



**Council for  
Exceptional  
Children**

**Council for Exceptional Children's  
Initial Summary of Selected Provisions from  
Part B Proposed Regulations for the  
Individuals With Disabilities Education Act**

**Subpart F: Monitoring, Technical  
Assistance, and Enforcement**

**July 27, 2005**

## Subpart F - Monitoring, Technical Assistance, and Enforcement

**Note: Statutory language related to federal monitoring is not included in the NPRM.**

**Note: Bold text in left column indicates language not specifically included in IDEA 2004**

NPRM Language	Current Regulation	Comments
<p>Sec. 300.149 State educational agency responsibility for general supervision.</p> <p>(a) The SEA is responsible for ensuring--</p> <p>(1) That the requirements of this part are carried out; and</p> <p>(2) That each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency <b>(but not including elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior)--</b></p> <p>(i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and</p> <p>(ii) Meets the educational standards of the SEA (including the requirements of this part).</p> <p>(3) In carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.</p> <p>(b) The State must have in effect policies and procedures to ensure that it complies with the monitoring and enforcement requirements in Sec. 300.600 through 300.602 and Sec. 300.606 through 300.608.</p> <p>(c) Part B of the Act does not limit the responsibility of agencies other than educational agencies for providing or paying</p>	<p>300.600 Responsibility for all educational programs(a) The SEA is responsible for ensuring—</p> <p>(1) That the requirements of this part are carried out; and</p> <p>(2) That each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency—</p> <p>(i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and</p> <p>(ii) Meets the education standards of the SEA (including the requirements of this part).</p> <p>(b) The State must comply with paragraph (a) of this section through State statute, State regulation, signed agreement between respective agency officials, or other documents.</p> <p>(c) Part B of the Act does not limit the responsibility of agencies other than educational agencies for providing or paying</p>	<p>In general, statutory language was incorporated into regulations.</p>

<b>NPRM Language</b>	<b>Current Regulation</b>	<b>Comments</b>
<p>some or all of the costs of FAPE to children with disabilities in the State.</p> <p>(d) Notwithstanding paragraph (a) of this section, the Governor (or another individual pursuant to State law) may assign to any public agency in the State the responsibility of ensuring that the requirements of Part B of the Act are met with respect to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons.</p>	<p>some or all of the costs of FAPE to children with disabilities in the State.</p> <p>(d) Notwithstanding paragraph (a) of this section, the Governor (or another individual pursuant to State law) may assign to any public agency in the State the responsibility of ensuring that the requirements of Part B of the Act are met with respect to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons.</p>	
<p>Sec. 300.600 State monitoring and enforcement.</p> <p>(a) The State must monitor the implementation of this part, enforce this part in accordance with section 616(e) of the Act, and annually report on performance under this part.</p> <p>(b) The primary focus of the State's monitoring activities must be on--</p> <p>(1) Improving educational results and functional outcomes for all children with disabilities; and</p> <p>(2) Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.</p> <p>(c) As a part of its responsibilities under paragraph (a) of this section, the State must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in section 616(a)(3) of the Act, and the indicators established by the Secretary pursuant to State performance plans.</p>		<p>In general, statutory language was incorporated into regulations.</p>

NPRM Language	Current Regulation	Comments
<p>Sec. 300.601 State performance plans and data collection.</p> <p>(a) General. Not later than December 3, 2005, each State must have in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B of the Act, and describes how the State will improve such implementation.</p> <p>(1) Each State must submit the State's performance plan to the Secretary for approval in accordance with the approval process described in section 616(c) of the Act.</p> <p>(2) Each State must review its State performance plan at least once every six years, and submit any amendments to the Secretary.</p> <p>(3) As part of the State performance plan, each State must establish measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in section 616(a)(3) of the Act.</p> <p>(b) Data collection. (1) Each State must collect valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the State performance plans.</p> <p>(2) Nothing in Part B of the Act shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part B of the Act.</p>		<p><b>OSERS discussion of proposed regulatory changes:</b> “Notes 253 through 258 of the Conf. Rpt. explain that the expectation is that the State performance plans, indicators and targets are to be developed with broad stakeholder input and public dissemination.”</p>
<p>Sec. 300.602 State use of targets and reporting.</p> <p>(a) General. Each State must use the targets established in the State's performance plan</p>		

