

Technical Assistance Document

**Maintenance of Effort (MOE)
Requirements
for the
Individuals with Disabilities
Education Act (IDEA)**

**Nevada Department of Education
Office of Special Education,
Elementary and Secondary Education,
and School Improvement Programs**

February 2009

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INTRODUCTION

The Nevada Department of Education (NDE) occasionally receives questions from parents, educators, advocates and other interested parties about requirements pertaining to the federal Individuals with Disabilities Education Act (IDEA), Maintenance of Effort (MOE) criteria that applies to the year-to-year expenditure of special education funds. It is important for those individuals who have an interest in or responsibility for the budgeting of State and local funds that support special education and related services to students with disabilities have a thorough understanding of these federal funding requirements.

Following is a response to the complex questions posed to the NDE over a period of time regarding this issue. The following response is intended to inform and guide policy makers and others in making critical decisions about State and local funding to support students with disabilities found eligible for services under Part B of the IDEA.

The Nevada Department of Education wishes to thank Gail ImObersteg, Esq., for her assistance in the preparation of this material.

Overview of the IDEA Fiscal Requirements

Maintenance of Effort (MOE)

In general the, federal IDEA funds are made available to the states to assist in covering the excess costs of providing special education and related services to children with disabilities. In order for a State to be eligible to receive federal IDEA funding, “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.” 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); 34 C.F.R. §300.163).

For Local Educational Agencies (LEA) to be eligible to receive the IDEA funding, the IDEA Part B funds may not be used to reduce the level of expenditures from local funds for educating children with disabilities below the level of those expenditures for the preceding fiscal year (20 U.S.C. § 1413 (a)(2)(a); 34 C.F.R. §300.203). The State Educational Agency (SEA) determines the LEAs eligibility by determining if the LEA budgets, for the education of children with disabilities, at least the same total or per capita amount as the LEA spent for that purpose from the same source for the most recent prior year. The sources considered are local funds only, or the combination of State and local funds. The SEA may not consider any expenditure made from federal funds for which the SEA, or LEA through the SEA, is required to account to the Federal government (34 C.F.R. §300.203).

There are explicit exceptions to the local MOE requirement for the following only: (1) a voluntary departure of special education or related services personnel; (2) a decrease in the enrollment of children with disabilities; (3) the termination of an obligation to provide an individual child with disabilities with an exceptionally costly program for specific reasons; (4) the termination of costly long-term purchases such as the acquisition of equipment or construction on school facilities; and/or (5) the assumption of cost by the high cost fund that may be operated by the SEA¹ (34 C.F.R. § 300.204).

MOE and Relationship to Other IDEA Fiscal Requirements

In addition to the State and local MOE requirements, the IDEA Part B funds must also be used only to pay excess costs of providing special education and related services to children with disabilities and must supplement the level of other federal, State and local funds expended for special education and related services and in no case supplant such funds (20 U.S.C. §§1412(a)(17)(c) and 1413(a)(2)(iii); 34 C.F.R. §§300.202 and 300.162). These three requirements, i.e., excess cost, supplement not supplant, and MOE, are intertwined and a violation of one requirement in most cases will affect the others. In addition, the actions of the

¹ The “high cost fund” are funds a State can choose to use—with certain limitations—from the amount the State reserves from the IDEA Part B grant to fund other state-level activities, to assist LEAs in addressing the needs of high need students with disabilities 34 C.F.R. § 300.704(c)

State and LEAs are intertwined. So, for example, if a State reduces the level of support for teacher salaries and an LEA responds by diverting IDEA funds to make-up for the loss of this State support, and does not otherwise increase local funding, an MOE and “supplement not supplant” problem arises for both the SEA and the LEA (and an “excess cost” requirement may also be violated).

As a further example: if a LEA spends \$900,000 of combined State and local funds on children with disabilities in FY 2008 and \$100,000 of that is local funds; then for FY 2009 it must spend at least \$100,000 of local funds *or* \$900,000 of combined State and local funds on children with disabilities. The permissibility of reductions of State aid for education generally will ultimately depend on the LEAs ability to maintain its effort to support special education (i.e., meet the MOE requirement). In other words, at the risk of over simplifying complex fiscal concepts, a State’s commitment to the general education fund can go up and down, but to the extent reductions to the general fund affect the LEAs ability to maintain the combined local and State effort from fiscal year to fiscal year, such reductions will ultimately affect the State’s federal grant² [See also, 211 IDELR 222 (OSEP 1980); 213 IDELR 116 (OSEP 1988); 18 IDELR 1033 (OSEP 1992) and a recent letter on calculation of expenditures, 51 IDELR 136 (OSEP 2008)].

Consequence for the State Spending Less Than the MOE Requirement

As noted above, the Secretary of Education is required to withhold funding from the State’s grant in the year subsequent to the violation of the MOE requirement. The grant will be reduced by the same amount by which the State fell short of meeting its MOE requirement (34 C.F.R. §300.163(d)). In addition, in future years, the MOE is determined on the basis of the level of support prior to the MOE failure and not the level of support in the non-complying year (20 U.S.C. § 1413(a)(18)(D)).

