UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Date: July 27, 2015

Contact Person: Gregg Corr
Telephone: 202-245-7309

OSEP MEMO 15-10

MEMORANDUM

TO: Chief State School Officers
State Directors of Special Education

FROM: Melody Musgrove, Ed.D.
Director
Office of Special Education Programs (OSEP)

SUBJECT: Issuance of Guidance on the Final Local Educational Agency (LEA) Maintenance of Effort (MOE) Regulations under Part B of the Individuals with Disabilities Education Act (IDEA)

The purpose of this Memorandum is to provide a question and answer (Q&A) document on the final LEA MOE regulations that were published in the Federal Register on April 28, 2015.[1] These regulations became effective on July 1, 2015. OSEP encourages State educational agencies (SEAs) and LEAs to review carefully the final regulations and the attached guidance and work collaboratively to ensure that the regulations are implemented correctly. The major changes in the final regulations include: (1) Clarification of the eligibility standard; (2) Clarification of the compliance standard; (3) Explanation of the Subsequent Years rule; and (4) Specification of the consequences for an LEA's failure to maintain effort.

The attached Q&A document explains the above terms, describes the actions that SEAs and LEAs must take to meet the MOE compliance standard and the eligibility standard, answers frequently asked questions about LEA MOE, and shares examples to facilitate and enhance SEAs' and LEAs' understanding of LEA MOE.

OSEP intends to issue a second Q&A document on LEA MOE to address issues that were not affected by the change to the regulations. The topics to be addressed will include the allowable exceptions and adjustment to the LEA MOE requirement, and the interaction between the LEA MOE adjustment and the voluntary use of funds for coordinated early intervening services.

This Memorandum and the attached questions and answers are available at https://osep.grads360.org/#program and http://www2.ed.gov/about/offices/list/osers/osep/policy.html**.**

We hope that you find this information helpful. If you or members of your staff have questions, please contact Gregg Corr or your State Contact in OSEP's Monitoring and State Improvement Planning Division.

Thank you for your continued commitment to improving results for children and youth with disabilities and to ensuring that the rights of children and their parents are protected.

Attachment

[1] 80 Fed. Reg. 23644 (Apr. 28, 2015).

IDEA PART B SUPPLEMENTAL REGULATIONS

LOCAL EDUCATIONAL AGENCY (LEA) MAINTENANCE OF EFFORT (MOE)

ISSUED APRIL 28, 2015
AND EFFECTIVE JULY 1, 2015

NON-REGULATORY GUIDANCE

July 2015

Office of Special Education Programs
Office of Special Education and Rehabilitative Services
U.S. Department of Education

INTRODUCTION

The Office of Special Education and Rehabilitative Services (OSERS) issues this document to provide State educational agencies (SEAs), local educational agencies (LEAs), parents, advocacy organizations, and other interested parties with information regarding the LEA maintenance of effort (MOE) requirement in Part B of the IDEA.[1]

The LEA MOE requirement was first added to the IDEA in the 1997 amendments and the 1999 implementing regulations. The purpose of the requirement is to ensure that LEAs provide the financial support necessary to make a free appropriate public education (FAPE) available to eligible children with disabilities. The Department identified a need for revisions to the LEA MOE requirement based upon fiscal monitoring, audits and questions from States and others.

On April 28, 2015, the U.S. Department of Education (Department) published final regulations on LEA MOE.[2] These regulations were effective on July 1, 2015. The Subsequent Years rule for Fiscal Years[3] (FYs) 2014 and 2015, stated in final § 300.203(c)(1), reiterates the relevant provisions of the 2014 Appropriations Act and the 2015 Appropriations Act, respectively. As explained in the Effective Date section of the Analysis of Comments and Changes in the final rule, the 2014 and 2015 Appropriations Acts made the Subsequent Years rule applicable for Individuals with Disabilities Education Act (IDEA) Part B grants awarded on July 1, 2014, and July 1, 2015, respectively.

To provide additional clarity and act as a supplement to the revised regulations, we are issuing a two-part document in a question-and-answer format to provide guidance to the field in this complex area. Part I, as appears below, addresses the major changes in the revised regulations.

The major changes in the revised regulations include:

- Clarification of the eligibility standard;
- Clarification of the compliance standard;
- Explanation of the Subsequent Years rule; and
- Specification of the consequences for an LEA's failure to maintain effort.