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<p>under Sec. 300.601 and the priority areas described in section 616(a)(3) of the Act to analyze the performance of each LEA.</p> <p>(b) Public reporting and privacy.</p> <p>(1) Public report. (i) Subject to paragraph (b)(1)(ii) of this section, the State must--</p> <p>(A) Report annually to the public on the performance of each LEA located in the State on the targets in the State's performance plan; and</p> <p>(B) Make the State's performance plan available through public means, including by posting on the Web site of the SEA, distribution to the media, and distribution through public agencies.</p> <p><b>(ii) If the State, in meeting the requirements of paragraph (b)(1)(i) of this section, collects performance data through State monitoring or sampling, the State must include in its report the most recently available performance data on each LEA, and the date the data were obtained.</b></p> <p>(2) State performance report. The State must report annually to the Secretary on the performance of the State under the State's performance plan.</p> <p>(3) Privacy. The State must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information.</p>		<p><b>OSERS discussion of proposed regulatory changes:</b> “Proposed Sec. 300.602(b)(1)(ii) would add that if the State, in meeting the requirements of Sec. 300.602(b)(1)(i), collects performance data through State monitoring or sampling, the State must include in its report the most recently available performance data on each LEA and the date the data were obtained. When appropriate, monitoring or sampling can be an effective means of data collection, reduce burden on States, and provide meaningful information on LEAs' performance.”</p>
<p>Sec. 300.603 Secretary's review and determination regarding State</p>	<p>300.587 Enforcement.</p> <p>(a) General. The Secretary initiates an action</p>	

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<p>performance.</p> <p>(a) Review. The Secretary annually reviews the State's performance report submitted pursuant to Sec. 300.602(b)(2).</p> <p>(b) Determination. (1) General. Based on the information provided by the State in the State's annual performance report, information obtained through monitoring visits, and any other public information made available, the Secretary determines if the State--</p> <p>(i) Meets the requirements and purposes of Part B of the Act;</p> <p>(ii) Needs assistance in implementing the requirements of Part B of the Act;</p> <p>(iii) Needs intervention in implementing the requirements of Part B of the Act; or</p> <p>(iv) Needs substantial intervention in implementing the requirements of Part B of the Act.</p> <p>(2) Notice and opportunity for a hearing. (i) For determinations made under paragraphs (b)(1)(iii) and (b)(1)(iv) of this section, the Secretary provides reasonable notice and an opportunity for a hearing on those determinations.</p> <p><b>(ii) The hearing described in paragraph (b)(2) of this section consists of an opportunity to meet with the Assistant Secretary for the Office of Special Education and Rehabilitative Services to demonstrate why the Department should not make the determination described in paragraph (b)(1) of this section.</b></p>	<p>described in paragraph (b) of this section if the Secretary finds—</p> <p>(1) That there has been a failure by the State to comply substantially with any provision of Part B of the Act, this part, or 34 CFR part 301; or</p> <p>(2) That there is a failure to comply with any condition of an LEA's or SEA's eligibility under Part B of the Act, this part or 34 CFR part 301, including the terms of any agreement to achieve compliance with Part B of the Act, this part, or Part 301 within the timelines specified in the agreement.</p>	<p><b>OSERS discussion of proposed regulatory changes:</b> “Proposed Sec. 300.603(b)(2)(ii) also would clarify that the hearing would consist of an opportunity to meet with the Assistant Secretary for the Office of Special Education and Rehabilitative Services to demonstrate why the Department should not make the determination. We propose this regulatory provision because the Department has determined that this type of hearing would</p>

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		provide the appropriate amount of process due a State prior to one of these determinations. Should specific enforcement action subsequently be contemplated, as provided for in section 616(e) of the Act, other hearing procedures then may apply, as provided for in proposed Sec. 300.604 and in the General Education Provisions Act as amended, 20 U.S.C. 1221 et seq. (GEPA), and implementing regulations.”
<p>Sec. 300.604 Enforcement.</p> <p>(a) Needs assistance. If the Secretary determines, for two consecutive years, that a State needs assistance under Sec. 300.603(b)(1)(ii) in implementing the requirements of Part B of the Act, the Secretary takes one or more of the following actions:</p> <p>(1) Advise the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and require the State to work with appropriate entities. Such technical assistance may include--</p> <p>(i) The provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the area for concern within a specified period of time;</p>		In general, statutory language was incorporated into regulations.