Because the IDEA grant is awarded to the State, the State is the one to suffer—at least initially—if an LEA reduces the amount of State and local funding for special education:

“The IDEA is a State-administered program under which the Department awards funds to an SEA. The SEA, in turn, as noted above, is responsible for ensuring that the requirements of the Act are met, both by the SEA and the LEAs to which it subgrants funds. Consequently, if an LEA fails to meet its obligation under the maintenance of effort requirement, the Department, because it awarded the IDEA grant to the State, will seek a recovery of funds directly from the State because of this violation. The level of recovery will depend on the degree to which the LEA failed to meet the maintenance of effort requirement, but would not, under any circumstances, exceed the amount of the LEA's IDEA subgrant for the year in question. An SEA cannot use the IDEA funds to pay this liability. Instead, it must use non-Federal funds or Federal funds for which

² See, OSEP Part B Regional Implementation Meetings, “Building the Legacy: IDEA 2004,” at <http://www.specialedconnection.com/LrpSecStoryTool/index.jsp?contentId=10001&chunkid=133691&query={{M OE}}&chunknum=1&topic=Main&listnum=0&offset=6>

accountability to the Federal government is not required.” [See 48 IDELR 18, (OSEP 2006)]³

“The SEA, following applicable State procedures, could seek reimbursement from the LEA; however, the SEA is not authorized to reduce a current year IDEA subgrant as a means of resolving a prior year's maintenance of effort violation.” [48 IDELR 18, (OSEP 2006)]

In addition to the previously cited exceptions to the local MOE requirement, there are permissible exceptions to the State MOE requirement. The Secretary of Education may determine “that a waiver would be equitable due to exceptional or uncontrollable circumstances such as natural disaster or a precipitous and unforeseen decline in the financial resources of the state”, or (2) the State meets the standards for a waiver of the “supplement not supplant requirement.” The latter waiver requires an exceptionally high standard of the SEA being able to establish that a free appropriate public education (FAPE) is provided to all children with disabilities within the State, and such a waiver has never been given to any State.

There have been waivers to the State MOE requirements approved by the Secretary of Education on the basis of a “natural disaster” such as those given to Mississippi and Louisiana subsequent to Hurricane Katrina. [See OSEP Policy Letters, Letter to Picard, Sept. 21, 2005, Letter to Bounds, Oct. 25, 2005, and see Federal Register, Vol. 70, No. 227, p. 71270.] However, this writer is unable to find any waivers, in the absence of a natural disaster, granted for a “precipitous and unforeseen decline in the financial resources of the state.” Given the current national economic situation, it is important to note the requirement that the decline in financial resources must be both precipitous and unforeseen.

Consequences for the State Giving Back (i.e., not accepting) IDEA Funds

The IDEA is a funding statute. As such, SEAs are not compelled to seek and accept funding under the IDEA and, as a result, comply with the concomitant requirements under the IDEA (34 C.F.R. §300.2). However, all public schools that receive federal financial assistance must comply with Section 504 of the Rehabilitation Act (Section 504: 29 U.S.C. §794; 34 C.F.R. Part 104). Section 504 is a civil rights law designed to eliminate discrimination on the basis of disability in any program or activity receiving federal financial assistance. Title II of the Americans with Disabilities Act (ADA: 42 U.S.C. §12101 et seq 28 C.F.R. Part 35) prohibits discrimination in all programs, activities and services of public entities provided or made

³ See 34 C.F.R. Section 203(b)(3) regarding other federal funds.

Other than Impact Aid funds received as Payments for Federal Property under section 8002 of the Impact Aid Program (IAP) statute or Basic Support payments under section 8003(b) of the IAP statute, OSEP opined “...we are not aware of any other Federal funds used to support education for which accountability to the Federal government is not required. However, it is possible that other funds exist which may be administered by other agencies of the Federal government (50 IDELR 286 (OSEP 2008)).

available by State or local governments, including public elementary and secondary schools whether or not they receive federal funds.⁴

Unlike the IDEA, Section 504 is not a funding statute and, as such, there are no federal funds designated under the statute to provide the services/accommodations necessary for a child with disabilities eligible under Section 504. However, failure to comply with Section 504 subjects the State to the potential withdrawal of federal funds.

As a civil rights statute, the standards of nondiscrimination in Section 504 are not identical to the standards in the IDEA, Part B. However, three sections of the Section 504 regulations regarding the provision of a FAPE and the use of an Individualized Educational Program (IEP); reevaluation; and procedural safeguards establish that one means for public schools to comply with Section 504 is to comply with the pertinent provisions of the IDEA (34 C.F.R. §104.33(b)(2); §104.35(d); §104.36). In addition, the United States Department of Education, Office for Civil Rights, the agency responsible for enforcing Section 504 often looks to the interpretations of the IDEA when enforcing the Section 504 requirements (e.g., disciplinary exclusions of students with disabilities). Therefore, any consideration of rejecting the IDEA funding and the associated requirements must include a careful analysis of the remaining obligation of the State to comply with Section 504 and Title II of the ADA, without designated federal funding.

⁴ Title II does not specifically address discrimination in elementary and secondary public education programs. However, the U.S. Department of Justice has confirmed that the nondiscrimination provisions under Title II will be construed to adopt the standards of Section 504 in this area (19 IDELR 859 (OCR 1992)).