Supplement, not supplant. State and local funds may supplement and in no case supplant the proportionate amount</p>	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>of Federal funds required to be expended for parentally-placed private school children with disabilities under this part. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(10)(A))</p> <p>Sec. 300.134 Consultation.</p> <p>To ensure timely and meaningful consultation, an LEA, or, if appropriate, an SEA, must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:</p> <ul style="list-style-type: none"> (a) Child find. The child find process, including-- <ul style="list-style-type: none"> (1) How parentally-placed private school children suspected of having a disability can participate equitably; and (2) How parents, teachers, and private school officials will be informed of the process. (b) Proportionate share of funds. The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under Sec. 300.133(b), including the determination of how the proportionate share of those funds was calculated. (c) Consultation process. The consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services. (d) Provision of special education and related services. How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of-- <ul style="list-style-type: none"> (1) The types of services, including direct services and alternate service delivery mechanisms; and (2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and (3) How and when those decisions will be made; (e) Written explanation by LEA regarding services. How, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract. <p>(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600)</p>	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p><i>(Authority: 20 U.S.C. 1412(a)(10)(A)(iii))</i></p> <p>Sec. 300.135 Written affirmation.</p> <p>(a) When timely and meaningful consultation, as required by Sec. 300.134, has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools.</p> <p>(b) If the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA.</p> <p><i>(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600)</i></p> <p><i>(Authority: 20 U.S.C. 1412(a)(10)(A)(iv))</i></p> <p>Sec. 300.136 Compliance.</p> <p>(a) General. A private school official has the right to submit a complaint to the SEA that the LEA--</p> <p>(1) Did not engage in consultation that was meaningful and timely; or</p> <p>(2) Did not give due consideration to the views of the private school official.</p> <p>(b) Procedure.</p> <p>(1) If the private school official wishes to submit a complaint, the official must provide to the SEA the basis of the noncompliance by the LEA with the applicable private school provisions in this part; and</p> <p>(2) The LEA must forward the appropriate documentation to the SEA.</p> <p>(3)(i) If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph (b)(1) of this section; and</p> <p>(ii) The SEA must forward the appropriate documentation to the Secretary.</p> <p><i>(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600)</i></p> <p><i>(Authority: 20 U.S.C. 1412(a)(10)(A)(v))</i></p> <p>Sec. 300.137 Equitable services determined.</p> <p>(a) No individual right to special education and related services. No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.</p> <p>(b) Decisions.</p>	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>(1) Decisions about the services that will be provided to parentally-placed private school children with disabilities under Sections 300.130 through 300.144 must be made in accordance with paragraph (c) of this section and Sec. 300.134(c).</p> <p>(2) The LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.</p> <p>(c) Services plan for each child served under Sections 300.130 through 300.144. If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from an LEA, the LEA must--</p> <p>(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with Sec. 300.138(b); and</p> <p>(2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i></p> <p><i>(Authority: 20 U.S.C. 1412(a)(10)(A))</i></p> <p>Sec. 300.138 Equitable services provided.</p> <p>(a) General.</p> <p>(1) The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements of Sec. 300.18.</p> <p>(2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.</p> <p>(b) Services provided in accordance with a services plan.</p> <p>(1) Each parentally-placed private school child with a disability who has been designated to receive services under Sec. 300.132 must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined, through the process described in Sections 300.134 and 300.137, it will make available to parentally-placed private school</p>	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>children with disabilities.</p> <p>(2) The services plan must, to the extent appropriate--</p> <p>(i) Meet the requirements of Sec. 300.320, or for a child ages three through five, meet the requirements of Sec. 300.323(b) with respect to the services provided; and</p> <p>(ii) Be developed, reviewed, and revised consistent with Sections 300.321 through 300.324.</p> <p>(c) Provision of equitable services.</p> <p>(1) The provision of services pursuant to this section and Sections 300.139 through 300.143 must be provided:</p> <p>(i) By employees of a public agency; or</p> <p>(ii) Through contract by the public agency with an individual, association, agency, organization, or other entity.</p> <p>(2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i></p> <p><i>(Authority: 20 U.S.C. 1412(a)(10)(A)(vi))</i></p> <p>Sec. 300.139 Location of services and transportation.</p> <p>(a) Services on private school premises. Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.</p> <p>(b) Transportation--</p> <p>(1) General.</p> <p>(i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation--</p> <p>(A) From the child's school or the child's home to a site other than the private school; and</p> <p>(B) From the service site to the private school, or to the child's home, depending on the timing of the services.</p> <p>(ii) LEAs are not required to provide transportation from the child's home to the private school.</p> <p>(2) Cost of transportation. The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the requirement of Sec. 300.133.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i></p>	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p><i>(Authority: 20 U.S.C. 1412(a)(10)(A))</i></p> <p>Sec. 300.140 Due process complaints and State complaints.</p> <p>(a) Due process not applicable, except for child find. (1) Except as provided in paragraph (b) of this section, the procedures in Sections 300.504 through 300.519 do not apply to complaints that an LEA has failed to meet the requirements of Sections 300.132 through 300.139, including the provision of services indicated on the child's services plan.</p> <p>(b) Child find complaints--to be filed with the LEA in which the private school is located.</p> <p>(1) The procedures in Sections 300.504 through 300.519 apply to complaints that an LEA has failed to meet the child find requirements in Sec. 300.131, including the requirements in Sections 300.300 through 300.311.</p> <p>(2) Any due process complaint regarding the child find requirements (as described in paragraph (b)(1) of this section) must be filed with the LEA in which the private school is located and a copy must be forwarded to the SEA.</p> <p>(c) State complaints.</p> <p>(1) Any complaint that an SEA or LEA has failed to meet the requirements in Sections 300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the procedures described in Sections 300.151 through 300.153.</p> <p>(2) A complaint filed by a private school official under Sec. 300.136(a) must be filed with the SEA in accordance with the procedures in Sec. 300.136(b).</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i></p> <p><i>(Authority: 20 U.S.C. 1412(a)(10)(A))</i></p> <p>Sec. 300.141 Requirement that funds not benefit a private school.</p> <p>(a) An LEA may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.</p> <p>(b) The LEA must use funds provided under Part B of the Act to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for meeting--</p> <p>(1) The needs of a private school; or</p> <p>(2) The general needs of the students enrolled in the private school.</p>	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i> <i>(Authority: 20 U.S.C. 1412(a)(10)(A))</i></p> <p>Sec. 300.142 Use of personnel.</p> <p>(a) Use of public school personnel. An LEA may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities--</p> <p>(1) To the extent necessary to provide services under Sections 300.130 through 300.144 for parentally-placed private school children with disabilities; and</p> <p>(2) If those services are not normally provided by the private school.</p> <p>(b) Use of private school personnel. An LEA may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under Sections 300.130 through 300.144 if--</p> <p>(1) The employee performs the services outside of his or her regular hours of duty; and</p> <p>(2) The employee performs the services under public supervision and control.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i> <i>(Authority: 20 U.S.C. 1412(a)(10)(A))</i></p> <p>Sec. 300.143 Separate classes prohibited.</p> <p>An LEA may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the children if--</p> <p>(a) The classes are at the same site; and</p> <p>(b) The classes include children enrolled in public schools and children enrolled in private schools.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i> <i>(Authority: 20 U.S.C. 1412(a)(10)(A))</i></p> <p>Sec. 300.144 Property, equipment, and supplies.</p> <p>(a) A public agency must control and administer the funds used to provide special education and related services under Sections 300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.</p>	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>(b) The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program.</p> <p>(c) The public agency must ensure that the equipment and supplies placed in a private school--</p> <ol style="list-style-type: none"> (1) Are used only for Part B purposes; and (2) Can be removed from the private school without remodeling the private school facility. <p>(d) The public agency must remove equipment and supplies from a private school if--</p> <ol style="list-style-type: none"> (1) The equipment and supplies are no longer needed for Part B purposes; or (2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes. <p>(e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i> <i>(Authority: 20 U.S.C. 1412(a)(10)(A)(vii))</i></p> <p>Children With Disabilities in Private Schools Placed or Referred by Public Agencies</p> <p>Sec. 300.145 Applicability of Sections 300.146 through 300.147.</p> <p>Sections 300.146 through 300.147 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i> <i>(Authority: 20 U.S.C. 1412(a)(10)(B))</i></p> <p>Sec. 300.146 Responsibility of SEA.</p> <p>Each SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency--</p> <ol style="list-style-type: none"> (a) Is provided special education and related services-- <ol style="list-style-type: none"> (1) In conformance with an IEP that meets the requirements of Sections 300.320 through 300.325; and (2) At no cost to the parents; (b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs including 	