Each of these areas is discussed in more detail in this document.

Part II, to be released separately, will address related issues not addressed in changes to the regulations. These issues include the allowable exceptions, adjustment, and the interaction

[1] The Department published final regulations for IDEA Part B in the Federal Register on August 14, 2006, and they became effective on October 13, 2006. Supplemental IDEA Part B regulations were published on December 1, 2008, and on February 13, 2013, and became effective on December 31, 2008, and March 18, 2013, respectively.

[2] 80 Fed. Reg. 23644 (Apr. 28, 2015).

[3] The LEA MOE requirement in section 613(a) of the IDEA does not clearly specify the time period delineated by the term "fiscal year." As such, LEAs may meet the LEA MOE requirement using their own State fiscal years (SFYs), which often cover a different range of time than do Federal fiscal years (FFYs). For clarity, references to a particular year in this document refer to the fiscal year covering that school year, unless otherwise noted.

between the LEA MOE adjustment and the voluntary use of funds for Coordinated Early Intervening Services.

This guidance does not impose any requirements beyond those required under applicable law and regulations. The responses presented in this document generally are informal guidance representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented and are not legally binding. This document is not intended to be a replacement for careful study of the IDEA and its implementing regulations.

If you are interested in commenting on this guidance, please e–mail your comments to OSERSguidancecomments@ed.gov and include LEA MOE in the subject of your e–mail or write us at the following address:

Gregg Corr
U.S. Department of Education
Potomac Center Plaza
550 12th Street, S.W., room 4144
Washington, DC 20202

CONTENTS

A. GENERAL RULE 4

B. ELIGIBILITY STANDARD 7

C. COMPLIANCE STANDARD 13

D. EXCEPTIONS AND ADJUSTMENT/FLEXIBILITY 19

E. CONSEQUENCES OF LEA MOE FAILURE 21

A. GENERAL RULE

Authority: §300.203[4]

Question A-1: What is LEA MOE?

Answer: Generally, an LEA may not reduce the amount of local, or State and local, funds that it spends for the education of children with disabilities below the amount it spent for the preceding fiscal year.[5] There are two components to the LEA MOE requirement – the eligibility standard (§300.203(a)) and the compliance standard (§300.203(b)).

Question A-2: What is the eligibility standard?

Answer: The eligibility standard in §300.203(a) requires that, in order to find an LEA eligible for an IDEA Part B subgrant for the upcoming fiscal year, the SEA must determine that the LEA has budgeted for the education of children with disabilities at least the same amount of local, or State and local, funds, as it actually spent for the education of children with disabilities during the most recent fiscal year for which information is available.

The eligibility standard is discussed in more detail in Section B of this document.

Question A-3: What is the compliance standard?

Answer: The compliance standard in §300.203(b) prohibits an LEA from reducing the level of expenditures for the education of children with disabilities made by the LEA from local, or State and local, funds below the level of those expenditures from the same source for the preceding fiscal year. In other words, an LEA must maintain (or increase) the amount of local, or State and local, funds it spends for the education of children with disabilities when compared to the preceding fiscal year.

The compliance standard is discussed in more detail in Section C of this document.

Question A-4: What are the four methods an LEA may use to meet the eligibility and compliance standards?

Answer: An LEA may use the following four methods to meet both the eligibility and compliance standards:
(i) Local funds only;
(ii) The combination of State and local funds;
(iii) Local funds only on a per capita basis; or
(iv) The combination of State and local funds on a per capita basis.

[4] All regulatory citations in this document refer to the IDEA Part B regulations in 34 CFR part 300, unless otherwise noted.

Question A-5: What does "per capita" mean in the context of the LEA MOE regulations?

Answer: Per capita, in the context of the LEA MOE regulations, refers to the total amount of local, or State and local, funds either budgeted or expended by an LEA for the education of children with disabilities, divided by the number of children with disabilities served by the LEA.

Question A-6: What is the "comparison year"?

Answer: The "comparison year" refers to the fiscal year that an LEA uses to determine the amount of local, or State and local, funds it must budget or spend, in order to meet both the LEA MOE eligibility and compliance standards. The comparison year differs for each standard, and may be affected by the Subsequent Years rule. The comparison year is discussed more fully in B-2 and C-3.

