

§ 300.140 [Reserved]**§ 300.141 SEA responsibility for general supervision.**

(a) The State must have on file with the Secretary information that shows that the requirements of §300.600 are met.

(b) The information described under paragraph (a) of this section must include a copy of each State statute, State regulation, signed agreement between respective agency officials, and any other documents that show compliance with that paragraph.

(Authority: 20 U.S.C. 1412(a)(11))

§ 300.142 Methods of ensuring services.

(a) *Establishing responsibility for services.* The Chief Executive Officer or designee of that officer shall 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:

(1) *Agency financial responsibility.* 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) *Conditions and terms of reimbursement.* The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies.

(3) *Interagency disputes.* Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to se-

cure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

(4) *Coordination of services procedures.* 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) *General.* (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 §300.5 relating to assistive technology devices, §300.6 relating to assistive technology services, §300.24 relating to related services, §300.28 relating to supplementary aids and services, and §300.29 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

(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) *Reimbursement for services by noneducational public agency.* 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) shall provide or pay for these services to the child in a timely manner. The LEA or State agency may then claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency shall reimburse the LEA or State agency in accordance with the terms of the interagency

agreement or other mechanism described in paragraph (a)(1) of this section, and the agreement described in paragraph (a)(2) 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 that officer.

(d) *Information.* The State must have on file with the Secretary information to demonstrate that the requirements of paragraphs (a) through (c) of this section are met.

(e) *Children with disabilities who are covered by public insurance.* (1) A public agency may use the Medicaid or other public insurance benefits programs in which a child participates to provide or pay for services required under this part, as permitted under the public insurance program, except as provided in paragraph (e)(2) of this section.

(2) With regard to services required to provide FAPE to an eligible child under this part, the public agency—

- (i) May not require parents to sign up for or enroll in public insurance programs in order for their child to receive FAPE under Part B of the Act;
- (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 parent otherwise would be required to pay; and
- (iii) May not use a child's benefits under a public insurance program if that use would—

(A) Decrease available lifetime coverage or any other insured benefit;

(B) Result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;

(C) Increase premiums or lead to the discontinuation of insurance; or

(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

(f) *Children with disabilities who are covered by private insurance.* (1) With regard to services required to provide FAPE to an eligible child under this part, a public agency may access a parent's private insurance proceeds only if the parent provides informed consent consistent with § 300.500(b)(1).

(2) Each time the public agency proposes to access the parent's private insurance proceeds, it must—

(i) Obtain parent consent in accordance with paragraph (f)(1) of this section; and

(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.

(g) *Use of Part B funds.* (1) If a public agency is unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent 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.

(2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the public agency may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

(h) *Proceeds from public or private insurance.* (1) Proceeds from public or private insurance will not be treated as program income for purposes of 34 CFR 80.25.

(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 §§ 300.154 and 300.231.

(i) *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 insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, or any other public insurance program.

(Authority: 20 U.S.C. 1412(a)(12)(A), (B), and (C); 1401(8))

§ 300.143 SEA implementation of procedural safeguards.

The State must have on file with the Secretary the procedures that the SEA (and any agency assigned responsibility pursuant to §300.600(d)) follows to inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by that public agency.

(Authority: 20 U.S.C. 1412(a)(11); 1415(a))

§ 300.144 Hearings relating to LEA eligibility.

The State must have on file with the Secretary procedures to ensure that the SEA does 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).

(Authority: 20 U.S.C. 1412(a)(13))

§ 300.145 Recovery of funds for misclassified children.

The State must have on file with the Secretary policies and procedures that ensure that the State seeks to recover any funds provided under Part B of the Act for services to a child who is determined to be erroneously classified as eligible to be counted under section 611(a) or (d) of the Act.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 300.146 Suspension and expulsion rates.

The State must have on file with the Secretary information to demonstrate that the following requirements are met:

(a) *General.* The SEA examines data to determine if significant discrepancies are occurring in the rate of

long-term suspensions and expulsions of children with disabilities—

(1) Among LEAs in the State; or

(2) Compared to the rates for non-disabled children within the agencies.

(b) *Review and revision of policies.* If the discrepancies described in paragraph (a) of this section are occurring, the SEA reviews and, if appropriate, revises (or requires the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.

(Authority: 20 U.S.C. 612(a)(22))

§ 300.147 Additional information if SEA provides direct services.

(a) If the SEA provides FAPE to children with disabilities, or provides direct services to these children, the agency—

(1) Shall comply with any additional requirements of §§ 300.220–300.230(a) and 300.234–300.250 as if the agency were an LEA; and

(2) May use amounts that are otherwise available to the agency under Part B of the Act to serve those children without regard to §300.184 (relating to excess costs).

(b) The SEA must have on file with the Secretary information to demonstrate that it meets the requirements of paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 1412(b))

§ 300.148 Public participation.

(a) *General; exception.* (1) Subject to paragraph (a)(2) of this section, each State must ensure that, prior to the adoption of any policies and procedures needed to comply with this part, 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 consistent with §§300.280–300.284.

(2) A State will be considered to have met paragraph (a)(1) of this section with regard to a policy or procedure needed to comply with this part if it