Technical Assistance Checklist¹ – Eligibility Requirements found in 34 CFR Part 300

Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>the requirements of this part, except for Sec. 300.18 and Sec. 300.156(c); and</p> <p>(c) Has all of the rights of a child with a disability who is served by a public agency.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i></p> <p><i>(Authority: 20 U.S.C. 1412(a)(10)(B))</i></p> <p>Sec. 300.147 Implementation by SEA.</p> <p>In implementing Sec. 300.146, the SEA must--</p> <ul style="list-style-type: none"> (a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires; (b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and (c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them. <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i></p> <p><i>(Authority: 20 U.S.C. 1412(a)(10)(B))</i></p> <p>Children With Disabilities Enrolled by Their Parents in Private Schools When FAPE Is at Issue</p> <p>Sec. 300.148 Placement of children by parents when FAPE is at issue.</p> <ul style="list-style-type: none"> (a) General. This part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with Sections 300.131 through 300.144. (b) Disagreements about FAPE. Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in Sections 300.504 through 300.520. (c) Reimbursement for private school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer 	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.</p> <p>(d) Limitation on reimbursement. The cost of reimbursement described in paragraph (c) of this section may be reduced or denied--</p> <p>(1) If--</p> <p>(i) At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or</p> <p>(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;</p> <p>(2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in Sec. 300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or</p> <p>(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.</p> <p>(e) Exception. Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement--</p> <p>(1) Must not be reduced or denied for failure to provide the notice if--</p> <p>(i) The school prevented the parents from providing the notice;</p> <p>(ii) The parents had not received notice, pursuant to Sec. 300.504, of the notice requirement in paragraph (d)(1) of this section; or</p> <p>(iii) Compliance with paragraph (d)(1) of this section would likely result in physical harm to the child; and</p> <p>(2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if--</p> <p>(i) The parents are not literate or cannot write in English; or</p> <p>(ii) Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to the child.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i></p>	

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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<i>(Authority: 20 U.S.C. 1412(a)(10)(C))</i>	
11	<p>Sec. 300.149 SEA responsibility for general supervision.</p> <ul style="list-style-type: none"> (a) The SEA is responsible for ensuring-- <ul style="list-style-type: none"> (1) That the requirements of this part are carried out; and (2) That each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency (but not including elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior)-- <ul style="list-style-type: none"> (i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and (ii) Meets the educational standards of the SEA (including the requirements of this part). (3) In carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met. (b) The State must have in effect policies and procedures to ensure that it complies with the monitoring and enforcement requirements in Sections 300.600 through 300.602 and Sections 300.606 through 300.608. (c) Part B of the Act does not limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to children with disabilities in the State. (d) Notwithstanding paragraph (a) of this section, the Governor (or another individual pursuant to State law) may assign to any public agency in the State the responsibility of ensuring that the requirements of Part B of the Act are met with respect to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons. <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i> <i>(Authority: 20 U.S.C. 1412(a)(11); 1416)</i></p> <p>Sec. 300.600 State monitoring and enforcement.</p> <ul style="list-style-type: none"> (a) The State must-- <ul style="list-style-type: none"> (1) Monitor the implementation of this part; (2) Make determinations annually about the performance of each LEA using the categories in Section 300.603(b)(1); (3) Enforce this part, consistent with Section 300.604, using appropriate enforcement mechanisms, which must 	


Technical Assistance Checklist¹ – Eligibility Requirements found in 34 CFR Part 300

Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>include, if applicable, the enforcement mechanisms identified in Section 300.604(a)(1) (technical assistance), (a)(3) (conditions on funding of an LEA), (b)(2)(i) (corrective action plan or improvement plan), (b)(2)(v) (withholding funds, in whole or in part, by the SEA), and (c)(2) (withholding funds, in whole or in part, by the SEA); and</p> <p>(4) Report annually on the performance of the State and of each LEA under this part, as provided in Section 300.602(b)(1)(i)(A) and (b)(2).</p> <p>(b) The primary focus of the State's monitoring activities must be on--</p> <p>(1) Improving educational results and functional outcomes for all children with disabilities; and</p> <p>(2) Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.</p> <p>(c) As a part of its responsibilities under paragraph (a) of this section, the State must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in paragraph (d) of this section, and the indicators established by the Secretary for the State performance plans.</p> <p>(d) The State must monitor the LEAs located in the State, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:</p> <p>(1) Provision of FAPE in the least restrictive environment.</p> <p>(2) State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services as defined in Sec. 300.43 and in 20 U.S.C. 1437(a)(9).</p> <p>(3) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.</p> <p>(e) In exercising its monitoring responsibilities under paragraph (d) of this section, the State must ensure that when it identifies noncompliance with the requirements of this part by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0624)</i></p> <p><i>(Authority: 20 U.S.C. 1416(a))</i></p> <p>Sec. 300.601 State performance plans and data collection.</p> <p>(a) General. Not later than December 3, 2005, each State must have in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B of the Act, and describes how the State will</p>	


Technical Assistance Checklist¹ – Eligibility Requirements found in 34 CFR Part 300

<p>Related Assurances</p>	<p>Related Statutory or Regulatory Provisions</p>	<p style="text-align: center;">✓ Consistent State policies and procedures are in place.</p>
	<p>improve such implementation.</p> <ul style="list-style-type: none"> (1) Each State must submit the State's performance plan to the Secretary for approval in accordance with the approval process described in section 616(c) of the Act. (2) Each State must review its State performance plan at least once every six years, and submit any amendments to the Secretary. (3) As part of the State performance plan, each State must establish measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in Sec. 300.600(d). <p>(b) Data collection.</p> <ul style="list-style-type: none"> (1) Each State must collect valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the State performance plans. (2) If the Secretary permits States to collect data on specific indicators through State monitoring or sampling, and the State collects the data through State monitoring or sampling, the State must collect data on those indicators for each LEA at least once during the period of the State performance plan. (3) Nothing in Part B of the Act shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part B of the Act. <p><i>(Approved by the Office of Management and Budget under control number 1820-0624)</i> <i>(Authority: 20 U.S.C. 1416(b))</i></p> <p>Sec. 300.602 State use of targets and reporting.</p> <ul style="list-style-type: none"> (a) General. Each State must use the targets established in the State's performance plan under Sec. 300.601 and the priority areas described in Sec. 300.600(d) to analyze the performance of each LEA. (b) Public reporting and privacy-- <ul style="list-style-type: none"> (1) Public report. <ul style="list-style-type: none"> (i) Subject to paragraph (b)(1)(ii) of this section, the State must-- <ul style="list-style-type: none"> (A) Report annually to the public on the performance of each LEA located in the State on the targets in the State's performance plan as soon as practicable but no later than 120 days following the State's submission of its annual performance report to the Secretary under paragraph (b)(2) of this section; and (B) Make each of the following items available through public means: the State's performance plan, 	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>under Section 300.601(a); annual performance reports, under paragraph (b)(2) of this section; and the State's annual reports on the performance of each LEA located in the State, under paragraph (b)(1)(i)(A) of this section. In doing so, the State must, at a minimum, post the plan and reports on the SEA's Web sit, and distribute the plan and reports to the media and through public agencies.</p> <p>(ii) If the State, in meeting the requirements of paragraph (b)(1)(i) of this section, collects performance data through State monitoring or sampling, the State must include in its report under paragraph (b)(1)(i)(A) of this section the most recently available performance data on each LEA, and the date the data were obtained.</p> <p>(2) State performance report. The State must report annually to the Secretary on the performance of the State under the State's performance plan.</p> <p>(3) Privacy. The State must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0624)</i> <i>(Authority: 20 U.S.C. 1416(b)(2)(C))</i></p> <p>Sec. 300.606 Public attention.</p> <p>Whenever a State receives notice that the Secretary is proposing to take or is taking an enforcement action pursuant to Section 300.604, the State must, by means of public notice, take such actions as may be necessary to notify the public within the State of the pendency of an action pursuant to Section 300.604, including, as a minimum, by posting the notice on the SEA's Web site and distributing the notice to the media and through public agencies.</p> <p><i>(Authority: 20 U.S.C. 1416(e)(7))</i></p> <p>Sec. 300.607 Divided State agency responsibility.</p> <p>For purposes of this subpart, if responsibility for ensuring that the requirements of Part B of the Act are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the SEA pursuant to Sec. 300.149(d), and if the Secretary finds that the failure to comply substantially with the provisions of Part B of the Act are related to a failure by the public agency, the Secretary takes appropriate corrective</p>	