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<p>(ii) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;</p> <p>(iii) Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and</p> <p>(iv) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under part D of the Act, and private providers of scientifically based technical assistance.</p> <p>(2) Direct the use of State-level funds under section 611(e) of the Act on the area or areas in which the State needs assistance.</p> <p>(3) Identify the State as a high-risk grantee and impose special conditions on the State's grant under Part B of the Act.</p> <p>(b) Needs intervention. If the Secretary determines, for three or more consecutive years, that a State needs intervention under Sec. 300.603(b)(1)(iii) in implementing the requirements of Part B of the Act, the following shall apply:</p> <p>(1) The Secretary may take any of the actions described in paragraph (a) of this section.</p> <p>(2) The Secretary takes one or more of the following actions:</p> <p>(i) Requires the State to prepare a corrective action plan or improvement plan if the</p>	<p>(b) Types of action. The Secretary, after notifying the SEA (and any LEA or State agency affected by a failure described in paragraph (a)(2) of this section)—</p> <p>(1) Withholds in whole or in part any further payments to the State under Part B of the Act;</p> <p>(2) Refers the matter to the Department of Justice for enforcement; or</p> <p>(3) Takes any other enforcement action authorized by law.</p>	

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<p>Secretary determines that the State should be able to correct the problem within one year.</p> <p>(ii) Requires the State to enter into a compliance agreement under section 457 of the General Education Provisions Act as amended, 20 U.S.C. 1221 et seq. (GEPA), if the Secretary has reason to believe that the State cannot correct the problem within one year.</p> <p>(iii) For each year of the determination, withhold not less than 20 percent and not more than 50 percent of the State's funds under section 611(e) of the Act, until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention.</p> <p>(iv) Seeks to recover funds under section 452 of GEPA.</p> <p>(v) Withholds, in whole or in part, any further payments to the State under Part B of the Act pursuant to paragraph (d) of this section.</p> <p>(vi) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.</p> <p>(c) Needs substantial intervention.</p> <p>Notwithstanding paragraph (a) or (b) of this section, at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of Part B of the Act or that there is a substantial failure to comply with any condition of an SEA's or LEA's eligibility under Part B of the Act, the Secretary shall take one or more of the following actions:</p> <p>(1) Recover funds under section 452 of GEPA.</p> <p>(2) Withhold, in whole or in part, any further payments to the State under Part B of the Act.</p>	<p>(d) Referral for appropriate enforcement.</p> <p>(1) Before the Secretary makes a referral under paragraph (b)(2) of this section for enforcement, or takes any other enforcement action authorized by law under paragraph (b)(3), the Secretary provides the State—</p> <p>(i) With reasonable notice; and</p> <p>(ii) With an opportunity for an hearing.</p> <p>(2) The hearing described in paragraph (d)(1)(ii) of this section consists of an opportunity to meet with the Assistant Secretary for the Office of Special Education and Rehabilitative Services to demonstrate why the Department should not make a referral for enforcement.</p>	

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<p>(3) Refer the case to the Office of the Inspector General at the Department of Education.</p> <p>(4) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.</p> <p>(d) Report to Congress. The Secretary reports to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (a), (b), or (c) of this section, on the specific action taken and the reasons why enforcement action was taken.</p>		
<p>Sec. 300.605 Withholding funds.</p> <p>(a) Opportunity for hearing. Prior to withholding any funds under Part B of the Act, the Secretary provides reasonable notice and an opportunity for a hearing to the SEA involved, pursuant to the procedures in Sec. 300.180 through 300.183.</p> <p>(b) Suspension. Pending the outcome of any hearing to withhold payments under paragraph (a) of this section, the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under Part B of the Act, or both, after the recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under Part B of the Act should not be suspended.</p> <p>(c) Nature of withholding. (1) If the Secretary determines that it is appropriate to withhold further payments under section 616(e)(2) or (e)(3) of the Act, the Secretary may determine-</p>	<p>300.587(c)(4) Before withholding under paragraph (b)(1) of this section, the Secretary provides notice and a hearing pursuant to the procedures in §§300.581-300.586.</p> <p>300.587 (c) Nature of withholding. (1) If the Secretary determines that it is appropriate to withhold further payments under paragraph (b)(1) of this section, the</p>	<p>In general, statutory language was incorporated into regulations.</p>

