

LEA Maintenance of Effort (MOE)

Background Information

The LEA MOE requirement was first added to the IDEA in the 1997 amendments and the 1999 implementing regulations. The purpose of the requirement is to ensure that LEAs provide the financial support necessary to make a free appropriate public education (FAPE) available to eligible children with disabilities. On April 28, 2015, the Department published updated final regulations on LEA MOE. These regulations became effective on July 1, 2015. The major changes in the final regulations included:

1. Clarification of the eligibility standard;
2. Clarification of the compliance standard;
3. Explanation of the Subsequent Years rule; and
4. Specification of the consequences for an LEA's failure to maintain effort.

Under the LEA MOE requirement, any local educational agency (LEA) receiving IDEA Part B subgrants must budget and spend at least the same amount of local — or State and local — funds for the education of children with disabilities on a year-to-year basis. The required MOE levels for budgeting and spending are referred to, respectively, as the “eligibility standard” and the “compliance standard.”

Eligibility Standard

In order for an LEA to be eligible to receive an IDEA Part B award in a given fiscal year, the regulations require that State educational agencies (SEAs) 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 unless any of the exceptions or adjustments in 34 C.F.R. §§ 300.204 and 300.205 apply:

- 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 (see 34 C.F.R. § 300.203(a)(1)).

Compliance Standard

An LEA meets the compliance standard for LEA MOE, if it does not 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, unless any of the exceptions or adjustments apply in 34 C.F.R. §§ 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 (see 34 C.F.R. § 300.203(b)(2)).

Subsequent Years Rule

Except as provided in 34 C.F.R. §§ 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. 34 C.F.R. § 300.203(b)(1). If, in any fiscal year, an LEA fails to maintain effort, 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 to maintain effort in the absence of that failure, not the LEA's reduced level of expenditures. 34 C.F.R. § 300.203(c).

Exceptions and Adjustment

An LEA may reduce its level of effort under the eligibility and compliance standards if there is an allowable exception or adjustment. Allowable exceptions are those due to a) voluntary departure, by retirement or otherwise, or departure for- just cause, of special education or related services personnel, b) decrease in enrollment of IDEA-eligible children, c) termination of the LEA's obligation to provide an exceptionally costly program of special education, as determined by the SEA, for a particular child with a disability, because the child:

- i. Has left the jurisdiction of the agency;
- ii. Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or
- iii. No longer needs the program of special education, d) termination of costly expenditures for long-term purchases, and e) assumption of cost by its SEA's high-cost fund (see 34 C.F.R. § 300.204).

An LEA may reduce its level of effort under the compliance standard by up to 50 percent of any increase over the preceding year in its IDEA Part B Section 611 subgrant. 34 C.F.R. § 300.205. That is, if an LEA receives more IDEA Section 611 funds than it received for the previous fiscal year, it may reduce its required level of State and/or local expenditures by up to 50 percent of the amount of the increase. The SEA must prohibit an LEA from reducing its level of expenditures under 34 C.F.R. § 300.205 if:

1. the SEA determines that the LEA is unable to establish and maintain programs of FAPE that meet the requirements in IDEA section 613;
2. the SEA determines that the LEA is not meeting the requirements and purposes of IDEA Part B;
3. the SEA must not have taken action against the LEA under IDEA Section 616; and
4. the LEA must not have been identified as having significant disproportionality based on race or ethnicity with respect to identification of children as children with disabilities, including identification as children with particular impairments, placement in particular educational settings, or the incidence, duration, and type of disciplinary actions (See also 34 C.F.R. § 300.608).

LEAs are also permitted to voluntarily use up to 15 percent of IDEA Part B Sections 611 and 619 funds to provide coordinated early intervening services (CEIS). 34 C.F.R. § 300.226. These are services provided to children in kindergarten through grade 12 (with a particular emphasis on children in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic or behavioral support to succeed in a general education environment. If an LEA chooses to take advantage of both provisions —

using funds for CEIS and reducing its level of effort under the LEA MOE compliance standard by up to 50 percent of its IDEA Section 611 funding increase — the combined total of Part B funds used under both provisions cannot exceed the lesser of the maximum amount of funds available for either CEIS (15 percent of Sections 611 and 619 funds) or the amount available for the MOE reduction (50 percent of the increase in Section 611 funds) (see 34 C.F.R. §§ 300.205 and 300.226). See also Appendix D to 34 C.F.R. Part 300.

