



PART B MAINTENANCE OF EFFORT (MOE) QUICK REFERENCE DOCUMENT

Fiscal Priority Team

This Quick Reference Document has been prepared by the Regional Resource Center Program Fiscal Priority Team to aid RRCP State liaisons and other TA providers in understanding the general context of State questions surrounding Maintenance of State Financial Support (MFS) and Local Educational Agency (LEA) Maintenance of Effort (MOE).

In addition to the regulations cited below, there is additional information about MFS in OSEP Memo10-05: Maintenance of State Financial Support under the Individuals with Disabilities Education Act, Dec. 2, 2009. This memo is included as Attachment 1. Attachment 2, OSEP Letter to Boundy, April 4, 2012, contains additional information about LEA MOE.

As a “first-stop” for TA providers in investigating MFS and MOE questions on behalf of their States, this document is intentionally brief and is not intended to provide comprehensive guidance on these issues. It is also not designed or intended for general public distribution. For additional clarification or detail on a specific MFS or MOE issue, TA providers are encouraged to contact the member of the Fiscal Priority Team in their respective RRCP region or the Fiscal Convener for additional information and resources (see complete contact information for the Team at the end of the document).

A. GENERAL

1. What is the difference between Maintenance of State Financial Support (MFS) and LEA Maintenance of Effort (MOE)?

- a.** Maintenance of State Financial Support refers to responsibility of the State to maintain State financial support for special education and related services from one fiscal year to the next.

34 CFR §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.”
[Emphasis added.]

- b.** LEA Maintenance of Effort refers to responsibility of the LEA to maintain the same level of expenditures for the education of children with disabilities from one fiscal year to the next.

34 CFR §300.203: “Except as provided in §§300.204 and 300.205, funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year. [Emphasis added.]



B. MAINTENANCE OF STATE FINANCIAL SUPPORT (MFS)

1. What happens if a State does not meet MFS?

34 CFR §300.163(b): “The Secretary reduces the allocation of funds under section 611 of the Act for any fiscal year following the fiscal year in which the State fails to comply with the requirement of paragraph (a) of this section by the same amount by which the State fails to meet the requirement.”

2. Are there any exceptions to meeting MFS?

There are no exceptions to meeting MFS, although a State may seek a waiver for one fiscal year at a time for exceptional or uncontrollable circumstances (see question 3).

3. Can a State request a waiver permitting it to not meet MFS?

a. 34 CFR §300.163(c)(1). The Secretary may grant a waiver for one fiscal year at a time due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State.

b. 34 CFR §300.163(d). If a State fails to maintain fiscal effort (regardless of whether a waiver is granted), the financial support required of the State in future years is the amount that would have been required in the absence of that failure to meet MFS and NOT the reduced level of the State’s support.

C. LEA MAINTENANCE OF EFFORT (MOE)

1. What happens if an LEA does not meet MOE?

a. The State may not withhold IDEA funds and/or reduce the level of IDEA funds to the LEA because of its failure to meet MOE.

b. The State must repay the Federal government the amount of money by which the LEA failed to maintain effort. This payback must be made from non-Federal funds or funds for which accountability to the Federal government is not required.

c. The State has discretion to require the LEA to pay back to the State the amount of money that the LEA failed to maintain effort. If the LEA is required to pay back the amount of shortfall to the State, it must use non-Federal funds or funds for which accountability to the Federal government is not required.



d. The level of effort that an LEA must meet in the year after it fails to maintain effort is the level of effort that it should have met in the prior year, and not the LEA's actual expenditures (See Attachment 2: OSEP Letter to Boundy, April 4, 2012).

2. Are there any exceptions for LEAs in meeting MOE?

34 CFR §300.204 There are 5 exceptions to meeting MOE:

- a. The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.
- b. A decrease in the enrollment of children with disabilities.
- c. The termination of the obligation of the agency to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child has either: left the jurisdiction of the agency, reached the age here there is no longer an obligation to provide FAPE, and/or no longer needs the program of special education.
- d. The termination of costly expenditures for long-term purchases.
- e. The assumption of cost by the high cost fund operated by the SEA.

