

**§ 300.203 Maintenance of effort.**

(a) *Eligibility standard.* (1) For purposes of establishing the LEA's eligibility for an award for a fiscal year, the SEA must determine that the LEA budgets, for the education of children with disabilities, at least the same amount, from at least one of the following sources, as the LEA spent for that purpose from the same source for the most recent fiscal year for which information is available:

- (i) Local funds only;
- (ii) The combination of State and local funds;
- (iii) Local funds only on a per capita basis; or
- (iv) The combination of State and local funds on a per capita basis.

(2) When determining the amount of funds that the LEA must budget to meet the requirement in paragraph (a)(1) of this section, the LEA may take into consideration, to the extent the information is available, the exceptions and adjustment provided in §§ 300.204 and 300.205 that the LEA:

- (i) Took in the intervening year or years between the most recent fiscal year for which information is available and the fiscal year for which the LEA is budgeting; and
- (ii) Reasonably expects to take in the fiscal year for which the LEA is budgeting.

(3) 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 may not be considered in determining whether an LEA meets the standard in paragraph (a)(1) of this section.

(b) *Compliance standard.* (1) 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.

(2) An LEA meets this standard if it does not reduce the level of expenditures for the education of children with disabilities made by the LEA from at least one of the following sources below

the level of those expenditures from the same source for the preceding fiscal year, except as provided in §§ 300.204 and 300.205:

- (i) Local funds only;
- (ii) The combination of State and local funds;
- (iii) Local funds only on a per capita basis; or
- (iv) The combination of State and local funds on a per capita basis.

(3) 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 may not be considered in determining whether an LEA meets the standard in paragraphs (b)(1) and (2) of this section.

(c) *Subsequent years.* (1) If, in the fiscal year beginning on July 1, 2013 or July 1, 2014, an LEA fails to meet the requirements of § 300.203 in effect at that time, the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required in the absence of that failure, not the LEA's reduced level of expenditures.

(2) If, in any fiscal year beginning on or after July 1, 2015, an LEA fails to meet the requirement of paragraph (b)(2)(i) or (iii) of this section and the LEA is relying on local funds only, or local funds only on a per capita basis, to meet the requirements of paragraph (a) or (b) of this section, the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required under paragraph (b)(2)(i) or (iii) in the absence of that failure, not the LEA's reduced level of expenditures.

(3) If, in any fiscal year beginning on or after July 1, 2015, an LEA fails to meet the requirement of paragraph (b)(2)(ii) or (iv) of this section and the LEA is relying on the combination of State and local funds, or the combination of State and local funds on a per capita basis, to meet the requirements of paragraph (a) or (b) of this section, the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount

that would have been required under paragraph (b)(2)(ii) or (iv) in the absence of that failure, not the LEA's reduced level of expenditures.

(d) *Consequence of failure to maintain effort.* If an LEA fails to maintain its level of expenditures for the education of children with disabilities in accordance with paragraph (b) of this section, the SEA is liable in a recovery action under section 452 of the General Education Provisions Act (20 U.S.C. 1234a) to return to the Department, using non-Federal funds, an amount equal to the amount by which the LEA failed to maintain its level of expenditures in accordance with paragraph (b) of this section in that fiscal year, or the amount of the LEA's Part B subgrant in that fiscal year, whichever is lower. (Approved by the Office of Management and Budget under control number 1820-0600)

(Authority: 20 U.S.C. 1413(a)(2)(A), Pub. L. 113-76, 128 Stat. 5, 394 (2014), Pub. L. 113-235, 128 Stat. 2130, 2499 (2014))

[80 FR 23666, Apr. 28, 2015]

**§ 300.204 Exception to maintenance of effort.**

Notwithstanding the restriction in § 300.203(b), 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;

(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).

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

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

[71 FR 46753, Aug. 14, 2006, as amended at 80 FR 23667, Apr. 28, 2015]

**§ 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(b), 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(b) 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