Failure to Meet LEA MOE

An LEA is not eligible to receive IDEA Part B funds until it has met the MOE eligibility (i.e., budget) standard. If an LEA fails to meet its MOE compliance (i.e., expenditure) standard, the SEA must repay the U.S. Department of Education. The State's repayment obligation — which must be met using nonfederal funds or funds for which accountability to the federal government is not required — is either the difference between what the LEA actually spent and what it should have spent to meet the MOE requirement, or the amount of the LEA's Part B subgrant for that fiscal year, whichever is lower. The SEA can require the LEA to reimburse the SEA for this amount or can opt to cover the penalty itself.

Reporting

States have annual reporting requirements for both MOE and CEIS, which are combined in a single data collection form in the ED Facts Metadata and Process System (EMAPS), the IDEA Part B MOE Reduction and CEIS collection. This collection includes:

1. IDEA sections 611 and 619 allocation amounts for each LEA (which includes educational service agencies (ESAs) as defined in 34 C.F.R. § 300.12) in the State for a given fiscal year;
2. For MOE, States must report whether each LEA/ESA met MOE, and the amount, if any, by which each LEA reduced its MOE obligation under 34 C.F.R. § 300.205(a), as well as the State's determination of whether the LEA has met the requirements of Part B of the IDEA;
3. For CEIS, whether, and the amount of IDEA Part B funds, each LEA/ESA reserved for CEIS, whether voluntary or required, and the number of children who received CEIS during the reporting school year, and those that received CEIS anytime in the past two school years and later received special education and related services during the reporting school year.

States must also report, for each LEA that was required to reserve funds for CEIS, the category or categories of analysis under which the LEA was identified with significant disproportionality. States are also required to report whether the State returned non-Federal funds to the Department based on the failure of the LEA/ESA to meet the MOE compliance standard in the fiscal year for which they are reporting and, if so, how much.

Monitoring Scope and Timelines

- *Scope:* Monitoring will focus on the policies, procedures and their implementation during Federal fiscal year (FFY) 2020 (July 1, 2019-September 30, 2020). However, as appropriate, OSEP will also examine documentation from the prior two Federal fiscal years.
- *Timelines:* All monitoring activities will be completed by September 30, 2020. If OSEP identifies any findings of noncompliance and prescribes required actions, or identifies areas

for recommendations, OSEP will issue a report within 90 days of the completion of the monitoring activities. Issuing the report may take additional time based on the complexity of the issues identified and competing priorities within OSEP and other Departmental priorities.

Monitoring Objectives

By monitoring this topic area, OSEP participates in a larger Federal effort to more effectively focus Federal resources in improving performance and outcomes while ensuring the financial integrity of taxpayer dollars in partnership with non-Federal stakeholders. Ensuring that States have systems in place to budget for and comply with LEA MOE is an important step in helping to ensure, more broadly, that LEAs provide enough resources to make FAPE available to all eligible children with disabilities. In addition, this monitoring will ensure that States provide LEAs all of the flexibilities allowed under the law and regulations, including the exceptions, adjustment, and the multiple methods of LEA MOE calculation, to more efficiently provide services to children with disabilities and to prevent unnecessary recovery of funds from LEAs if they are not appropriately allowed to utilize the LEA MOE flexibilities. Listed below are some of the more targeted outcomes anticipated as a result of this monitoring activity:

- a. Highlight best practices for the field by describing compliant systems that OSEP has identified in States.
- b. Provide technical assistance (TA) to States through the monitoring activity and through State-specific TA plans developed as a result of monitoring, if appropriate.
- c. Determine SEAs' internal capacities to manage their general supervision responsibilities for ensuring their LEAs meet the LEA MOE requirements (including Continuity of Operations);
- d. Identify noncompliance that may require increased attention from OSEP and OSEP-funded TA providers.
- e. Test an SEA's processes for calculating and reporting on LEA MOE to ensure compliance and require corrective action where needed.

Monitoring Protocol

To effectively monitor the topic area, OSEP has developed a protocol addressing three specific components of LEA MOE: the compliance standard, the eligibility standard, and the reporting requirements.