Technical Assistance Checklist¹ – Eligibility Requirements found in 34 CFR Part 300

Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>action to ensure compliance with Part B of the Act, except that--</p> <ul style="list-style-type: none"> (a) Any reduction or withholding of payments to the State under Sec. 300.604 must be proportionate to the total funds allotted under section 611 of the Act to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the SEA; and (b) Any withholding of funds under Sec. 300.604 must be limited to the specific agency responsible for the failure to comply with Part B of the Act. <p><i>(Authority: 20 U.S.C. 1416(e)(7))</i></p> <p>Sec. 300.608 State enforcement.</p> <ul style="list-style-type: none"> (a) If an SEA determines that an LEA is not meeting the requirements of Part B of the Act, including the targets in the State's performance plan, the SEA must prohibit the LEA from reducing the LEA's maintenance of effort under Sec. 300.203 for any fiscal year. (b) Nothing in this subpart shall be construed to restrict a State from utilizing any other authority available to it to monitor and enforce the requirements of Part B of the Act. <p><i>(Authority: 20 U.S.C. 1416(f); 20 U.S.C. 1412(a)(11))</i></p>	
12	<p>Sec. 300.154 Methods of ensuring services.</p> <ul style="list-style-type: none"> (a) Establishing responsibility for services. The Chief Executive Officer of a State or designee of that officer must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency described in paragraph (b) of this section and the SEA, in order to ensure that all services described in paragraph (b)(1) of this section that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under paragraph (a)(3) of this section. The agreement or mechanism must include the following: <ul style="list-style-type: none"> (1) An identification of, or a method for defining, the financial responsibility of each agency for providing services described in paragraph (b)(1) of this section to ensure FAPE to children with disabilities. The financial responsibility of each noneducational public agency described in paragraph (b) of this section, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or the State agency responsible for developing the child's IEP). 	


Technical Assistance Checklist¹ – Eligibility Requirements found in 34 CFR Part 300

Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	(2) The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies. (3) Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism. (4) Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in paragraph (b)(1) of this section. (b) Obligation of noneducational public agencies. (1)(i) If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to paragraph (a) of this section, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in Sec. 300.5 relating to assistive technology devices, Sec. 300.6 relating to assistive technology services, Sec. 300.34 relating to related services, Sec. 300.41 relating to supplementary aids and services, and Sec. 300.42 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to paragraph (a) of this section or an agreement pursuant to paragraph (c) of this section. (ii) A noneducational public agency described in paragraph (b)(1)(i) of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context. (2) If a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph (b)(1) of this section, the LEA (or State agency responsible for developing the child's IEP) must provide or pay for these services to the child in a timely manner. The LEA or State agency is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism described in paragraph (a) of this section. (c) Special rule. The requirements of paragraph (a) of this section may be met through-- (1) State statute or regulation; (2) Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or (3) Other appropriate written methods as determined by the Chief Executive Officer of the State or designee of	

Technical Assistance Checklist¹ – Eligibility Requirements found in 34 CFR Part 300

<p>Related Assurances</p>	<p>Related Statutory or Regulatory Provisions</p>	<p style="text-align: center;">✓ Consistent State policies and procedures are in place.</p>
	<p>that officer and approved by the Secretary.</p> <p>(d) Children with disabilities who are covered by public benefits or insurance.</p> <p>(1) A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(2) of this section.</p> <p>(2) With regard to services required to provide FAPE to an eligible child under this part, the public agency--</p> <p>(i) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act;</p> <p>(ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parents otherwise would be required to pay;</p> <p>(iii) May not use a child's benefits under a public benefits or insurance program if that use would--</p> <p>(A) Decrease available lifetime coverage or any other insured benefit;</p> <p>(B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;</p> <p>(C) Increase premiums or lead to the discontinuation of benefits or insurance; or</p> <p>(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and</p> <p>(iv)(A) Must obtain parental consent, consistent with Sec. 300.9, each time that access to public benefits or insurance is sought; and</p> <p>(B) Notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.</p> <p>(e) Children with disabilities who are covered by private insurance.</p> <p>(1) With regard to services required to provide FAPE to an eligible child under this part, a public agency may access the parents' private insurance proceeds only if the parents provide consent consistent with Sec. 300.9.</p> <p>(2) Each time the public agency proposes to access the parents' private insurance proceeds, the agency must--</p> <p>(i) Obtain parental consent in accordance with paragraph (e)(1) of this section; and</p> <p>(ii) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.</p>	


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Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>(f) Use of Part B funds.</p> <p>(1) If a public agency is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under this part, to ensure FAPE the public agency may use its Part B funds to pay for the service.</p> <p>(2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the public agency may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance (e.g., the deductible or co-pay amounts).</p> <p>(g) Proceeds from public benefits or insurance or private insurance.</p> <p>(1) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 80.25.</p> <p>(2) If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in Sections 300.163 and 300.203.</p> <p>(h) Construction. Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public benefits or insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i> <i>(Authority: 20 U.S.C. 1412(a)(12) and (e))</i></p>	
<p>13</p>	<p>Sec. 300.155 Hearings relating to LEA eligibility.</p> <p>The SEA must not make any final determination that an LEA is not eligible for assistance under Part B of the Act without first giving the LEA reasonable notice and an opportunity for a hearing under 34 CFR 76.401(d).</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i> <i>(Authority: 20 U.S.C. 1412(a)(13))</i></p>	
<p>14</p>	<p>Sec. 300.156 Personnel qualifications.</p>	


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<p>Related Assurances</p>	<p>Related Statutory or Regulatory Provisions</p>	<p>✓ Consistent State policies and procedures are in place.</p>
	<p>(a) General. The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.</p> <p>(b) Related services personnel and paraprofessionals. The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that--</p> <p>(1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and</p> <p>(2) Ensure that related services personnel who deliver services in their discipline or profession--</p> <p>(i) Meet the requirements of paragraph (b)(1) of this section; and</p> <p>(ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and</p> <p>(iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.</p> <p>(c) Qualifications for special education teachers. The qualifications described in paragraph (a) of this section must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in section 1119(a)(2) of the ESEA.</p> <p>(d) Policy. In implementing this section, a State must adopt a policy that includes a requirement that LEAs in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.</p> <p>(e) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the SEA as provided for under this part.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i></p> <p><i>(Authority: 20 U.S.C. 1412(a)(14))</i></p>	
<p>15</p>	<p>Sec. 300.157 Performance goals and indicators.</p>	

