



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
OFFICE OF SPECIAL EDUCATION PROGRAMS

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The Office of Special Education Programs (OSEP), within the U.S. Department of Education's (Department) Office of Special Education and Rehabilitative Services, issues this Question and Answer (Q & A) document in response to inquiries concerning flexibility in the implementation of the Individuals with Disabilities Education Act (IDEA) Part B fiscal requirements in the current COVID-19 environment.

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To review other Q & A documents that OSEP has provided related to COVID-19, please visit <https://sites.ed.gov/idea/topic-areas/#COVID-19>. Additional information specific to the COVID-19 pandemic may be found online at <https://www.ed.gov/coronavirus>.

FLEXIBILITY ON IDEA PART B FISCAL REQUIREMENTS

Q1. In light of the COVID-19 pandemic, we are anticipating that State revenues will be reduced and that there may be budget cuts in education generally, and special education specifically. Is there any flexibility in meeting the requirements for the maintenance of State financial support (MFS)?

Yes. As you know, under [34 C.F.R. § 300.163\(a\)](#), a State must not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year. However, under [34 C.F.R. § 300.163\(c\)](#), the Secretary may waive the MFS requirement for a State, for one fiscal year at a time, if the Secretary determines that –

- 1) Granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or
- 2) The State meets the standard in [34 C.F.R. § 300.164](#) for a waiver of the requirement to supplement, and not to supplant, funds received under Part B of IDEA.

Additional information about MFS waivers is posted on <https://www2.ed.gov/policy/speced/guid/idea/monitor/smfs-partb-waivers.html>.

In addition, States may establish compliance with the MFS requirement on a total or a per capita basis, and may switch between the two methods, but must establish compliance by applying the same method to the relevant comparison years (*i.e.*, States establish compliance in a given year by showing that either:

- 1) the total dollar amount was at least equal to the total dollar amount of the previous year, OR
- 2) the per capita amount was at least equal to the per capita amount of the previous year).

Q2. Disruptions to services and school closures related to the COVID-19 pandemic have had a significant impact on the funds our local educational agencies (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 maintenance of effort (MOE) requirements?

Yes. 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; or
 - 4) local funds only on a per capita basis. See [34 C.F.R. § 300.203\(a\)\(1\) and \(b\)\(2\)](#). 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.¹
- Under [34 C.F.R. § 300.204](#), 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:
 - a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.

¹ More information on LEA MOE is available in [Office of Special Education Programs \(OSEP\) Memorandum 15-10](#), Issuance of Guidance on the Final LEA MOE Regulations under Part B of the IDEA (July 27, 2015).

- b) A decrease in the enrollment of children with disabilities.
 - c) 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.
 - d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.
 - e) The assumption of cost by the high cost fund operated by the SEA under [34 C.F.R. § 300.704\(c\)](#).
- In addition, under [34 C.F.R. § 300.205](#), 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 otherwise required by [34 C.F.R. § 300.203\(b\)](#) by not more than 50 percent of the amount of that excess. However, the maximum amount of expenditures the LEA may reduce under [34 C.F.R. § 300.205](#) is affected by the amount of funds expended by the LEA for coordinated early intervening services under [34 C.F.R. § 300.226](#). See [34 C.F.R. §§ 300.205\(d\)](#) and [300.226\(a\)](#); and [Appendix D to 34 C.F.R. Part 300](#).

Finally, if an LEA fails to meet the MOE compliance standard, the SEA is liable in a recovery action under section 452 of the General Education Provisions Act ([20 U.S.C. 1234a](#)) 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 subgrant in that fiscal year, whichever is lower. [34 C.F.R. § 300.203\(d\)](#). 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. Whether a State seeks recovery from an LEA is at the discretion of the State.

Q3. Because of the potential budget cuts and school closures during the COVID-19 pandemic, our LEAs are concerned they may not meet the excess cost requirement. Is there any flexibility in meeting this requirement under IDEA?

No. Excess costs means those costs that are in excess of the average annual per pupil expenditure (APPE) in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed in accordance with [34 C.F.R. § 300.16](#). To meet the excess cost requirement, an LEA must spend at least the APPE on the education of each student with a disability – calculated separately at the elementary school level and the secondary school level

– before using IDEA Part B funds to pay for the excess costs of providing special education and related services to students with disabilities. If an LEA expends less funds on the education of all students (including students with disabilities), and if the APPE is then reduced, the amount the LEA must expend on students with disabilities to meet the excess cost requirement would also be reduced. See also [34 C.F.R. § 300.202\(b\)](#) and [Appendix A to 34 C.F.R. Part 300](#).