

a State that provides services in accordance with this section to a child with a disability who is eligible for services under section 619 of the Act will not be required to provide the child FAPE under part B of the Act for the period of time in which the child is receiving services under this part.

(2) Nothing in this section may be construed to require a provider of services under this part to provide a child served under this part with FAPE.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1435(c), 1437(a)(11))

**§ 303.212 Additional information and assurances.**

Each application must contain—

(a) A description of the steps the State is taking to ensure equitable access to, and equitable participation in, the part C statewide system as required by section 427(b) of GEPA; and

(b) Other information and assurances as the Secretary may reasonably require.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1228a(b), 1437(a)(11))

ASSURANCES

**§ 303.220 Assurances satisfactory to the Secretary.**

Each application must contain assurances satisfactory to the Secretary that the State has met the requirements in §§ 303.221 through 303.227.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1437(b))

**§ 303.221 Expenditure of funds.**

The State must ensure that Federal funds made available to the State under section 643 of the Act will be expended in accordance with the provisions of this part, including §§ 303.500 and 303.501.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1437(b)(1))

**§ 303.222 Payor of last resort.**

The State must ensure that it will comply with the requirements in

§§ 303.510 and 303.511 in subpart F of this part.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1437(b)(2))

**§ 303.223 Control of funds and property.**

The State must ensure that—

(a) The control of funds provided under this part, and title to property acquired with those funds, will be in a public agency for the uses and purposes provided in this part; and

(b) A public agency will administer the funds and property.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1437(b)(3))

**§ 303.224 Reports and records.**

The State must ensure that it will—

(a) Make reports in the form and containing the information that the Secretary may require; and

(b) Keep records and afford access to those records as the Secretary may find necessary to ensure compliance with the requirements of this part, the correctness and verification of reports, and the proper disbursement of funds provided under this part.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1437(b)(4))

**§ 303.225 Prohibition against supplanting; indirect costs.**

(a) Each application must provide satisfactory assurance that the Federal funds made available under section 643 of the Act to the State:

(1) Will not be commingled with State funds; and

(2) Will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds.

(b) To meet the requirement in paragraph (a) of this section, the total amount of State and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this part and their families must be at least equal to

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the total amount of State and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available. Allowance may be made for—

(1) A decrease in the number of infants and toddlers who are eligible to receive early intervention services under this part; and

(2) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of facilities.

(c) *Requirement regarding indirect costs.* (1) Except as provided in paragraph (c)(2) of this section, a lead agency under this part may not charge indirect costs to its part C grant.

(2) If approved by the lead agency's cognizant Federal agency or by the Secretary, the lead agency must charge indirect costs through either—

(i) A restricted indirect cost rate that meets the requirements in 34 CFR 76.560 through 76.569; or

(ii) A cost allocation plan that meets the non-supplanting requirements in paragraph (b) of this section and 34 CFR part 76 of EDGAR.

(3) In charging indirect costs under paragraph (c)(2)(i) and (c)(2)(ii) of this section, the lead agency may not charge rent, occupancy, or space maintenance costs directly to the part C grant, unless those costs are specifically approved in advance by the Secretary.

(Approved by Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1437(b)(5))

**§ 303.226 Fiscal control.**

The State must ensure that fiscal control and fund accounting procedures will be adopted as necessary to ensure proper disbursement of, and accounting for, Federal funds paid under this part.

(Approved by Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1437(b)(6))

**§ 303.227 Traditionally underserved groups.**

The State must ensure that policies and practices have been adopted to ensure—

(a) That traditionally underserved groups, including minority, low-income, homeless, and rural families and children with disabilities who are wards of the State, are meaningfully involved in the planning and implementation of all the requirements of this part; and

(b) That these families have access to culturally competent services within their local geographical areas.

(Approved by Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1231d, 1437(b)(7))

**SUBSEQUENT APPLICATIONS AND MODIFICATIONS, ELIGIBILITY DETERMINATIONS, AND STANDARD OF DISAPPROVAL**

**§ 303.228 Subsequent State application and modifications of application.**

(a) *Subsequent State application.* If a State has on file with the Secretary a policy, procedure, method, or assurance that demonstrates that the State meets an application requirement in this part, including any policy, procedure, method, or assurance filed under this part (as in effect before the date of enactment of the Act, December 3, 2004), the Secretary considers the State to have met that requirement for purposes of receiving a grant under this part.

(b) *Modification of application.* An application submitted by a State that meets the requirements of this part remains in effect until the State submits to the Secretary such modifications as the State determines necessary. This section applies to a modification of an application to the same extent and in the same manner as this paragraph applies to the original application.

(c) *Modifications required by the Secretary.* The Secretary may require a State to modify its application under this part to the extent necessary to ensure the State's compliance with this part if—

(1) An amendment is made to the Act or to a Federal regulation issued under the Act;

(2) A new interpretation of the Act is made by a Federal court or the State's highest court; or