Technical Assistance Checklist¹ – Eligibility Requirements found in 34 CFR Part 300

Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	The State must-- <ul style="list-style-type: none"> (a) Have in effect established goals for the performance of children with disabilities in the State that-- <ul style="list-style-type: none"> (1) Promote the purposes of this part, as stated in Sec. 300.1; (2) Are the same as the State's objectives for progress by children in its definition of adequate yearly progress, including the State's objectives for progress by children with disabilities, under section 1111(b)(2)(C) of the ESEA, 20 U.S.C. 6311; (3) Address graduation rates and dropout rates, as well as such other factors as the State may determine; and (4) Are consistent, to the extent appropriate, with any other goals and academic standards for children established by the State; (b) Have in effect established performance indicators the State will use to assess progress toward achieving the goals described in paragraph (a) of this section, including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the ESEA, 20 U.S.C. 6311; and (c) Annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under paragraph (a) of this section, which may include elements of the reports required under section 1111(h) of the ESEA. <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i> <i>(Authority: 20 U.S.C. 1412(a)(15))</i></p>	
<p>16</p>	<p>20 U.S.C. 1412(a)(16)(A)-(E)</p> <ul style="list-style-type: none"> (16) PARTICIPATION IN ASSESSMENTS- <ul style="list-style-type: none"> (A) IN GENERAL- All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs. (B) ACCOMMODATION GUIDELINES- The State (or, in the case of a districtwide assessment, the local educational agency) has developed guidelines for the provision of appropriate accommodations. (C) ALTERNATE ASSESSMENTS- <ul style="list-style-type: none"> (i) IN GENERAL- The State (or, in the case of a districtwide assessment, the local educational agency) has developed and implemented guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments under subparagraph 	


Technical Assistance Checklist¹ – Eligibility Requirements found in 34 CFR Part 300

Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>(ii) (A) with accommodations as indicated in their respective individualized education programs.</p> <p>REQUIREMENTS FOR ALTERNATE ASSESSMENTS- The guidelines under clause (i) shall provide for alternate assessments that--</p> <p>(I) are aligned with the State's challenging academic content standards and challenging student academic achievement standards; and</p> <p>(II) if the State has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, measure the achievement of children with disabilities against those standards.</p> <p>(iii) CONDUCT OF ALTERNATE ASSESSMENTS- The State conducts the alternate assessments described in this subparagraph.</p> <p>(D) REPORTS- The State educational agency (or, in the case of a districtwide assessment, the local educational agency) makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:</p> <p>(i) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations in order to participate in those assessments.</p> <p>(ii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(I).</p> <p>(iii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(II).</p> <p>(iv) The performance of children with disabilities on regular assessments and on alternate assessments (if the number of children with disabilities participating in those assessments is sufficient to yield statistically reliable information and reporting that information will not reveal personally identifiable information about an individual student), compared with the achievement of all children, including children with disabilities, on those assessments.</p> <p>(E) UNIVERSAL DESIGN- The State educational agency (or, in the case of a districtwide assessment, the local educational agency) shall, to the extent feasible, use universal design principles in developing and administering any assessments under this paragraph.</p>	
17	Sec. 300.162 Supplementation of State, local, and other Federal funds.	


Technical Assistance Checklist¹ – Eligibility Requirements found in 34 CFR Part 300

<p>Related Assurances</p>	<p>Related Statutory or Regulatory Provisions</p>	<p style="text-align: center;">✓ Consistent State policies and procedures are in place.</p>
	<p>(a) Expenditures. Funds paid to a State under this part must be expended in accordance with all the provisions of this part.</p> <p>(b) Prohibition against commingling.</p> <p style="padding-left: 20px;">(1) Funds paid to a State under this part must not be commingled with State funds.</p> <p style="padding-left: 20px;">(2) The requirement in paragraph (b)(1) of this section is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of funds paid to a State under this part. Separate bank accounts are not required. (See 34 CFR 76.702 (Fiscal control and fund accounting procedures).)</p> <p>(c) State-level nonsupplanting.</p> <p style="padding-left: 20px;">(1) Except as provided in Sec. 300.202, funds paid to a State under Part B of the Act must be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of the SEA or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act, and in no case to supplant those Federal, State, and local funds.</p> <p style="padding-left: 20px;">(2) If the State provides clear and convincing evidence that all children with disabilities have available to them FAPE, the Secretary may waive, in whole or in part, the requirements of paragraph (c)(1) of this section if the Secretary concurs with the evidence provided by the State under Sec. 300.164.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i></p> <p><i>(Authority: 20 U.S.C. 1412(a)(17))</i></p>	
<p>18</p>	<p>Sec. 300.163 Maintenance of State financial support.</p> <p>(a) General. A State must not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.</p> <p>(b) Reduction of funds for failure to maintain support. The Secretary reduces the allocation of funds under section 611 of the Act for any fiscal year following the fiscal year in which the State fails to comply with the requirement of paragraph (a) of this section by the same amount by which the State fails to meet the requirement.</p> <p>(c) Waivers for exceptional or uncontrollable circumstances. The Secretary may waive the requirement of paragraph (a) of this section for a State, for one fiscal year at a time, if the Secretary determines that--</p> <p style="padding-left: 20px;">(1) Granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or</p> <p style="padding-left: 20px;">(2) The State meets the standard in Sec. 300.164 for a waiver of the requirement to supplement, and not to</p>	


Technical Assistance Checklist¹ – Eligibility Requirements found in 34 CFR Part 300

Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	supplant, funds received under Part B of the Act. (d) Subsequent years. If, for any fiscal year, a State fails to meet the requirement of paragraph (a) of this section, including any year for which the State is granted a waiver under paragraph (c) of this section, the financial support required of the State in future years under paragraph (a) of this section shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support. <i>(Approved by the Office of Management and Budget under control number 1820-0030)</i> <i>(Authority: 20 U.S.C. 1412(a)(18))</i>	
<p>19</p>	<p>Sec. 300.165 Public participation.</p> <p>(a) Prior to the adoption of any policies and procedures needed to comply with Part B of the Act (including any amendments to those policies and procedures), the State must ensure that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.</p> <p>(b) Before submitting a State plan under this part, a State must comply with the public participation requirements in paragraph (a) of this section and those in 20 U.S.C. 1232d(b)(7).</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i> <i>(Authority: 20 U.S.C. 1412(a)(19); 20 U.S.C. 1232d(b)(7))</i></p>	
<p>20</p>	<p>Sec. 300.166 Rule of construction.</p> <p>In complying with Sections 300.162 and 300.163, a State may not use funds paid to it under this part to satisfy State-law mandated funding obligations to LEAs, including funding based on student attendance or enrollment, or inflation.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i> <i>(Authority: 20 U.S.C. 1412(a)(20))</i></p>	
<p>21</p>	<p>Sec. 300.167 State advisory panel.</p> <p>The State must establish and maintain an advisory panel for the purpose of providing policy guidance with respect to special</p>	

Technical Assistance Checklist¹ – Eligibility Requirements found in 34 CFR Part 300

Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>education and related services for children with disabilities in the State. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(21)(A))</p> <p>Sec. 300.168 Membership.</p> <p>(a) General. The advisory panel must consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, be representative of the State population and be composed of individuals involved in, or concerned with the education of children with disabilities, including--</p> <ol style="list-style-type: none"> (1) Parents of children with disabilities (ages birth through 26); (2) Individuals with disabilities; (3) Teachers; (4) Representatives of institutions of higher education that prepare special education and related services personnel; (5) State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, (42 U.S.C. 11431 et seq.); (6) Administrators of programs for children with disabilities; (7) Representatives of other State agencies involved in the financing or delivery of related services to children with disabilities; (8) Representatives of private schools and public charter schools; (9) Not less than one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; (10) A representative from the State child welfare agency responsible for foster care; and (11) Representatives from the State juvenile and adult corrections agencies. <p>(b) Special rule. A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities (ages birth through 26).</p> <p>(Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(21)(B) and (C))</p> <p>Sec. 300.169 Duties.</p>	


Technical Assistance Checklist¹ – Eligibility Requirements found in 34 CFR Part 300

Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	The advisory panel must-- (a) Advise the SEA of unmet needs within the State in the education of children with disabilities; (b) Comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities; (c) Advise the SEA in developing evaluations and reporting on data to the Secretary under section 618 of the Act; (d) Advise the SEA in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the Act; and (e) Advise the SEA in developing and implementing policies relating to the coordination of services for children with disabilities. <i>(Approved by the Office of Management and Budget under control number 1820-0030)</i> <i>(Authority: 20 U.S.C. 1412(a)(21)(D))</i>	
<p>22</p>	<p>Sec. 300.170 Suspension and expulsion rates.</p> <p>(a) General. The SEA must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities--</p> <p>(1) Among LEAs in the State; or</p> <p>(2) Compared to the rates for nondisabled children within those agencies.</p> <p>(b) Review and revision of policies. If the discrepancies described in paragraph (a) of this section are occurring, the SEA must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i> <i>(Authority: 20 U.S.C. 1412(a)(22))</i></p>	
<p>23a 23b1 23b2</p>	<p>Sec. 300.172 Access to instructional materials.</p> <p>(a) General. The State must--</p> <p>(1) Adopt the National Instructional Materials Accessibility Standard (NIMAS), published as appendix C to part</p>	


Technical Assistance Checklist¹ – Eligibility Requirements found in 34 CFR Part 300

<p>Related Assurances</p>	<p>Related Statutory or Regulatory Provisions</p>	<p style="text-align: center;">✓ Consistent State policies and procedures are in place.</p>
	<p>300, for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after publication of the NIMAS in the Federal Register on July 19, 2006 (71 FR 41084); and</p> <p>(2) Establish a State definition of "timely manner" for purposes of paragraphs (b)(2) and (b)(3) of this section if the State is not coordinating with the National Instructional Materials Access Center (NIMAC) or (b)(3) and (c)(2) of this section if the State is coordinating with the NIMAC.</p> <p>(b) Rights and responsibilities of SEA.</p> <p>(1) Nothing in this section shall be construed to require any SEA to coordinate with the NIMAC.</p> <p>(2) If an SEA chooses not to coordinate with the NIMAC, the SEA must provide an assurance to the Secretary that it will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.</p> <p>(3) Nothing in this section relieves an SEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but are not included under the definition of blind or other persons with print disabilities in Sec. 300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.</p> <p>(4) In order to meet its responsibility under paragraphs (b)(2), (b)(3), and (c) of this section to ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner, the SEA must ensure that all public agencies take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials.</p> <p>(c) Preparation and delivery of files. If an SEA chooses to coordinate with the NIMAC, as of December 3, 2006, the SEA must--</p> <p>(1) As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, must enter into a written contract with the publisher of the print instructional materials to--</p> <p style="padding-left: 20px;">(i) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or</p> <p style="padding-left: 20px;">(ii) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.</p> <p>(2) Provide instructional materials to blind persons or other persons with print disabilities in a timely manner.</p>	

Technical Assistance Checklist¹ – Eligibility Requirements found in 34 CFR Part 300

Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	(d) Assistive technology. In carrying out this section, the SEA, to the maximum extent possible, must work collaboratively with the State agency responsible for assistive technology programs. (e) Definitions. (1) In this section and Sec. 300.210-- (i) Blind persons or other persons with print disabilities means children served under this part who may qualify to receive books and other publications produced in specialized formats in accordance with the Act entitled "An Act to provide books for adult blind," approved March 3, 1931, 2 U.S.C. 135a; (ii) National Instructional Materials Access Center or NIMAC means the center established pursuant to section 674(e) of the Act; (iii) National Instructional Materials Accessibility Standard or NIMAS has the meaning given the term in section 674(e)(3)(B) of the Act; (iv) Specialized formats has the meaning given the term in section 674(e)(3)(D) of the Act. (2) The definitions in paragraph (e)(1) of this section apply to each State and LEA, whether or not the State or LEA chooses to coordinate with the NIMAC. <i>(Approved by the Office of Management and Budget under control number 1820-0030)</i> <i>(Authority: 20 U.S.C. 1412(a)(23), 1474(e))</i>	
24	<p>Sec. 300.173 Overidentification and disproportionality.</p> <p>The State must have in effect, consistent with the purposes of this part and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in Sec. 300.8.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i> <i>(Authority: 20 U.S.C. 1412(a)(24))</i></p>	
25	<p>Sec. 300.174 Prohibition on mandatory medication.</p> <p>(a) General. The SEA must prohibit State and LEA personnel from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation under Sections 300.300 through</p>	

Technical Assistance Checklist¹ – Eligibility Requirements found in 34 CFR Part 300

Related Assurances	Related Statutory or Regulatory Provisions	 Consistent State policies and procedures are in place.
	<p>300.311, or receiving services under this part.</p> <p>(b) Rule of construction. Nothing in paragraph (a) of this section shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under Sec. 300.111 (related to child find).</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i></p> <p><i>(Authority: 20 U.S.C. 1412(a)(25))</i></p>	

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Other Assurances	Related Statutory or Regulatory Provisions
Section II B – Other Assurances	
<p>1</p>	<p>Sec. 300.705 Subgrants to LEAs.</p> <p>(a) Subgrants required. Each State that receives a grant under section 611 of the Act for any fiscal year must distribute any funds the State does not reserve under Sec. 300.704 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under section 613 of the Act for use in accordance with Part B of the Act. Effective with the funds that become available on July 1, 2009, each State must distribute funds to eligible LEAs, including public charter schools that operate as LEAs, even if the LEA is not serving any children with disabilities.</p> <p>(b) Allocations to LEAs. For each fiscal year for which funds are allocated to States under Sec. 300.703, each State shall allocate funds as follows:</p> <p>(1) Base payments. The State first must award each LEA described in paragraph (a) of this section the amount the LEA would have received under section 611 of the Act for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under section 611(d) of the Act, as that section was then in effect.</p> <p>(2) Base payment adjustments. For any fiscal year after 1999--</p> <p>(i) If a new LEA is created, the State must divide the base allocation determined under paragraph (b)(1) of this section for</p>

Technical Assistance Checklist – Eligibility Requirements found in 34 CFR Part 300

