

Maintenance of Effort

Preamble Comments and Discussion

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Maintenance of effort (§§ 300.202 through 300.205)

Comment: A few commenters stated that the maintenance of effort requirements are complicated and unnecessary and should be eliminated or simplified.

Discussion: Sections 300.202 through 300.205, regarding maintenance of effort and the LEA's use of funds received

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under Part B of the Act, reflect the specific statutory requirements in section 613(a)(2) of the Act, as well as necessary information regarding the implementation of these requirements.

Much of the additional information in §§ 300.202 through 300.205 was included in various sections throughout the current regulations. We continue to believe that this information is necessary for the proper implementation of the Act. Section 300.204(e), which has been newly added to the regulations, includes the assumption of costs by the high cost fund as an additional condition under which an LEA may reduce its level of expenditures. We believe this provision is necessary because LEAs should not be required to maintain a level of fiscal effort based on costs that are assumed by the SEA's high cost fund.

In short, we have tried to present the regulations relating to LEA maintenance of effort in a clear manner, while being consistent with the language of the Act (which we do not have the authority to change) and including only as much additional information as is necessary to ensure proper implementation of the Act.

Changes: None.

Comment: One commenter stated that LEAs should be permitted to use a reasonable amount of their Part B funds to meet the Act's requirements relating to student assessment, outcomes, complaints, compliance monitoring, mediation, and due process hearings.

Discussion: With one exception, nothing in the Act or these regulations would prevent an LEA from using its Part B allotment for the activities noted by the commenter, so long as the expenditures meet the other applicable requirements under the Act and regulations.

LEAs may not use their Part B funds to support the mediation process described in § 300.506.

Consistent with section 615(e)(2)(D) of the Act, § 300.506(b)(4) requires the State (not the LEA) to bear the cost of that mediation process. Although LEAs may not use their Part B funds to support the mediation process required under § 300.506(b)(4), they may use their Part B funds to support alternative mediation processes that they offer. Some LEAs (and States) offer alternative mediation processes, in addition to the mediation process required under section 615 of the Act. These alternative mediation processes generally were established prior to the Federal mandate for mediation and some LEAs (and States) continue to offer parents the option of using these alternative mediation processes to resolve disputes. Therefore, if an LEA has an alternative mediation process, it may use its Part B funds for this process, so long as parents are provided access to the required mediation process under section 615 of the Act and are not required to use an alternative mediation process in order to engage in the mediation process provided under section 615 of the Act.

Changes: None.

Comment: Several commenters requested clarifying that “per capita” in § 300.203(b) means the amount per child with a disability in an LEA.

Discussion: We do not believe it is necessary to include a definition of “per capita” in § 300.203(b) because we believe that, in the context of the regulations, it is clear that we are using this term to refer to the amount per child with a disability served by the LEA.

Changes: None.

Exception to Maintenance of Effort (§ 300.204)

Comment: One commenter recommended expanding the exceptions to the maintenance of effort requirements in § 300.204(a) to include negotiated reductions in staff salaries or benefits so that LEAs are not penalized for being proactive in reducing costs.

Another commenter recommended revising § 300.204 to allow LEAs to apply for a waiver of the maintenance of effort requirements in cases of fiscal emergencies.

Discussion: Section 300.204(a) through (d) reflects the language in section 613(a)(2)(B) of the Act and clarifies the conditions under which LEAs may reduce the level of expenditures below the level of expenditures for the preceding year. Nothing in the Act permits an exception for negotiated reductions in staff salaries or benefits or financial emergencies. Accordingly, to expand the exceptions to the maintenance of effort requirements, as recommended by the commenters, would be beyond the authority of the Department.

Changes: None.

Comment: Some commenters requested clarification as to whether the exceptions to the maintenance of effort requirements apply to an LEA that uses funds from its SEA’s high cost fund under § 300.704(c) during the preceding year.

Discussion: We do not believe further clarification is necessary because § 300.204(e) clearly states that the assumption of costs by a State-operated high cost fund under § 300.704(c) would be a permissible reason for reducing local maintenance of effort. This provision was included in the proposed regulations in recognition that the new statutory authority in section 611(e)(3) of the Act that permits States to establish a fund to pay for some high costs associated with certain children with disabilities could logically and appropriately result in lower expenditures for some LEAs.

Changes: None.

Adjustments to Local Fiscal Efforts in Certain Fiscal Years (§ 300.205)

Comment: A few commenters stated that the link between early intervening services and reductions in maintenance of effort in § 300.205(d) is not in the Act. Some commenters expressed concern that this requirement forces an LEA to choose between providing early intervening services and directing local funds toward nondisabled children. One commenter stated that linking the use of funds for early intervening services to reduction in maintenance of effort in § 300.205 is not logical and was not the intent of Congress.

Discussion: The link between reductions in local maintenance of effort (reflected in § 300.205(d)) and the amount of Part B funds that LEAs may use to provide early intervening services (reflected in § 300.226) is established in the Act. Section 300.205(d) tracks the statutory language in section 613(a)(2)(C)(iv) of the Act and § 300.226(a) tracks the statutory language in section 613(f)(1) of the Act. Section 300.205(d) states that the amount of funds expended by an LEA for early intervening services under § 300.226 counts toward the maximum amount of expenditures that an LEA may reduce in its local maintenance of effort. Section 300.226(a) clearly states that the amount of Part B funds an LEA may use to provide early intervening services may not exceed 15 percent of the funds the LEA receives under Part B of the Act less any amount reduced by the LEA under § 300.205. As noted in the NPRM, the Department believes it is important to caution LEAs that seek to

reduce their local maintenance of effort in accordance with § 300.205(d) and use some of their Part B funds for early intervening services under § 300.226 because the local maintenance of effort reduction provision and the authority to use Part B funds for early intervening services are interconnected. The decision that an LEA makes about the amount of funds that it uses for one purpose affects the amount that it may use for the other. *Appendix D to Part 300—Maintenance of Effort and Early Intervening Services* includes examples that illustrate how §§ 300.205(d) and 300.226(a) affect one another.

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Changes: We have added a reference to Appendix D in § 300.226(a).