3. Can an LEA request a waiver for not meeting MOE?

No, there are no waivers of MOE available to an LEA.

4. Are there different ways to calculate LEA MOE?

34 CFR §300.203(b) There are 4 different ways to calculate LEA MOE:

- a. Total amount of local funds only
- b. Total amount of a combination of State and local funds
- c. Per capita amount of local funds
- d. Per capita amount of a combination of State and local funds

An LEA meets MOE if it has expended the same amount or more under any one or more of these methods. Note that the MOE calculation standards require that the LEA expenditures be compared to the same source from one year to the next. Therefore, in order to know whether, from year to year, an LEA met MOE under any one or more of these calculation methods, the SEA will need to know the amounts the LEA expended using the sources identified in each method each year. For example, if an LEA for 2009-2010 met MOE under method "b" (total



State and local funds) but not under methods “a”, “c”, or “d”, the State will still need to know the amount the LEA expended in 2009-2010 of total local funds (method “a”), per capita local funds (method “c”), and per capita State and local funds combined (method “d”) in order to determine whether the LEA met MOE, under any one or more of the four calculation methods, in 2010-2011.

Fiscal Priority Team Contact Information:

NERRC:	Dave Phillips (Convener): dphilli2@wested.org
SEERRC:	Grace Kelley: gkelley3@cox.net Virginia Beridon: beridonandassociates@gmail.com
MSRRC:	Nancy O’Hara: nancy.ohara@uky.edu Alison Layland: dalayland@uky.edu
NCRRC:	Ann Bailey: baile045@umn.edu Kent Hamre: kjhamre@umn.edu Amanda Morse: amamorse@umn.edu
MRRRC:	Wayne Ball: wayne.ball@usu.edu Shauna Crane: shauna.crane@usu.edu Wendy Whipple: wendy.whipple@usu.edu
WRRC:	Cesar D’Agord: Cdagord@tacs.uoregon.edu
NECTAC:	Katy McCullough: katy.mccullough@unc.edu

Special thanks to Wayne Ball, Virginia Beridon, Kent Hamre and Amanda Morse for their work in authoring this document.

Attachment 1: OSEP Memo 10-05: Maintenance of State Financial Support under the Individuals with Disabilities Education Act, Dec. 2, 2009.

Attachment 2: OSEP Letter to Boundy, April 4, 2012.

ATTACHMENT 1



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

DEC - 2 2009

Contact Persons	
Name:	Ruth Ryder
Telephone:	202-245-7513
Name:	Deborah Morrow
Telephone:	202-245-7456

OSEP 10-5

MEMORANDUM

TO: Chief State School Officers
State Directors of Special Education

FROM: Alexa Posny 
Acting Director
Office of Special Education Programs

SUBJECT: Maintenance of State Financial Support under the
Individuals with Disabilities Education Act

Since the Office of Special Education Programs (OSEP) began focusing on the fiscal requirements of the Individuals with Disabilities Education Act (IDEA) in 2007, the heightened scrutiny has given rise to requests for clarification of several of those provisions. In addition, the passage of the American Recovery and Reinvestment Act of 2009 on February 17, 2009, requires States and local educational agencies (LEAs) to examine the fiscal requirements in a new light and to be in a position to account for each of those requirements with increasing detail and specificity. One of the provisions which OSEP has been asked to clarify is found at 34 CFR §300.163, Maintenance of State financial support.

Under 34 CFR §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." The question has been asked whether this provision specifically means the support for special education and related services provided by the State educational agency (SEA) or whether, in computing its maintenance of financial support for special education and related services, the SEA must include support provided by other State agencies, such as a State Department of Health or a State Vocational Rehabilitation Agency.

