

(1) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments.

(2) The number of children with disabilities, if any, participating in alternate assessments based on grade-level academic achievement standards.

(3) The number of children with disabilities, if any, participating in alternate assessments based on modified academic achievement standards.

(4) The number of children with disabilities, if any, participating in alternate assessments based on alternate academic achievement standards.

(5) Compared with the achievement of all children, including children with disabilities, the performance results of children with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards, alternate assessments based on modified academic achievement standards, and alternate assessments based on alternate academic achievement standards if—

(i) The number of children participating in those assessments is sufficient to yield statistically reliable information; and

(ii) Reporting that information will not reveal personally identifiable information about an individual student on those assessments.

(g) *Universal design.* An SEA (or, in the case of a district-wide assessment, an LEA) must, to the extent possible, use universal design principles in developing and administering any assessments under this section.

(Authority: 20 U.S.C. 1412(a)(16))

[72 FR 17781, Apr. 9, 2007]

§ 300.161 [Reserved]

§ 300.162 Supplementation of State, local, and other Federal funds.

(a) *Expenditures.* Funds paid to a State under this part must be expended in accordance with all the provisions of this part.

(b) *Prohibition against commingling.* (1) Funds paid to a State under this part

must not be commingled with State funds.

(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).)

(c) *State-level nonsupplanting.* (1) Except as provided in §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.

(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 §300.164.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(17))

§ 300.163 Maintenance of State financial support.

(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.

(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.

(c) *Waivers for exceptional or uncontrollable circumstances.* The Secretary may waive the requirement of paragraph (a) of this section for a State, for