I. IDEA Part B Monitoring Protocol: LEA MOE- Eligibility Standard

In order for an LEA to be eligible to receive an IDEA Part B award in a given fiscal year, the regulations require that SEAs 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.

34 C.F.R. § 300.203(a)(1).

OSEP will examine State policies and procedures to determine whether or not the State is ensuring that LEAs meet the eligibility standard pursuant to 34 C.F.R. § 300.203(a).

Documents needed:

1. Sample calculations for determining the amount each LEA must budget in order to meet the MOE eligibility standard.
2. Policies and procedures
3. Guidance document(s) provided by the SEA
4. Evidence that for the purpose of establishing an LEA's eligibility for an award for a fiscal year, the State is determining whether each LEA has met the MOE eligibility standard.

Sample Questions (actual questions will be developed based on documentation reviewed):

1. Does the State annually determine whether each LEA has met the MOE eligibility standard by examining whether or not it budgets at least the same amount of funds as it spent in the most recent fiscal year for which data are available?
2. Does the State allow the LEA to reduce the amount budgeted based on the anticipated exceptions and adjustment? For example, an expected retirement of a special education teacher could be utilized to reduce the budgeted amount. Does the State allow the LEA to take into consideration, to the extent the information is available, the exceptions and adjustment provided in 34 C.F.R. §§ 300.204 and 300.205 that the LEA took (1) 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 (2) reasonably expects to take in the fiscal year for which the LEA is budgeting?
3. Does the State examine whether the exceptions taken by an LEA are allowable under 34 C.F.R. § 300.204? What type of process and documentation does the State require of its LEAs?
4. Does the State check to ensure that LEAs that are ineligible to take the adjustment, such as those determined by the SEA to not meet the requirements of IDEA Part B or that have been identified as having significant disproportionality, do not take the adjustment?
5. Does the State allow the LEA to utilize the four methods to meet the eligibility standard: 1) local funds only, 2) State and local funds, 3) local funds only on a per capita basis, or 4) State and local funds on a per capita basis?
6. Do LEAs have accounting systems that allow them to distinguish between expenditures that are made using local funds only and those made using State and local funds?
7. Who does the calculations? When? What is the role of the State/LEA in making these calculations?
8. Are there written policies and procedures that describe the calculations to be done, when, and by whom?
9. What sources of data/information systems does the State rely on for calculating whether its LEAs meet the eligibility standard?
10. Do the State and its LEAs maintain data to demonstrate LEAs' compliance with the MOE eligibility standard, including the subsequent years rule, for a minimum of five years? In addition, for an LEA that wishes to retain the flexibility to use any of the four methods to meet the MOE eligibility standard, are data and information retained that allow the LEA to determine the amount of expenditures it made in the relevant comparison year using that same method? Likewise, for an LEA that wishes to take an exception and/or adjustment in order to reduce the amount it is required to budget under the MOE eligibility standard, are data and information retained that demonstrate the LEA properly

took the exceptions and/or adjustment in the relevant comparison year? If an LEA failed to maintain effort in the most recent fiscal year for which information is available, are data and information retained from the proper comparison year, even if that fiscal year falls outside of the five years generally required for record retention?

11. If an SEA determines that an LEA fails to meet the MOE eligibility standard and therefore is not eligible for an IDEA Part B subgrant, does the SEA provide the LEA with reasonable notice that the SEA has determined the LEA is not eligible for an IDEA Part B subgrant and provide the LEA an opportunity for a hearing, pursuant to 34 C.F.R. § 300.221? What kind of technical assistance is provided to such LEAs to allow them to become eligible for an IDEA Part B subgrant? What is the appeals process? What happens to the IDEA Part B funds if they do not go to the LEA?

II. IDEA Part B Monitoring Protocol: LEA MOE- Compliance Standard

An LEA meets the compliance standard for LEA MOE, 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 34 C.F.R. §§ 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 (See 34 C.F.R. § 300.203(b)(2)).

OSEP will examine State policies and procedures to determine whether the State is ensuring that LEAs meet the compliance standard pursuant to 34 C.F.R. § 300.203(b).