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<p>(i) That the withholding will be limited to programs or projects, or portions of programs or projects that affected the Secretary's determination under Sec. 300.603(b)(1); or</p> <p>(ii) That the SEA must not make further payments under Part B of the Act to specified State agencies or LEAs that caused or were involved in the Secretary's determination under Sec. 300.603(b)(1).</p> <p>(2) Withholding until rectified. Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified--</p> <p>(i) Payments to the State under Part B of the Act must be withheld in whole or in part; and</p> <p>(ii) Payments by the SEA under Part B of the Act must be limited to State agencies and LEAs whose actions did not cause or were not involved in the Secretary's determination under Sec. 300.603(b)(1), as the case may be.</p>	<p>Secretary may determine that the withholding will be limited to programs or projects, or portions thereof, affected by the failure, or that the SEA shall not make further payments under Part B of the Act to specified LEA or State agencies affected by the failure.</p> <p>(2) Until the Secretary is satisfied that there is no longer any failure to comply with the provisions of Part B of the Act, this part, or 34 CFR part 301, as specified in paragraph (a) of this section, payments to the State under Part B of the Act are withheld in whole or in part, or payments by the SEA under Part B of the Act are limited to local educational agencies and State agencies whose actions did not cause or were not involved in the failure, as the case may be.</p>	
<p>Sec. 300.606 Public attention. Any State that has received notice under Sec. 300.603(b)(1)(ii) through (iv) must, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to section 616(e) of the Act to the attention of the public within the State.</p>	<p>300.587(c)(3) Any SEA, LEA, or other State agency that has received notice under paragraph (a) of this section shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of that agency.</p>	<p>In general, statutory language was incorporated into regulations.</p>
<p>Sec. 300.607 Divided State agency responsibility. For purposes of this subpart, if responsibility for ensuring that the requirements of Part B of</p>	<p>300.587(e) Divided State agency responsibility. For purposes of this part, if responsibility for ensuring that the requirements of this part are met with respect</p>	<p>In general, statutory language was incorporated into regulations.</p>

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<p>the Act are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the SEA pursuant to section 612(a)(11)(C) of the Act, and if the Secretary finds that the failure to comply substantially with the provisions of Part B of the Act are related to a failure by the public agency, the Secretary takes appropriate corrective action to ensure compliance with Part B of the Act, except that—</p> <p>(a) Any reduction or withholding of payments to the State under Sec. 300.604 must be proportionate to the total funds allotted under section 611 of the Act to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the SEA; and</p> <p>(b) Any withholding of funds under Sec. 300.604 must be limited to the specific agency responsible for the failure to comply with Part B of the Act.</p>	<p>to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the SEA pursuant to §300.600(d), and if the Secretary finds that the failure to comply substantially with the provisions of Part B of the Act or this part are related to a failure by the public agency, the Secretary takes one of the enforcement actions described in paragraph (b) of this section to ensure compliance with Part B of the Act and this part, except—</p> <p>(1) Any reduction or withholding of payments to the State under paragraph (b)(1) of this section is proportionate to the total funds allotted under section 611 of the Act to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the State educational agency; and</p> <p>(2) Any withholding of funds under paragraph (e)(1) of this section is limited to the specific agency responsible for the failure to comply with Part B of the Act or this part.</p>	
<p>Sec. 300.608 State enforcement. If an SEA determines that an LEA is not meeting the requirements of Part B of the Act, including the targets in the State's performance plan, the SEA must prohibit the LEA from reducing the LEA's maintenance of effort under section 613(a)(2)(C) of the Act for any</p>	<p>300.233 Treatment of Federal funds in certain fiscal years. (b) If an SEA determines that an LEA is not meeting the requirements of this part, the SEA may prohibit the LEA from treating funds received under Part B of the Act as local funds under paragraph (a)(1) of this</p>	<p>In general, statutory language was incorporated into regulations.</p>

<b>NPRM Language</b>	<b>Current Regulation</b>	<b>Comments</b>
fiscal year.	section for any fiscal year, but only if it is authorized to do so by the State constitution or a State statute.	
Sec. 300.609 Rule of construction. Nothing in this subpart shall be construed to restrict the Secretary from utilizing any authority under GEPA to monitor and enforce the requirements of the Act.		In general, statutory language was incorporated into regulations.
Sec. 300.702 Technical assistance. (a) In general. The Secretary may reserve not more than one-half of one percent of the amounts appropriated under Part B of the Act for each fiscal year to support technical assistance activities authorized under section 616(i) of the Act. (b) Maximum amount. The maximum amount the Secretary may reserve under paragraph (a) of this section for any fiscal year is \$25,000,000, cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.		In general, statutory language was incorporated into regulations.