Question A-7: What is the Subsequent Years rule?

Answer: The Subsequent Years rule prescribes the level of effort an LEA must meet in the year after the LEA fails to maintain effort. The Department first set out the Subsequent Years rule on April 4, 2012 in a letter to Ms. Kathleen Boundy, available at http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep-04-04-2012.pdf. At that time, the Department clarified 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 would have been required in the absence of that failure and not the LEA's actual reduced level of expenditures in the fiscal year in which it failed to meet the compliance standard. Therefore, the Department's expectation is that SEAs and LEAs have been complying with this interpretation since FY 2012-2013. Since that time, Congress included the Subsequent Years rule in the 2014 Appropriations Act[6] and the 2015 Appropriations Act. [7]

Example: For FY 2014-2015, an LEA must have maintained at least the same level of expenditures as it did in the preceding fiscal year, FY 2013-2014, unless it did not meet the compliance standard in that year. If it did not meet the compliance standard in FY 2013-2014, the LEA must determine what it should have spent in FY 2013-2014, which is the amount that it actually spent in the preceding fiscal year, FY 2012-2013.

For further examples illustrating the Subsequent Years rule, see Tables B and D in this guidance and Tables 1–4 and 8 in Appendix E of the final regulations.

[6] Pub. L. No. 113-76, 128 Stat. 5, 394 (2014).

[7] Pub. L. No. 113-235, 128 Stat. 2130, 2499 (2014).

Question A-8: May an LEA meet the compliance and/or eligibility standards using local funds only if it spent zero local dollars in the comparison year?

Answer: An LEA, including an LEA that has not spent any local funds for the education of children with disabilities since the MOE requirement was enacted in 1997, may use any of the four methods to meet the compliance and eligibility standards. Therefore, an LEA that has spent $0 in local funds for the education of children with disabilities may meet the compliance and eligibility standards by continuing to budget and spend $0 in local funds for the education of children with disabilities. However, the Department believes that there are very few instances where LEAs have expended $0 in local funds for the education of children with disabilities, and reminds LEAs that they must continue to make FAPE available to all eligible children with disabilities. In addition, when demonstrating that they meet the compliance and eligibility standards using any of the four methods, LEAs must be able to provide auditable data regarding their expenditures from the relevant sources in all relevant years. Simply because an LEA does not account for local funds separately from State funds does not mean that the LEA expends $0 in local funds for the education of children with disabilities.

Question A-9: May LEAs use their local, or State and local, funds to meet both the LEA MOE requirement and a matching or MOE requirement for a separate Federal program (e.g., Medicaid or Vocational Rehabilitation)?

Answer: Yes. In fact, LEAs must include the amount of local only, or State and local, funds spent for the education of children with disabilities when calculating the level of effort required to meet the eligibility and compliance standards, even if those local only, or State and local, funds are also used to meet a matching requirement in another Federal program. The IDEA does not impose a matching requirement. In other words, an LEA that expends local, or State and local, funds for the education of children with disabilities must include those funds in its LEA MOE calculations regardless of whether it uses those same funds to comply with a matching or other MOE requirement (of course, an LEA that uses the local funds only method to meet the LEA MOE requirement need not include State funds in its LEA MOE calculations).

Example: An LEA expended $4,000 in local funds for the education of children with disabilities in FY 2013–2014. It properly used these funds to meet a matching or MOE requirement for Medicaid. The LEA must include the $4,000 in local funds in its LEA MOE calculation for FY 2013–2014 even though it uses those same funds to meet a matching requirement for Medicaid.

B. ELIGIBILITY STANDARD

Authority: §300.203(a)

Question B-1: What is the eligibility standard?

Answer: The eligibility standard describes the MOE requirement that an LEA must meet as a condition of receiving an IDEA Part B subgrant. When reviewing an LEA's application for an IDEA Part B subgrant, the SEA must determine that the LEA budgets, for the education of children with disabilities, at least the same amount as the LEA spent for that purpose from the same source in the most recent fiscal year for which information is available, subject to the Subsequent Years rule.

As indicated in A-4, an LEA may meet the eligibility standard using any one of the following methods:

(i) Local funds only;

(ii) The combination of State and local funds;

(iii) Local funds only on a per capita basis; or

(iv) The combination of State and local funds on a per capita basis.

