

**§ 300.223**

**§ 300.223 Joint establishment of eligibility.**

(a) *General.* An SEA may require an LEA to establish its eligibility jointly with another LEA if the SEA determines that the LEA will be ineligible under this subpart because the agency will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

(b) *Charter school exception.* An SEA may not require a charter school that is an LEA to jointly establish its eligibility under paragraph (a) of this section unless the charter school is explicitly permitted to do so under the State's charter school statute.

(c) *Amount of payments.* If an SEA requires the joint establishment of eligibility under paragraph (a) of this section, the total amount of funds made available to the affected LEAs must be equal to the sum of the payments that each LEA would have received under § 300.705 if the agencies were eligible for those payments.

(Authority: 20 U.S.C. 1413(e)(1) and (2))

**§ 300.224 Requirements for establishing eligibility.**

(a) *Requirements for LEAs in general.* LEAs that establish joint eligibility under this section must—

(1) Adopt policies and procedures that are consistent with the State's policies and procedures under §§ 300.101 through 300.163, and §§ 300.165 through 300.174; and

(2) Be jointly responsible for implementing programs that receive assistance under Part B of the Act.

(b) *Requirements for educational service agencies in general.* If an educational service agency is required by State law to carry out programs under Part B of the Act, the joint responsibilities given to LEAs under Part B of the Act—

(1) Do not apply to the administration and disbursement of any payments received by that educational service agency; and

(2) Must be carried out only by that educational service agency.

(c) *Additional requirement.* Notwithstanding any other provision of §§ 300.223 through 300.224, an educational service agency must provide

for the education of children with disabilities in the least restrictive environment, as required by § 300.112.

(Approved by the Office of Management and Budget under control number 1820-0600)

(Authority: 20 U.S.C. 1413(e)(3) and (4))

**§ 300.225 [Reserved]**

**§ 300.226 Early intervening services.**

(a) *General.* An LEA may not use more than 15 percent of the amount the LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the LEA pursuant to § 300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment. (See Appendix D for examples of how § 300.205(d), regarding local maintenance of effort, and § 300.226(a) affect one another.)

(b) *Activities.* In implementing coordinated, early intervening services under this section, an LEA may carry out activities that include—

(1) Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

(2) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

(c) *Construction.* Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.

(d) *Reporting.* Each LEA that develops and maintains coordinated, early