

improvement designed to enable children with disabilities to meet the challenging State student academic achievement standards.

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

(Authority: 20 U.S.C. 1407)

Subpart C—Local Educational Agency Eligibility

§ 300.200 Condition of assistance.

An LEA is eligible for assistance under Part B of the Act for a fiscal year if the agency submits a plan that provides assurances to the SEA that the LEA meets each of the conditions in §§ 300.201 through 300.213.

(Authority: 20 U.S.C. 1413(a))

§ 300.201 Consistency with State policies.

The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under §§ 300.101 through 300.163, and §§ 300.165 through 300.174.

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(Authority: 20 U.S.C. 1413(a)(1))

§ 300.202 Use of amounts.

(a) *General.* Amounts provided to the LEA under Part B of the Act—

(1) Must be expended in accordance with the applicable provisions of this part;

(2) Must be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with paragraph (b) of this section; and

(3) Must be used to supplement State, local, and other Federal funds and not to supplant those funds.

(b) *Excess cost requirement*—(1) *General.* (i) The excess cost requirement prevents an LEA from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to paragraph (b)(1)(ii) of this section.

(ii) The excess cost requirement does not prevent an LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or State funds are available for non-disabled children of these ages. However, the LEA must comply with the nonsupplanting and other requirements of this part in providing the education and services for these children.

(2)(i) An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.

(ii) The amount described in paragraph (b)(2)(i) of this section is determined in accordance with the definition of *excess costs* in § 300.16. That amount may not include capital outlay or debt service.

(3) If two or more LEAs jointly establish eligibility in accordance with § 300.223, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of *excess costs* in § 300.16 in those agencies for elementary or secondary school students, as the case may be.

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(Authority: 20 U.S.C. 1413(a)(2)(A))

§ 300.203 Maintenance of effort.

(a) *General.* Except as provided in §§ 300.204 and 300.205, funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

(b) *Standard.* (1) Except as provided in paragraph (b)(2) of this section, the SEA must determine that an LEA complies with paragraph (a) of this section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per capita amount from either of the following sources as the LEA spent for that purpose from

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the same source for the most recent prior year for which information is available:

- (i) Local funds only.
- (ii) The combination of State and local funds.

(2) An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section.

(3) The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA in determining an LEA's compliance with the requirement in paragraph (a) of this section.

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(Authority: 20 U.S.C. 1413(a)(2)(A))

§ 300.204 Exception to maintenance of effort.

Notwithstanding the restriction in § 300.203(a), an LEA may reduce the level of expenditures by the LEA under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:

(a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.

(b) A decrease in the enrollment of children with disabilities.

(c) The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child—

(1) Has left the jurisdiction of the agency;

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(2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or

(3) No longer needs the program of special education.

(d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

(e) The assumption of cost by the high cost fund operated by the SEA under § 300.704(c).

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(Authority: 20 U.S.C. 1413(a)(2)(B))

§ 300.205 Adjustment to local fiscal efforts in certain fiscal years.

(a) *Amounts in excess.* Notwithstanding § 300.202(a)(2) and (b) and § 300.203(a), and except as provided in paragraph (d) of this section and § 300.230(e)(2), for any fiscal year for which the allocation received by an LEA under § 300.705 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by § 300.203(a) by not more than 50 percent of the amount of that excess.

(b) *Use of amounts to carry out activities under ESEA.* If an LEA exercises the authority under paragraph (a) of this section, the LEA must use an amount of local funds equal to the reduction in expenditures under paragraph (a) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities.

(c) *State prohibition.* Notwithstanding paragraph (a) of this section, if an SEA determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirements of section 613(a) of the Act and this part or the SEA has taken action against the LEA under section 616 of the Act and subpart F of these regulations, the SEA must prohibit the LEA from reducing the level of expenditures under paragraph (a) of this section for that fiscal year.

(d) *Special rule.* The amount of funds expended by an LEA for early intervening services under § 300.226 shall count toward the maximum amount of