Other Assurances	Related Statutory or Regulatory Provisions
	<p>the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under Sec. 300.703(b), currently provided special education by each of the LEAs;</p> <p>(ii) If one or more LEAs are combined into a single new LEA, the State must combine the base allocations of the merged LEAs;</p> <p>(iii) If, for two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages 3 through 21 change, the base allocations of affected LEAs must be redistributed among affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under Sec. 300.703(b), currently provided special education by each affected LEA; and</p> <p>(iv) IF an LEA received a base payment of zero in its first year of operation, the SEA must adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any children with disabilities. The State must divide the base allocation determined under paragraph (b)(1) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the LEA, among the LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 currently provided special education by each of the LEAs. This requirement takes effect with funds that become available on July 1, 2009.</p> <p>(3) Allocation of remaining funds. After making allocations under paragraph (b)(1) of this section, as adjusted by paragraph (b)(2) of this section, the State must--</p> <p>(i) allocate 85 percent of any remaining funds to those LEAs on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the LEA's jurisdiction; and</p> <p>(ii) allocate 15 percent of those remaining funds to those LEAs in accordance with their relative numbers of children living in poverty, as determined by the SEA.</p> <p>(c) Reallocation of funds. (1) If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by that agency with State and local funds, the SEA may reallocate any portion of the funds under this part that are not needed by that LEA to provide FAPE to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to Section 300.704.</p> <p>(2) After an SEA distributes funds under this part to an eligible LEA that is not serving any children with disabilities, as provided in paragraph (a) of this section, the SEA must determine, within a reasonable period of time prior to the end of the carryover period in 34 CFR 76.709, whether the LEA has obligated those funds. The SEA may reallocated any of those funds no obligated by the LEA to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to Section 300.704.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i></p> <p><i>(Authority: 20 U.S.C. 1411(f))</i></p>

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Other Assurances	Related Statutory or Regulatory Provisions
2	<p>Sec. 300.640 Annual report of children served--report requirement.</p> <ul style="list-style-type: none"> (a) The SEA must annually report to the Secretary on the information required by section 618 of the Act at the times specified by the Secretary. (b) The SEA must submit the report on forms provided by the Secretary. <p><i>(Approved by the Office of Management and Budget under control numbers 1820-0030, 1820-0043, 1820-0659, 1820-0621, 1820-0518, 1820-0521, 1820-0517, and 1820-0677)</i></p> <p><i>(Authority: 20 U.S.C. 1418(a))</i></p> <p>Sec. 300.641 Annual report of children served--information required in the report.</p> <ul style="list-style-type: none"> (a) For purposes of the annual report required by section 618 of the Act and Sec. 300.640, the State and the Secretary of the Interior must count and report the number of children with disabilities receiving special education and related services on any date between October 1 and December 1 of each year. (b) For the purpose of this reporting provision, a child's age is the child's actual age on the date of the child count. (c) The SEA may not report a child under more than one disability category. (d) If a child with a disability has more than one disability, the SEA must report that child in accordance with the following procedure: <ul style="list-style-type: none"> (1) If a child has only two disabilities and those disabilities are deafness and blindness, and the child is not reported as having a developmental delay, that child must be reported under the category "deaf-blindness." (2) A child who has more than one disability and is not reported as having deaf-blindness or as having a developmental delay must be reported under the category "multiple disabilities." <p><i>(Approved by the Office of Management and Budget under control numbers 1820-0030, 1820-0043, 1820-0621, 1820-0521, and 1820-0517)</i></p> <p><i>(Authority: 20 U.S.C. 1418(a), (b))</i></p> <p>Sec. 300.642 Data reporting.</p> <ul style="list-style-type: none"> (a) Protection of personally identifiable data. The data described in section 618(a) of the Act and in Sec. 300.641 must be publicly reported by each State in a manner that does not result in disclosure of data identifiable to individual children. (b) Sampling. The Secretary may permit States and the Secretary of the Interior to obtain data in section 618(a) of the Act through sampling. <p><i>(Approved by the Office of Management and Budget under control numbers 1820-0030, 1820-0043, 1820-0518, 1820-0521, and 1820-0517)</i></p> <p><i>(Authority: 20 U.S.C. 1418(b))</i></p> <p>Sec. 300.643 Annual report of children served--certification.</p> <p>The SEA must include in its report a certification signed by an authorized official of the agency that the information provided under Sec. 300.640 is an accurate and unduplicated count of children with disabilities receiving special education and related services on the dates in question.</p>

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Other Assurances	Related Statutory or Regulatory Provisions
	<p><i>(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0043)</i></p> <p><i>(Authority: 20 U.S.C. 1418(a)(3))</i></p> <p>Sec. 300.644 Annual report of children served--criteria for counting children.</p> <p>The SEA may include in its report children with disabilities who are enrolled in a school or program that is operated or supported by a public agency, and that--</p> <ul style="list-style-type: none"> (a) Provides them with both special education and related services that meet State standards; (b) Provides them only with special education, if a related service is not required, that meets State standards; or (c) In the case of children with disabilities enrolled by their parents in private schools, counts those children who are eligible under the Act and receive special education or related services or both that meet State standards under Sections 300.132 through 300.144. <p><i>(Approved by the Office of Management and Budget under control numbers 1820-0030, 1820-0043, 1820-0659, 1820-0621, 1820-0521, and 1820-0517)</i></p> <p><i>(Authority: 20 U.S.C. 1418(a))</i></p> <p>Sec. 300.645 Annual report of children served--other responsibilities of the SEA.</p> <p>In addition to meeting the other requirements of Sections 300.640 through 300.644, the SEA must--</p> <ul style="list-style-type: none"> (a) Establish procedures to be used by LEAs and other educational institutions in counting the number of children with disabilities receiving special education and related services; (b) Set dates by which those agencies and institutions must report to the SEA to ensure that the State complies with Sec. 300.640(a); (c) Obtain certification from each agency and institution that an unduplicated and accurate count has been made; (d) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under Sections 300.640 through 300.644; and (e) Ensure that documentation is maintained that enables the State and the Secretary to audit the accuracy of the count. <p><i>(Approved by the Office of Management and Budget under control numbers 1820-0030, 1820-0043, 1820-0659, 1820-0621, 1820-0518, 1820-0521, and 1820-0517)</i></p> <p><i>(Authority: 20 U.S.C. 1418(a))</i></p>
3	<p>34 CFR §76.702 Fiscal control and fund accounting procedures.</p> <p>A State and a subgrantee shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds.</p> <p><i>(Authority: 20 U.S.C. 1221e-3, 3474, and 65511(a))</i></p>
4	No Related Statutory or Regulatory Provisions Associated with this Assurance

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Certifications	Related Statutory or Regulatory Provisions
Section II C - Certifications	
1	<p>34 CFR Part 82, Appendix A and B</p> <p>34 CFR §80.11 State plans.</p> <p>(a) Scope. The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive order.</p> <p>(b) Requirements. A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.</p> <p>(c) Assurances. In each plan the State will include an assurance that the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:</p> <ol style="list-style-type: none"> (1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions, (2) Repeat the assurance language in the statutes or regulations, or (3) Develop its own language to the extent permitted by law. <p>(d) Amendments. A State will amend a plan whenever necessary to reflect:</p> <ol style="list-style-type: none"> (1) New or revised Federal statutes or regulations or (2) A material change in any State law, organization, policy, or State agency operation. <p>The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.</p> <p><i>(Authority: 20 U.S.C. 3474; OMB Circular A-102)</i></p>
2	<p>Sec. 300.154 Methods of ensuring services.</p> <p>(a) Establishing responsibility for services. The Chief Executive Officer of a State or designee of that officer must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency described in paragraph (b) of this section and the SEA, in order to ensure that all services described in paragraph (b)(1) of this section that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under paragraph (a)(3) of this section. The agreement or mechanism must include the following:</p> <ol style="list-style-type: none"> (1) An identification of, or a method for defining, the financial responsibility of each agency for providing services described in paragraph (b)(1) of this section to ensure FAPE to children with disabilities. The financial responsibility of each noneducational public agency described in paragraph (b) of this section, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or the State agency responsible for developing the child's IEP). (2) The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies. (3) Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