Documents needed:

1. Sample calculations for determining the amount each LEA must expend in order to meet the MOE compliance standard.
2. Policies and procedures
3. Evidence that the State is monitoring LEAs to determine whether each LEA is meeting the MOE compliance standard

Sample Questions (actual questions will be developed based on documentation reviewed):

1. How do States determine whether an LEA has met the MOE compliance standard by examining whether or not it spent at least the same amount of funds as it spent in the most recent fiscal year for which data is available?
2. Does the State allow the LEA to reduce its expenditures based on the allowable exceptions and/or adjustment?
3. Does the State check to ensure that LEAs that are ineligible to take the adjustment, such as those determined by the SEA to not meet the requirements of IDEA Part B or that have been identified with significant disproportionality, do not take the adjustment?
4. Does the State allow the LEA to utilize the four methods to meet the compliance standard: 1) local funds only, 2) State and local funds, 3) local funds only on a per capita basis, and 4) State and local funds on a per capita basis?

5. Do LEAs have accounting systems that allow them to distinguish between expenditures that are made using local funds only and those made using State and local funds? Who does the calculations? When? What is the role of the State/LEA in making these calculations?
6. Are there written policies and procedures that describe the calculations to be done, when, and by whom?
7. What sources of data/information systems does the State rely on for calculating whether its LEAs meet the compliance standard?
8. Do the State and its LEAs maintain data to demonstrate LEAs' compliance with the MOE compliance standard, including the subsequent years rule, for a minimum of five years? In addition, for an LEA that wishes to retain the flexibility to use any of the four methods to meet the MOE compliance standard, are data and information retained that allow the LEA to determine the amount of expenditures it made in the relevant comparison year using that same method? Likewise, for an LEA that wishes to take an exception and/or adjustment in order to reduce the amount it is required to expend to meet the MOE compliance standard, are data and information retained that demonstrate the LEA properly took the exceptions and/or adjustment in the relevant comparison year? If an LEA did not meet the compliance standard in the preceding fiscal year, are data and information retained for the proper comparison year, even if that fiscal year falls outside of the five years generally required for record retention?
9. If an LEA does not meet the compliance standard, does the State return non-Federal funds to the Department in the amount of the failure, or the amount of the LEA's IDEA Part B subgrant, whichever is lower?
10. What happens if the State determines an LEA does not meet the compliance standard? How is the LEA notified? Is there an opportunity for the LEA to validate the determination? What kind of corrective action is required? Does the State collect the amount of the MOE shortfall from the LEA? At what point does the State return the non-Federal funds, in the amount of the shortfall, to the Department?

III. IDEA Part B Monitoring Protocol: LEA MOE- Reporting

States have annual reporting requirements for both MOE and CEIS, which are combined in a single data collection form in the ED Facts Metadata and Process System (EMAPS). For MOE, States must report the amount, if any, by which each LEA reduced its MOE obligation under 34 C.F.R. § 300.205(a), as well as the State's determination of whether the LEA has met the requirements of Part B of the IDEA. States are also required to report whether the State returned non-Federal funds to the Department based on the failure of the LEA/ESA to meet the MOE compliance standard in the fiscal year for which they are reporting and, if so, the amount returned.

Documents needed:

1. Data on LEAs' section 611 and section 619 allocation amounts, LEA determinations, amount of any MOE reductions, LEAs' compliance with the MOE compliance standard, including amounts returned to the Department based on any LEA MOE failures, significant disproportionality identification, amounts reserved for required or voluntary CEIS, and the number of children receiving CEIS within the reporting school year and

number of children who received CEIS anytime in the past two school years and received special education and related services in the reporting school year.

2. Policies and procedures.

Sample Questions (actual questions will be developed based on documentation reviewed):

1. Does the State annually collect and report the data required in the LEA MOE CEIS data collection?
2. Who collects the data? When?
3. Are there written policies and procedures that describe what is done, when, and by whom?
4. What sources of data/information systems does the State rely on, and how does the State check its validity?

Resource Information

In developing and implementing monitoring protocols, all available regulatory, technical assistance, informational, and related resources, including those listed below, that apply to the specific protocol may be utilized. Resource materials are available in the relevant Fiscal section of GRADS360.

- Regulations
- Comments & Discussion Sections from Federal Register
- ED Guidance: Dear Colleague Letters, Q&As, resource packages, etc.
- OSEP Guidance: Policy letters, Q&As, etc.
- Checklists: OSEP/OGC-developed