

**Technical Assistance Paper  
Local Education Agency (LEA) Maintenance of Fiscal Effort (MOE)  
Utah State Office of Education  
Special Education, School Finance and Statistics Departments  
4-6-2010**

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 federal funds must be used to supplement 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 (34 CFR §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.

The Utah Consolidated Application (UCA) which LEAs submit annually to the Utah State Office of Education (USOE) to receive their Federal IDEA funds require that MOE be documented. In the past, the LEA was required to 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 indicated that the most recent amount of State and local expenditures was less than the State and local expenditures of the previous year, an explanation was required to 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 the acquisition of equipment or the construction of school facilities.

5. The assumption of cost by the high cost fund operated by the State Education Agency (SEA) (§300.204).

Nothing in the IDEA permits an exception for financial emergencies. The Federal Register further states that to expand the exceptions to the Maintenance of Effort requirements would be beyond the authority of the Department of Education (pg. 46624 of the Federal Register, 34 CFR Parts 300 and 301).

The Federal Regulations also state that if the USOE determines that an LEA is not meeting the requirements of Part B, including the targets in the State Performance Plan, the USOE must prohibit the LEA from reducing its maintenance of effort for any fiscal year (34 CFR §300.608).

Beginning with the 2010-11 school year, the UCA MOE figures will be populated by the USOE based on data contained in the Annual Program Report (the finance department's APR). The Annual Program Report is available from LEA Business Administrators on October 1 of each year. The data needed for Special Education MOE can be found in Schedule B of the document.

There are consequences if an LEA does not comply with the MOE requirements. After reasonable notice and an opportunity for a hearing, if the USOE finds that an LEA is failing to comply with the nonsupplanting and MOE provisions of IDEA, the LEA shall meet with the USOE to submit a plan for approval that describes how the LEA will meet the MOE requirements in subsequent years and how the LEA will meet its obligation to the USOE for the amount by which the LEA failed to meet MOE. Failure to complete this action or failure to carry out a USOE approved plan will render the LEA ineligible to receive their IDEA Part B allocation until the preceding procedure has been met and the USOE is satisfied that the LEA is complying with the requirements.

All MOE requirements apply to the ARRA funds and cannot be waived for LEAs. However, for any fiscal year for which the IDEA Part B allocation received by an LEA exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required for MOE by not more than 50 percent of the amount of that excess. (34 CFR §300.205) There are further details to be considered if an LEA intends to utilize this provision for FY 2009-10, since ARRA funding represents such an increase:

1. The ARRA funds count as FY 2009-10 funds.
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 FY 2009-10 funding must be used for activities that could be supported under the Elementary and Secondary Education Act.
4. In subsequent years the LEA is 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.

5. LEAs must receive a determination of “Meets Requirements” from the State in order to take advantage of this provision. LEA determinations are sent to LEAs in the spring of each year.
6. The USOE will be expected to collect from the LEA and report information on the use of freed-up funds.
7. 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 USOE annually.)
8. 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 Federal Regulations (34 CFR Parts 300 and 301), the Utah State Board of Education State Special Education Rules, and the ARRA Guidance.