

**Special Education Finance
Maintenance of Effort (MOE) and COVID-19 FAQ
September 8, 2020**

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MAINTENANCE OF EFFORT

Q: What is Maintenance of Effort (MOE)?

A: Maintenance of Effort (MOE) is the amount of state, local and county funds spent on special education that must be maintained at the same amount or more each year. Local funds and county funds are combined and considered “local” funds. There are two components to MOE: the eligibility standard and the compliance standard. The eligibility standard indicates a local education agency (LEA), including districts and charter schools, must budget at least the same amount or more for special education as the LEA spent for the most recent fiscal year for which information is available, unless allowable exceptions or adjustments apply, in order to be eligible for the next fiscal year grant award. The compliance standard indicates a LEA must not reduce the level of expenditures for special education below the level of expenditures from the previous fiscal year unless allowable exceptions or adjustments apply.

STAFF

Q: Can LEAs continue to pay Special Education K-12 and ECSE staff (both certificated and non-certificated) with state, local or county funds during school closures due to COVID-19?

A: Any staff paid with state, local or county funds that continue to perform IDEA related activities or are placed on paid administrative leave should be included in the MOE calculation.

Any staff paid with state, local or county funds that do not continue to perform IDEA related activities or are assigned non-special education duties should not be included in the MOE calculation.

MEETING REQUIREMENTS

Q: Disruptions to services and school closures related to the COVID-19 pandemic have had a significant impact on the funds LEAs have expended on the education of children with disabilities and may impact the amount they can budget for the upcoming year. Is there any flexibility in how LEAs meet the MOE requirements?

A: While no MOE waivers have been granted at this time, there are options LEAs have on meeting MOE. LEAs may meet the MOE eligibility and compliance standards by using any of the following four methods:

1. Total amount of state and local funds
2. State and local funds on a per capita basis
3. Total amount of local funds only
4. Local funds only on a per capita basis

See 34 C.F.R. § 300.203(a)(1) and (b)(2)

There are five allowable exceptions to the LEA MOE requirement. An LEA may reduce the level of expenditures for the education of children with disabilities below the level of those expenditures for the preceding fiscal year (for the compliance standard) and below the level of those expenditures for the most recent fiscal year for which information is available (for the eligibility standard), if the reduction is attributable to any of the following causes:

1. The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel
2. A decrease in the enrollment of children with disabilities
3. The termination of the obligation of the agency, consistent with Part B of IDEA, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the state educational agency (SEA), because the child (1) has left the jurisdiction of the agency; (2) has reached the age at which the agency's obligation to provide a free appropriate public education to the child has terminated; or (3) no longer needs the program of special education
4. The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities
5. The assumption of cost by the high cost fund

See 34 C.F.R. § 300.204, 34 C.F.R. § 300.704(c)

In addition, for any fiscal year for which an LEA's IDEA section 611 allocation exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures for the education

of children with disabilities by not more than 50 percent of the amount of that excess. However, the maximum amount of expenditures the LEA may reduce under is affected by the amount of funds expended by the LEA for coordinated early intervening services.

See 34 C.F.R. § 300.205, 34 C.F.R. § 300.205, C.F.R. § 300.226, Appendix D to 34 C.F.R. Part 300, 34 C.F.R. § 300.203(b)

Q: What happens if MOE is not met?

A: If an LEA fails to meet the MOE compliance standard, the SEA is liable, in a recovery action to return to the Department, using non-Federal funds, an amount equal to the amount by which the LEA failed to maintain its level of expenditures in that fiscal year, or the amount of the LEA's IDEA Part B sub-grant in that fiscal year, whichever is lower. To the extent permitted under state law, the SEA may seek reimbursement of this amount from the LEA that did not meet the MOE compliance standard.

See Section 452 of the General Education Provisions Act (20 U.S.C. 1234a), 34 C.F.R. § 300.203(d)

Q: What recommendations can be provided in how LEAs meet the MOE requirements?

A: LEAs must ensure enough non-federal funds are spent to meet MOE compliance on the method with the lowest threshold amount needed to meet. The “local funds only method,” on either a total or a per capita basis, is an option LEAs may want to consider using to meet the MOE requirement if state funds available for the education of children with disabilities are reduced. State funds can be redirected from special education to other areas needed as long as the “local funds only method” is met.

In order to meet MOE compliance, LEAs may need to allow some IDEA Part B federal funds to carry over into the next fiscal year. LEAs are allowed to obligate and spend federal funds over a two-year period, so as long as the LEA spends the carryover funds each year, it will not lose any funds. Shifting expenditures from federal to state through journal entry corrections for last fiscal year could be a strategy used to ensure MOE is met. The federal funds would then be available to help contain increased costs that may occur if additional services are required to help catch students up.

CARES ACT FUNDING

Q: Does spending CARES ACT funding on special education expenditures have an impact on MOE?

A: While federal CARES ACT funds can be spent on special education expenditures, LEAs should exercise caution when determining whether or not to spend these funds in areas that could contribute to MOE issues. For instance, if an LEA typically spends local funds on contracted therapy for students with disabilities and switches to using federal CARES ACT funds on these services, this could negatively impact the LEA's ability to meet MOE compliance. However, if CARES ACT funds are spent on one-time purchases, such as equipment identified in a student's IEP, this will likely not impact the LEA's ability to meet MOE compliance.

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