

Maintenance of Effort

THE BASICS

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In general, Federal funds appropriated under Part B of IDEA may only be utilized to cover the excess costs of providing special education and related services to students with disabilities. These Federal funds must supplement/increase the level of other Federal, State and local funds expended for special education and related services and in no case supplant these funds. In addition, IDEA includes separate maintenance of effort (MOE) provisions that apply independently at the State and local levels. The term “Maintenance of Effort” (“MOE”) generally refers to a requirement placed upon many federally funded grant programs that the State Education Agency (SEA) and Local Education Agencies (LEAs) or school districts, demonstrate that the level of State and local funding remains constant from year to year. Both the rules and the consequences of failing to meet the required level of effort by the State or by the LEA are different under IDEA.

▪ **State MOE Requirement**

Although States may vary in the manner in which they support special education, for each State to meet its MOE obligation under IDEA, it must continue to provide support for special education at the same level every year.

- IDEA Part B prohibits a State from reducing State financial *support* for special education and related services below the amount of that *support* made available by the State the preceding fiscal year. 20 U.S.C. §1412(a)(18); 34 C.F.R. §300.163.
- Furthermore, the statute is clear that the Secretary of Education will reduce the amount of a State’s grant by the same amount by which the State fails to meet this requirement for any fiscal year following the fiscal year in which the State fails to comply with this requirement. 20 U.S.C. §1412(a)(18)(B).

▪ **Local MOE Requirement**

At the local level, IDEA requires that LEAs, as a condition of eligibility for Part B funds, submit a plan that provides assurances to the SEA that the LEA shall not use IDEA monies to reduce the level of *expenditures* from local funds for educating students with disabilities below the level of those *expenditures* for the preceding fiscal year. 20 U.S.C. § 1413(a)(2)(A)(iii).

- An SEA will find the LEA eligible for an award of Part B funds in a fiscal year based on this standard if the LEA *budgets* for the education of students with disabilities at least the same total or per capita amount as the LEA *expended* for that purpose *from the same source(s)* for the most recent prior fiscal year.
- The sources considered are local funds only or the combination of local funds and State funds. 34 C.F.R. §300.203(b).
- The SEA may not consider any expenditure made from federal funds for which the SEA, or the LEA directly or through the SEA, is required to account to the Federal government. 34 C.F.R. §300.203.

▪ **Limited Reduction of State MOE Based on Waiver**

IDEA authorizes very limited waivers to the State MOE requirement. The Secretary of Education may find that a waiver is equitable due to exceptional or uncontrollable circumstances such as a natural disaster (e.g., Hurricane Katrina) or precipitous and unforeseen decline in the financial resources of the state, or the State meets the exceptionally high standards for a waiver of the supplement not supplant requirement – i.e., an SEA can establish that a free appropriate public education is provided to all eligible children with disabilities in the State. (This type of waiver has never been granted.)

▪ **Permissible Reduction of Local MOE**

The statute expressly permits an LEA to reduce its required local MOE if the reduction in expenditures is attributable to:

- (i) the voluntary departure or departure for just cause of special education personnel;
- (ii) a decrease in enrollment of students with disabilities;
- (iii) an individual child with disabilities moves out, graduates, ages out, or no longer needs an exceptionally costly program;
- (iv) the termination of costly long-term purchases such as the acquisition of equipment or construction of school facilities;
- (v) the assumption of cost by the high-cost fund that may be operated by the SEA [20 U.S.C. § 1413(a)(2)(B), 34 C.F.R. §300.204];
- (vi) an increase in the IDEA allocation from the previous year triggers the “50%” rule. 20 U.S.C. §1413(a)(2)(C); 34 C.F.R. §300.205.