The following table illustrates how the different methods work in practice:

Table A. Example of How an LEA May Meet the Eligibility Standard in 2016-2017 Using Different Methods (same table as Table 7 in Appendix E of the final regulations)

Fiscal Year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child Count	Notes
2014–2015	$500*	$1,000*	$50*	$100*	10	*The LEA met the compliance standard using all 4 methods.
2015–2016						Final information not available at time of budgeting for 2016–2017.
How much must the LEA budget for 2016–2017 to meet the eligibility standard in 2016–2017?	$500	$1,000	$50	$100		When the LEA submits a budget for 2016–2017, the most recent fiscal year for which the LEA has information is 2014–2015. It is not necessary for the LEA to consider information on expenditures for a fiscal year prior to 2014–2015 because the LEA maintained effort in 2014–2015. Therefore, the Subsequent Years rule in §300.203(c) is not applicable.

Question B-2: What is the comparison year for the LEA MOE eligibility standard?

Answer: The comparison year for the LEA MOE eligibility standard, regardless of the method used to meet the eligibility standard, is the most recent fiscal year for which information is available. Thus, in the example in Table A, above, the comparison year is FY 2014-2015. However, if the LEA had an MOE failure in FY 2014-2015, the SEA would be required to identify the correct comparison year in order to determine whether the LEA had met the eligibility standard in FY 2016-2017. Utilizing the Subsequent Years rule, the SEA would determine the most recent fiscal year in which the LEA met MOE and for which it has information available. For example, if the LEA met MOE in FY 2013-2014, FY 2013-2014 would be the comparison year for determining whether the LEA met the eligibility standard in FY 2016-2017.

Question B-3: What is the "most recent fiscal year for which information is available"?

Answer: The "most recent fiscal year for which information is available" is the most recent fiscal year for which an LEA has final data on the amount the LEA spent in local, or State and local, funds for the education of children with disabilities. Generally, an LEA applies for an IDEA Part B subgrant in the spring. At the time of the application, the LEA typically is finalizing its budget for the next fiscal year (the "budget year"), and will not have final information on its level of expenditures for the fiscal year immediately preceding the budget year because that fiscal year has not yet ended. Therefore, the most recent fiscal year for which information is available is frequently two fiscal years prior to the budget year.

For example, in Table B below, in June 2017 an SEA reviews an LEA's application for an IDEA Part B subgrant for FFY 2017 Part B funds, available on July 1, 2017, which means that the SEA reviews the amount the LEA has budgeted for FY 2017-2018. The most recent fiscal year for which information could be available is FY 2015-2016. This is because FY 2016-2017 has not yet concluded and, therefore, final expenditure data are not yet available for that year.

In the example in Table B below, if the LEA failed to maintain effort in FY 2015-2016, the SEA would examine the most recent fiscal year for which information is available, which would likely be FY 2014-2015. Assuming the LEA maintained effort in FY 2014-2015, the SEA would compare the amount budgeted for the education of children with disabilities for FY 2017-2018 to the amount actually expended for that purpose from the same source in FY 2014-2015. This is reflected in Table B, below.

Table B. Example of How an LEA May Meet the Eligibility Standard in 2017-2018 Using Different Methods and the Application of the Subsequent Years Rule (Same table as Table 8 in Appendix E of the final regulations)

Fiscal Year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child Count	Notes
2014–2015	$500*	$1,000*	$50*	$100*	10	
2015–2016	$450	$1,000*	$45	$100*	10	
2016–2017						Final information not available at time of budgeting for 2017-2018.
How much must the LEA budget for 2017–2018 to meet the eligibility standard in 2017–2018?	$500	$1,000	$50	$100		If the LEA seeks to use a combination of State and local funds, or a combination of State and local funds on a per capita basis, to meet the eligibility standard, the LEA does not consider information on expenditures for a fiscal year prior to 2015–2016 because the LEA maintained effort in 2015–2016 using those methods. However, if the LEA seeks to use local funds only, or local funds only on a per capita basis, to meet the eligibility standard, the LEA must use information on expenditures for a fiscal year prior to 2015–2016 because the LEA did not maintain effort in 2015–2016 using either of those methods, per the Subsequent Years rule. That is, the LEA must determine what it should have spent in 2015–2016 using either of those methods, and that is the amount that the LEA must budget in 2017–2018.

