

### § 300.149

can demonstrate that prior to the adoption of that policy or procedure, the policy or procedure was subjected to a public review and comment process that is required by the State for other purposes and is comparable to and consistent with the requirements of §§ 300.280–300.284.

(b) *Documentation.* The State must have on file with the Secretary information to demonstrate that the requirements of paragraph (a) of this section are met.

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

### § 300.149 [Reserved]

### § 300.150 State advisory panel.

The State must have on file with the Secretary information to demonstrate that the State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State in accordance with the requirements of §§ 300.650–300.653.

(Authority: 20 U.S.C. 1412(a)(21)(A))

### § 300.151 [Reserved]

### § 300.152 Prohibition against commingling.

(a) The State must have on file with the Secretary an assurance satisfactory to the Secretary that the funds under Part B of the Act are not commingled with State funds.

(b) The assurance in paragraph (a) of this section is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of the Part B funds. Separate bank accounts are not required. (See 34 CFR 76.702 (Fiscal control and fund accounting procedures).)

(Authority: 20 U.S.C. 1412(a)(18)(B))

### § 300.153 State-level nonsupplanting.

(a) *General.* (1) Except as provided in § 300.230, 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

### 34 CFR Ch. III (7–1–02 Edition)

children with disabilities under Part B of the Act and in no case to supplant these Federal, State, and local funds.

(2) The State must have on file with the Secretary information to demonstrate to the satisfaction of the Secretary that the requirements of paragraph (a)(1) of this section are met.

(b) *Waiver.* 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 (a) of this section if the Secretary concurs with the evidence provided by the State under § 300.589.

(Authority: 20 U.S.C. 1412(a)(18)(c))

### § 300.154 Maintenance of State financial support.

(a) *General.* The State must have on file with the Secretary information to demonstrate, on either a total or per-capita basis, that the State will 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 one fiscal year at a time, if the Secretary determines that—

(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

(2) The State meets the standard in § 300.589 for a waiver of the requirement to supplement, and not to 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 must be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

(Authority: 20 U.S.C. 1412(a)(19))

**§ 300.155 Policies and procedures for use of Part B funds.**

The State must have on file with the Secretary policies and procedures designed to ensure that funds paid to the State under Part B of the Act are spent in accordance with the provisions of Part B.

(Authority: 20 U.S.C. 1412(a)(18)(A))

**§ 300.156 Annual description of use of Part B funds.**

(a) In order to receive a grant in any fiscal year a State must annually describe—

(1) How amounts retained for State-level activities under §300.602 will be used to meet the requirements of this part;

(2) How those amounts will be allocated among the activities described in §§300.621 and 300.370 to meet State priorities based on input from LEAs; and

(3) The percentage of those amounts, if any, that will be distributed to LEAs by formula.

(b) If a State's plans for use of its funds under §§300.370 and 300.620 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.

(Authority: 20 U.S.C. 1411(f)(5))

LEA AND STATE AGENCY ELIGIBILITY—  
GENERAL

**§ 300.180 Condition of assistance.**

An LEA or State agency is eligible for assistance under Part B of the Act for a fiscal year if the agency demonstrates to the satisfaction of the SEA that it meets the conditions in §§300.220–300.250.

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

**§ 300.181 Exception for prior LEA or State agency policies and procedures on file with the SEA.**

If an LEA or a State agency described in §300.194 has on file with the SEA policies and procedures that demonstrate that the LEA or State agency meets any requirement of §300.180, including any policies and procedures filed under Part B of the Act as in effect before June 4, 1997, the SEA shall consider the LEA or State agency to have met the requirement for purposes of receiving assistance under Part B of the Act.

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

**§ 300.182 Amendments to LEA policies and procedures.**

(a) *Modification made by an LEA or a State agency.* (1) Subject to paragraph (b) of this section, policies and procedures submitted by an LEA or a State agency in accordance with this subpart remain in effect until it submits to the SEA the modifications that the LEA or State agency decides are necessary.

(2) The provisions of this subpart apply to a modification to an LEA's or State agency's policies and procedures in the same manner and to the same extent that they apply to the LEA's or State agency's original policies and procedures.

(b) *Modifications required by the SEA.* The SEA may require an LEA or a State agency to modify its policies and procedures, but only to the extent necessary to ensure the LEA's or State agency's compliance with this part, if—

(1) After June 4, 1997, the provisions of the Act or the regulations in this part are amended;

(2) There is a new interpretation of the Act by Federal or State courts; or

(3) There is an official finding of non-compliance with Federal or State law or regulations.

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

**§ 300.183 [Reserved]**

**§ 300.184 Excess cost requirement.**

(a) *General.* Amounts provided to an LEA under Part B of the Act may be used only to pay the excess costs of providing special education and related services to children with disabilities.