Under section 602(31) of the IDEA and 34 CFR §300.40 of the Part B implementing regulations, “State” is defined as each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas. Under section 602(32) of the IDEA and 34 CFR §300.41 of the regulations, “State educational agency” is defined as the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

The reference to “State financial support” in 34 CFR §300.163 is not limited to only the financial support provided to or through the SEA, but encompasses the financial support of all State agencies that provide or pay for special education and related services, as those terms are defined under the IDEA, to children with disabilities. Because 34 CFR §300.163(a) requires that a State not reduce its financial support from year to year for special education and related services, a State must include in its calculation of financial support under 34 CFR §300.163(a), any financial support for special education and related services provided by any State agency. The SEA is one of those agencies and likely provides or supervises the administration of the majority of the State’s support for special education and related services but possibly not all the State’s financial support for special education and related services. For example, payment by the State Vocational Rehabilitation Agency from State funds for job coaching services to youth with disabilities pursuant to an individualized education program (IEP) would be included in the calculation of the maintenance of State financial support for special education and related services. Likewise, if the State Department of Health provides psychological counseling or other mental health services to children with disabilities pursuant to their IEPs, the cost of such services would also be included in the calculation under 34 CFR §300.163. In other words, a State needs to include in its calculation of ‘State financial support for special education and related services’ funds other agencies provide to the SEA for such services, funds other agencies provide directly to LEAs for the services, and funds other agencies directly pay to staff or contractors for the delivery of the services pursuant to an IEP.

The State financial support provided by the SEA for special education and related services is, of course, also included in the calculation required by 34 CFR §300.163. This includes State funding for special education staff, the cost of monitoring and carrying out other State administrative duties related to special education, and the cost of any direct services provided by the SEA, as well as any State funds provided to public agencies (including LEAs) in the State for the purpose of providing special education and related services.

The standard of State financial support provided at 34 CFR §300.163(a) is a different standard than the LEA maintenance of effort (MOE) standard delineated at 34 CFR §300.203(b). The LEA standard at 34 CFR §300.203(b) requires that an LEA both budget, in each subsequent year, at least the same amount that it expended in the most recent prior year for which information is available, and expend, from year to year, at least the same amount that it expended in the previous year. The comparison, for LEA MOE compliance, is expenditures from year to year. For SEAs, the comparison is the amount of State financial support provided (made available) for special education and related services from year to year, regardless of the amount actually expended.

ATTACHMENT 2



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

Ms. Kathleen Boundy
Center for Law and Education
99 Chauncy Street
Suite 700
Boston, MA 02111

APR 4 2012

Dear Ms. Boundy:

This letter is in response to your letter of August 17, 2011, regarding the local maintenance of effort requirement in section 613(a)(2)(A)(iii), (B) and (C) of the Individuals with Disabilities Education Act (IDEA) and our response on June 16, 2011, to a question raised by Dr. Bill East, Executive Director of the National Association of State Directors of Special Education. This earlier correspondence concerned the level of effort required of a local educational agency (LEA) in the year after it fails to maintain effort under section 613(a)(2)(A)(iii), (B) and (C) of the IDEA. In our June 16th letter to Dr. East, the Department stated that, in the absence of an explicit alternative rule, an LEA would be obligated only to meet a level of effort equal to the amount it expended in the prior year, even if it had not maintained effort in the prior year. After further review, we have determined that the level of effort that an LEA must meet in the year after it fails to maintain effort is the level of effort that it should have met in the prior year, and not the LEA's actual expenditures. We are, therefore, withdrawing the letter to Dr. East.

LEAs, at a minimum, should not reduce their level of financial support for the education of children with disabilities, except as permitted in section 613(a)(2)(B) and (C), so that they can continue to meet their obligations to provide the special education and related services that children with disabilities need to receive a free appropriate public education.

Based on section 607(d) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents the interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented. The Department intends to seek comments from the public on this issue.

Thank you for your views on the letter of June 16, 2011 to Dr. East. We appreciate your thoughtful comments, and your desire to improve the education of children with disabilities.

Sincerely,

Handwritten signature of Alexa Posny in black ink.

Alexa Posny, Ph.D.
Assistant Secretary
Office of Special Education and
Rehabilitative Services

Handwritten signature of Melody Musgrove in black ink.

Melody Musgrove, Ed.D.
Director
Office of Special Education Programs

400 MARYLAND AVE. S.W., WASHINGTON, DC 20202-2600
www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.