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Certifications	Related Statutory or Regulatory Provisions
	<p>(4) Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in paragraph (b)(1) of this section.</p> <p>(b) Obligation of noneducational public agencies.</p> <p>(1)(i) If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to paragraph (a) of this section, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in Sec. 300.5 relating to assistive technology devices, Sec. 300.6 relating to assistive technology services, Sec. 300.34 relating to related services, Sec. 300.41 relating to supplementary aids and services, and Sec. 300.42 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to paragraph (a) of this section or an agreement pursuant to paragraph (c) of this section.</p> <p>(ii) A noneducational public agency described in paragraph (b)(1)(i) of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.</p> <p>(2) If a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph (b)(1) of this section, the LEA (or State agency responsible for developing the child's IEP) must provide or pay for these services to the child in a timely manner. The LEA or State agency is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism described in paragraph (a) of this section.</p> <p>(c) Special rule. The requirements of paragraph (a) of this section may be met through--</p> <p>(1) State statute or regulation;</p> <p>(2) Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or</p> <p>(3) Other appropriate written methods as determined by the Chief Executive Officer of the State or designee of that officer and approved by the Secretary.</p> <p>(h) Construction. Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public benefits or insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i></p> <p><i>(Authority: 20 U.S.C. 1412(a)(12) and (e))</i></p>
3	<p>Sec. 300.171 Annual description of use of Part B funds.</p> <p>(a) In order to receive a grant in any fiscal year a State must annually describe--</p> <p>(1) How amounts retained for State administration and State-level activities under Sec. 300.704 will be used to meet the requirements of this part; and</p> <p>(2) How those amounts will be allocated among the activities described in Sec. 300.704 to meet State priorities based on input from</p>

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Certifications	Related Statutory or Regulatory Provisions
	<p>LEAs.</p> <p>(b) If a State's plans for use of its funds under Sec. 300.704 for the forthcoming year do not change from the prior year, the State may submit a letter to that effect to meet the requirement in paragraph (a) of this section.</p> <p>(c) The provisions of this section do not apply to the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the freely associated States.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i></p> <p><i>(Authority: 20 U.S.C. 1411(e)(5))</i></p>

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Statement	Related Statutory or Regulatory Provisions
Section II D – Statement	
	<p>34 CFR §76.104 A State shall include certain certifications in its State plan.</p> <p>(a) A State shall include the following certifications in each State plan:</p> <ol style="list-style-type: none"> (1) That the plan is submitted by the State agency that is eligible to submit the plan. (2) That the State agency has authority under State law to perform the functions of the State under the program. (3) That all provisions of the plan are consistent with State law. (5) That a State officer, specified by title in the certification, has authority under State law to receive, hold, and disburse Federal funds made available under the plan. (6) That the State officer who submits the plan, specified by title in the certification, has authority to submit the plan. (7) That the agency that submits the plan has adopted or otherwise formally approved the plan. (8) That the plan is the basis for State operation and administration of the program. <p>(b) [Reserved]</p> <p><i>(Authority: 20 U.S.C. 1221e-3 and 3474)</i></p>

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Use of Funds Form	Related Statutory or Regulatory Provisions
Section III – Description of Use of Funds Under Part B of the Individuals with Disabilities Education Act	
	<p>Sec. 300.704 State-level activities.</p> <p>(a) State administration.</p> <ol style="list-style-type: none"> (1) For the purpose of administering Part B of the Act, including paragraph (c) of this section, section 619 of the Act, and the coordination of activities under Part B of the Act with, and providing technical assistance to, other programs that provide services to children with disabilities— <ol style="list-style-type: none"> (i) Each State may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under section 611 of the Act for fiscal year 2004 or \$800,000 (adjusted in accordance with paragraph (a)(2) of this section), whichever is greater; and (ii) Each outlying area may reserve for each fiscal year not more than five percent of the amount the outlying area receives under Sec. 300.701(a) for the fiscal year or \$35,000, whichever is greater. (2) For each fiscal year, beginning with fiscal year 2005, the Secretary cumulatively adjusts— <ol style="list-style-type: none"> (i) The maximum amount the State was eligible to reserve for State administration under section 611 of the Act for fiscal year

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	<p>2004; and</p> <ul style="list-style-type: none"> (ii) \$800,000, by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. (3) Prior to expenditure of funds under paragraph (a) of this section, the State must certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12)(A) of the Act are current. (4) Funds reserved under paragraph (a)(1) of this section may be used for the administration of Part C of the Act, if the SEA is the lead agency for the State under that Part. <p>(b) Other State-level activities.</p> <ul style="list-style-type: none"> (1) States may reserve a portion of their allocations for other State-level activities. The maximum amount that a State may reserve for other State-level activities is as follows: <ul style="list-style-type: none"> (i) If the amount that the State sets aside for State administration under paragraph (a) of this section is greater than \$850,000 and the State opts to finance a high cost fund under paragraph (c) of this section: <ul style="list-style-type: none"> (A) For fiscal years 2005 and 2006, 10 percent of the State's allocation under Sec. 300.703. (B) For fiscal year 2007 and subsequent fiscal years, an amount equal to 10 percent of the State's allocation for fiscal year 2006 under Sec. 300.703 adjusted cumulatively for inflation. (ii) If the amount that the State sets aside for State administration under paragraph (a) of this section is greater than \$850,000 and the State opts not to finance a high cost fund under paragraph (c) of this section— <ul style="list-style-type: none"> (A) For fiscal years 2005 and 2006, nine percent of the State's allocation under Sec. 300.703. (B) For fiscal year 2007 and subsequent fiscal years, an amount equal to nine percent of the State's allocation for fiscal year 2006 adjusted cumulatively for inflation. (iii) If the amount that the State sets aside for State administration under paragraph (a) of this section is less than or equal to \$850,000 and the State opts to finance a high cost fund under paragraph (c) of this section: <ul style="list-style-type: none"> (A) For fiscal years 2005 and 2006, 10.5 percent of the State's allocation under Sec. 300.703. (B) For fiscal year 2007 and subsequent fiscal years, an amount equal to 10.5 percent of the State's allocation for fiscal year 2006 under Sec. 300.703 adjusted cumulatively for inflation. (iv) If the amount that the State sets aside for State administration under paragraph (a) of this section is equal to or less than \$850,000 and the State opts not to finance a high cost fund under paragraph (c) of this section: <ul style="list-style-type: none"> (A) For fiscal years 2005 and 2006, nine and one-half percent of the State's allocation under Sec. 300.703. (B) For fiscal year 2007 and subsequent fiscal years, an amount equal to nine and one-half percent of the State's allocation for fiscal year 2006 under Sec. 300.703 adjusted cumulatively for inflation. (2) The adjustment for inflation is the rate of inflation as measured by the percentage of increase, if any, from the preceding fiscal year in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. (3) Some portion of the funds reserved under paragraph (b)(1) of this section must be used to carry out the following activities: <ul style="list-style-type: none"> (i) For monitoring, enforcement, and complaint investigation; and (ii) To establish and implement the mediation process required by section 615(e) of the Act, including providing for the costs of mediators and support personnel; (4) Funds reserved under paragraph (b)(1) of this section also may be used to carry out the following activities: <ul style="list-style-type: none"> (i) For support and direct services, including technical assistance, personnel preparation, and professional development and training;