▪ **Consequence of the State Failing to Meet MOE Obligations**

Barring a single year waiver, the Secretary is required by IDEA to withhold funding from the State’s Part B grant in the fiscal year subsequent to the State’s failure to meet its MOE. The grant must be reduced by the same amount as the State fell short of its MOE requirement. 20 U.S.C. §1412(a)(18) (B). In future years, even a State that has been granted a waiver, must meet the MOE amount that the State would have been required to have met in the absence of its failure to meet its obligation -not the reduced level of State support. 20 U.S.C. §1412(a)(18)((D)

▪ **Consequence of the LEA Failing to Meet MOE Obligations**

Under Section 612(a)(11)(A)(i) of the IDEA, “the SEA is responsible for ensuring that . . . the requirements of this part are met” including for ensuring that LEAs receiving assistance under IDEA comply with all applicable requirements, including the local MOE. If an LEA fails to meet its MOE obligation, the SEA is required to pay the US ED an amount equal to the short-fall in required local fiscal special education effort. An SEA may not use IDEA funds; nor reduce a current year IDEA subgrant as a means of resolving a prior year’s MOE violation by an LEA. Faced with a history of noncompliance with the MOE requirement, US ED admonished the SEA to carefully determine whether the LEA will meet the MOE requirement in the coming year, or whether the SEA should begin an administrative withholding action consistent with § 1413(c) and (d) because it is not convinced that the LEA will meet the MOE requirement for the new year. OSEP letter to Baglin, 2006.

▪ The Process

To be eligible for IDEA Part B funding in a particular fiscal year, an LEA submits as part of its Part B Application report of actual expenditures from the most recent fiscal year and the Budgeted Expenditures for the current fiscal year as an assurance that the LEA intends to comply with local MOE requirements under IDEA and its regulations.

The SEA conditionally approves of the LEA's eligibility based on a review of the MOE Assurance consisting of financial data compared in four different tests that determine that:

1. At least the same total combination of local and state funds are budgeted as the LEA expended for special education the previous fiscal year;
2. At least the same amounts of local funds are budgeted as the LEA expended for special education the previous fiscal year;
3. At least the same student per capita amount from local and state funds are budgeted as the LEA expended for special education the previous fiscal year;
4. At least the same student per capita amount from local funds are budgeted as the LEA expended for special education the previous fiscal year.

If the MOE assurance indicates that there has been no reduction in actual expenditures or budgeted expenditures, either in total or on a per-pupil basis, the application is conditionally approved. The LEA only needs to pass one of the four tests to ensure eligibility for the IDEA Part B grant. If an LEA's MOE assurance indicates a reduction in budgeted expenditures, either in total or per-pupil, without any allowable exception or adjustment to fiscal effort being claimed, the SEA will not approve the LEA's Part B application according to 34 CFR §300.203 (b)(1-2.)

At the close of the fiscal year, the SEA will review reported data from the conditionally approved LEA to determine if MOE requirements have been met. The final comparison of actual expenditures occurs when Annual Report data are received from the LEA, compiled and evaluated based again on one of four tests:

1. At least the same total combination of local and state funds were expended as the LEA expended on special education the previous fiscal year;
2. At least the same amounts of local funds were expended as the LEA expended on special education the previous year;
3. At least the same student per capita amounts from local and state funds were expended as the LEA expended on special education that previous fiscal year;
4. At least the same student per capita amounts from local funds were expended as the LEA expended on special education the previous fiscal year.

Again in conducting its review of LEA compliance with MOE, only one test is needed to pass and to be in compliance with MOE requirements. However, if an LEA fails all four tests based on the comparison of two fiscal years' expenditures for special education, then the LEA must submit documentation to the SEA that supports its use of the authorized MOE reduction exceptions under IDEA and its regulations. The LEA will be notified of the findings and given the opportunity to respond with allowable exceptions. If there are no allowable exceptions to explain the reduction, the LEA will have the opportunity to submit information from its auditor explaining possible errors in reporting on the annual report.

If, after efforts to resolve a MOE failure, it is determined that there has been an unallowable reduction, the SEA will be required to repay to the US ED the amount of the reduction. This repayment cannot be made from IDEA Part B funds or from any funds with federal accountability. In addition, the MOE level for that year will be reset to the higher amount that the LEA should have met.