

## Technical Assistance Paper

Local Education Agency (LEA) Maintenance of Fiscal Effort (MOE)  
Utah State Office of Education  
Special Education Department  
4-10-09

The implementation of the American Recovery and Reinvestment Act of 2009 (ARRA) has brought a new level of attention to two closely related requirements in the Individuals with Disabilities Education and Improvement Act (IDEA): maintenance of fiscal effort (MOE) and supplement not supplant.

Funds appropriated under Part B of the IDEA may only be used for the excess costs of providing special education and related services to children with disabilities. The funds must be used to supplement and increase the level of State and local funds expended for special education and related services provided to children with disabilities, and in no case to supplant those funds. The MOE provisions of the IDEA require that funds provided to an LEA under the IDEA must not be used to reduce the level of local, or State and local, expenditures (per capita or in total) for the education of students with disabilities below the level of those expenditures of the preceding fiscal year (§300.203). All MOE and nonsupplanting requirements apply to the IDEA Part B funds made available through the ARRA as well. The U.S. Department of Education has interpreted that LEAs can satisfy the supplement not supplant provisions of the IDEA if they maintain fiscal effort. Therefore, this technical assistance paper will focus on maintenance of effort.

IDEA Part B applications that LEAs submit annually to the USOE in order to receive their Federal IDEA funds require that MOE be documented. The LEA must enter the total amount of both State (Minimum School Program) dollars and local dollars spent on special education for the most recent two school years. Federal expenditures are not included. If the LEA application indicates that the most recent amount of State and local expenditures is less than the expenditures of the previous year, an explanation must be attached. There are only five explanations that are acceptable under IDEA for failing to maintain fiscal effort. An LEA may reduce the level of expenditures by an LEA under Part B of the IDEA below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:

1. The voluntary departure 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 LEA to provide a program of special education to a particular child with a disability that is an exceptionally costly program because the child-
  - a. Has left the jurisdiction of the LEA,
  - b. Has reached the age at which the obligation of the LEA has ended, or
  - c. No longer needs the program of special education.
4. The termination of costly expenditures for long-term purchases, such as equipment.
5. The assumption of cost by the high cost fund operated by the State Education Agency (SEA) (§300.204).

MOE figures are retained at the USOE.

There are consequences if an LEA does not comply with MOE requirements. The Regulations stipulate that if the SEA finds that an LEA is failing to comply with the MOE provisions of the IDEA, the SEA must require the LEA to repay the amount by which it failed to maintain effort. That amount is returned to the Federal government. The repayment may not be out of IDEA funds or any other Federal funds for which accountability to the Federal government is required.

All MOE requirements apply to the ARRA funds and cannot be waived for LEAs. However, an LEA may reduce the level of State and local expenditures by up to 50% of the increase in IDEA Part B funding. There are further details to be considered if an LEA intends to utilize this provision:

1. The ARRA funds count as FFY 09 funds (09-10).
2. The increase is calculated on the Part B ARRA plus the regular 611 Part B funds (not 618 preschool funds).
3. Funds freed up by reducing the MOE by up to 50% of the increase in 09-10 funding must be used for activities that could be supported under the Elementary and Secondary Education Act.
4. LEAs must receive a determination of "Meets Requirements" from the State in order to take advantage of this provision. LEA determinations will be disseminated on or about May 1.
5. The USOE will be expected to collect from the LEA and report information on the use of freed-up funds.
6. An LEA that is required to use 15% of its IDEA Part B allocation on Coordinated Early Intervening Services (CEIS) because the SEA identified the LEA as having significant disproportionality will not be able to reduce local MOE. (This does not apply to any LEAs in Utah at this time.)
7. In subsequent years the LEA would be required to maintain effort based on the reduced level, unless the LEA increases the amount of its state and local expenditures on its own. Therefore, if an LEA

chooses to use the 50% (of the increase) reduction provision, it would be prudent to project how the new MOE base might affect future financial support for special education programs.

Alternatively, an LEA may (or in the case of identified significant disproportionality must) use up to 15% of its total IDEA Part B and preschool grants for coordinated early intervening services (CEIS) for children in grades K through 12 who are not currently identified as children with disabilities, but who need additional academic and behavioral support to succeed in a general education environment. However, an LEA may use only up to 15% of its allocation minus any amount by which the LEA reduced its required MOE under the previously mentioned 50% percent of the increase of IDEA Part B funds. (Please note that any time an LEA decides to take advantage of up to 15% for CEIS opportunity, the number of children served under this option who received CEIS and the number of children served under this option that received CEIS and then subsequently receive special education services must be tracked and reported to the SEA.)

With prior approval from the Secretary of Education, an LEA may count ARRA State Fiscal Stabilization Funds (but not IDEA recovery funds) that are used for special education and related services as non-federal funds for purposes of determining whether the state or LEA has met the MOE requirements.

Information on MOE and non-supplanting is contained in the Utah State Board of Education State Special Education Rules.