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Use of Funds Form	Related Statutory or Regulatory Provisions
	<ul style="list-style-type: none"> (ii) To support paperwork reduction activities, including expanding the use of technology in the IEP process; (iii) To assist LEAs in providing positive behavioral interventions and supports and mental health services for children with disabilities; (iv) To improve the use of technology in the classroom by children with disabilities to enhance learning; (v) To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities; (vi) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to postsecondary activities; (vii) To assist LEAs in meeting personnel shortages; (viii) To support capacity building activities and improve the delivery of services by LEAs to improve results for children with disabilities; (ix) Alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities in charter schools; (x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 1111(b) and 6111 of the ESEA; and (xi) To provide technical assistance to schools and LEAs, and direct services, including supplemental educational services as defined in section 1116(e) of the ESEA to children with disabilities, in schools or LEAs identified for improvement under section 1116 of the ESEA on the sole basis of the assessment results of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the State under section 1111(b)(2)(G) of the ESEA. <p>(c) Local educational agency high cost fund.</p> <ul style="list-style-type: none"> (1) In general— <ul style="list-style-type: none"> (i) For the purpose of assisting LEAs (including a charter school that is an LEA or a consortium of LEAs) in addressing the needs of high need children with disabilities, each State has the option to reserve for each fiscal year 10 percent of the amount of funds the State reserves for other State-level activities under paragraph (b)(1) of this section— <ul style="list-style-type: none"> (A) To finance and make disbursements from the high cost fund to LEAs in accordance with paragraph (c) of this section during the first and succeeding fiscal years of the high cost fund; and (B) To support innovative and effective ways of cost sharing by the State, by an LEA, or among a consortium of LEAs, as determined by the State in coordination with representatives from LEAs, subject to paragraph (c)(2)(ii) of this section. (ii) For purposes of paragraph (c) of this section, local educational agency includes a charter school that is an LEA, or a consortium of LEAs. (2)(i) A State must not use any of the funds the State reserves pursuant to paragraph (c)(1)(i) of this section, which are solely for disbursement to LEAs, for costs associated with establishing, supporting, and otherwise administering the fund. The State may use funds the State reserves under paragraph (a) of this section for those administrative costs. <ul style="list-style-type: none"> (ii) A State must not use more than 5 percent of the funds the State reserves pursuant to paragraph (c)(1)(i) of this section for each fiscal year to support innovative and effective ways of cost sharing among consortia of LEAs.

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	<p>(3)(i) The SEA must develop, not later than 90 days after the State reserves funds under paragraph (c)(1)(i) of this section, annually review, and amend as necessary, a State plan for the high cost fund. Such State plan must-</p> <ul style="list-style-type: none"> (A) Establish, in consultation and coordination with representatives from LEAs, a definition of a high need child with a disability that, at a minimum— <ul style="list-style-type: none"> (1) Addresses the financial impact a high need child with a disability has on the budget of the child’s LEA; and (2) Ensures that the cost of the high need child with a disability is greater than 3 times the average per pupil expenditure (as defined in section 9101 of the ESEA) in that State; (B) Establish eligibility criteria for the participation of an LEA that, at a minimum, take into account the number and percentage of high need children with disabilities served by an LEA; (C) Establish criteria to ensure that placements supported by the fund are consistent with the requirements of Sections 300.114 through 300.118; (D) Develop a funding mechanism that provides distributions each fiscal year to LEAs that meet the criteria developed by the State under paragraph (c)(3)(i)(B) of this section; (E) Establish an annual schedule by which the SEA must make its distributions from the high cost fund each fiscal year; and (F) If the State elects to reserve funds for supporting innovative and effective ways of cost sharing under paragraph (c)(1)(i)(B) of this section, describe how these funds will be used. <p>(ii) The State must make its final State plan available to the public not less than 30 days before the beginning of the school year, including dissemination of such information on the State Web site.</p> <p>(4)(i) Each SEA must make all annual disbursements from the high cost fund established under paragraph (c)(1)(i) of this section in accordance with the State plan published pursuant to paragraph (c)(3) of this section.</p> <ul style="list-style-type: none"> (ii) The costs associated with educating a high need child with a disability, as defined under paragraph (c)(3)(i)(A) of this section, are only those costs associated with providing direct special education and related services to the child that are identified in that child’s IEP, including the cost of room and board for a residential placement determined necessary, consistent with Sec. 300.114, to implement a child’s IEP. (ii) The funds in the high cost fund remain under the control of the State until disbursed to an LEA to support a specific child who qualifies under the State plan for the high cost funds or distributed to LEAs, consistent with paragraph (c)(9) of this section. <p>(5) The disbursements under paragraph (c)(4) of this section must not be used to support legal fees, court costs, or other costs associated with a cause of action brought on behalf of a child with a disability to ensure FAPE for such child.</p> <p>(6) Nothing in paragraph (c) of this section—</p> <ul style="list-style-type: none"> (i) Limits or conditions the right of a child with a disability who is assisted under Part B of the Act to receive FAPE pursuant to section 612(a)(1) of the Act in the least restrictive environment pursuant to section 612(a)(5) of the Act; or (ii) Authorizes an SEA or LEA to establish a limit on what may be spent on the education of a child with a disability. <p>(7) Notwithstanding the provisions of paragraphs (c)(1) through (6) of this section, a State may use funds reserved pursuant to paragraph (c)(1)(i) of this section for implementing a placement neutral cost sharing and reimbursement program of high need, low incidence, catastrophic, or extraordinary aid to LEAs that provides services to high need children based on eligibility criteria for such programs that were created not later than January 1, 2004, and are currently in operation, if such program serves children that meet the requirement of the definition of a high need child with a disability as described in paragraph (c)(3)(i)(A) of this</p>

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	<p>section.</p> <p>(8) Disbursements provided under paragraph (c) of this section must not be used to pay costs that otherwise would be reimbursed as medical assistance for a child with a disability under the State Medicaid program under Title XIX of the Social Security Act.</p> <p>(9) Funds reserved under paragraph (c)(1)(i) of this section from the appropriation for any fiscal year, but not expended pursuant to paragraph (c)(4) of this section before the beginning of their last year of availability for obligation, must be allocated to LEAs in the same manner as other funds from the appropriation for that fiscal year are allocated to LEAs under Sec. 300.705 during their final year of availability.</p> <p>(d) Inapplicability of certain prohibitions. A State may use funds the State reserves under paragraphs (a) and (b) of this section without regard to—</p> <p>(1) The prohibition on commingling of funds in Sec. 300.162(b).</p> <p>(2) The prohibition on supplanting other funds in Sec. 300.162(c).</p> <p>(e) Special rule for increasing funds. A State may use funds the State reserves under paragraph (a)(1) of this section as a result of inflationary increases under paragraph (a)(2) of this section to carry out activities authorized under paragraph (b)(4)(i), (iii), (vii), or (viii) of this section.</p> <p>(f) Flexibility in using funds for Part C. Any State eligible to receive a grant under section 619 of the Act may use funds made available under paragraph (a)(1) of this section, Sec. 300.705(c), or Sec. 300.814(e) to develop and implement a State policy jointly with the lead agency under Part C of the Act and the SEA to provide early intervention services (which must include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with Part C of the Act to children with disabilities who are eligible for services under section 619 of the Act and who previously received services under Part C of the Act until the children enter, or are eligible under State law to enter, kindergarten, or elementary school as appropriate.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0600)</i></p> <p><i>(Authority: 20 U.S.C. 1411(e))</i></p>

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State Administration	Related Statutory or Regulatory Provisions
Section IV – State Administration	
	<p>Sec. 300.199 State administration.</p> <p>(a) Rulemaking. Each State that receives funds under Part B of the Act must--</p> <ol style="list-style-type: none"> (1) Ensure that any State rules, regulations, and policies relating to this part conform to the purposes of this part; (2) Identify in writing to LEAs located in the State and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by Part B of the Act and Federal regulations; and (3) Minimize the number of rules, regulations, and policies to which the LEAs and schools located in the State are subject under Part B of the Act. <p>(b) Support and facilitation. State rules, regulations, and policies under Part B of the Act must support and facilitate LEA and school-level system improvement designed to enable children with disabilities to meet the challenging State student academic achievement standards.</p> <p><i>(Approved by the Office of Management and Budget under control number 1820-0030)</i></p> <p><i>(Authority: 20 U.S.C. 1407)</i></p>