*LEA met MOE using this method.

Question B-4: What process should an SEA use to determine an LEA's eligibility for a Part B subgrant?

Answer: For the eligibility standard, an SEA has discretion to determine the type and amount of information it requires an LEA to submit in order to determine whether the LEA has met the eligibility standard, as long as the SEA has sufficient information to determine on an annual basis that the LEA budgets, for the education of children with disabilities, at least the same amount, from at least one of the following sources, as the LEA spent for that purpose from the same source for the most recent fiscal year for which information is available (subject to the Subsequent Years rule): (i) local funds only; (ii) the combination of State and local funds; (iii) local funds only on a per capita basis; or (iv) the combination of State and local funds on a per capita basis.

It is not necessary for the SEA to review a detailed budget, so long as the SEA has sufficient information to determine if the LEA meets the eligibility standard. For example, these regulations do not require LEAs to submit budgets broken down by object codes or line items. However, the Department would expect an LEA to submit information on the amount of funds budgeted for the education of children with disabilities and any additional information an SEA would need to determine eligibility (for example, an explanation of any applicable exceptions or adjustment, the relevant numbers of children with disabilities if the LEA seeks to establish eligibility on a per capita basis, etc.)

Question B–5: May an LEA change the method it uses to establish eligibility from one year to the next?

Answer: Yes. An LEA may change methods to establish eligibility from one year to the next, as long as the LEA uses the same method for calculating the amount it spent in the comparison year and the amount it must budget in the year for which it is establishing eligibility. For example, an LEA met the MOE eligibility standard using local funds only in FY 2015-2016. That LEA wishes to meet the MOE eligibility standard using a combination of State and local funds in FY 2016-2017. In order to do so, the LEA calculates the amount it expended for the education of children with disabilities using a combination of State and local funds in the most recent fiscal year in which the LEA met MOE using that method and for which information is available. As a practical matter, many LEAs will meet the eligibility standard for a fiscal year using more than one method.

Question B-6: May an LEA use a different method to establish eligibility than it used in the comparison year to meet the compliance standard?

Answer: Yes. When establishing eligibility, an LEA is not required to use the same method it used to meet the compliance standard in the most recent fiscal year for which information is available. When an LEA is budgeting for the education of children with disabilities, the LEA selects a method by which it

intends to meet the eligibility standard. If the LEA met the compliance standard using the same method in the most recent fiscal year for which information is available, the LEA must budget at least that amount (after taking into consideration the exceptions and adjustment in §§300.204 and 300.205, as permitted by §300.203(a)(2)) in order to meet the eligibility standard.

Pursuant to the Subsequent Years rule in §300.203(c), if the LEA did not meet the compliance standard using that method in the most recent fiscal year for which information is available, the LEA determines the amount that the LEA should have spent for the education of children with disabilities using that same method in the most recent fiscal year for which information is available. In that case, the LEA must budget at least that amount (after taking into consideration the exceptions and adjustment in §§300.204 and 300.205, as permitted by §300.203(a)(2)) in order to meet the eligibility standard.

For example, an LEA seeks to use a combination of State and local funds on a per capita basis to meet the eligibility standard in FY 2016-2017. The LEA determines the amount it expended for the education of children with disabilities using that same method in the most recent fiscal year for which information is available, which, in this case, is FY 2014-2015. The LEA determines that it met the compliance standard using the same method in FY 2014-2015. Therefore, after taking into account the exceptions and adjustment in §§300.204 and 300.205, the LEA determines that, in order to meet the eligibility standard in FY 2016-2017 using a combination of State and local funds on a per capita basis, it must budget for FY 2016-2017 at least the same amount it spent in FY 2014-2015 using the same method.

Question B-7: How does an LEA establish eligibility if it did not receive an IDEA Part B subgrant in "the most recent fiscal year for which information is available"?

Answer: In such a case, the LEA uses the comparison year in §300.203(a)(1), which is "the most recent fiscal year for which information is available," even if the LEA did not receive an IDEA Part B subgrant in that year. For example, an LEA received an IDEA Part B subgrant in 2013-2014, but did not receive one in 2015-2016. When seeking to establish eligibility for a subgrant in FY 2017-2018, the LEA determines that the most recent fiscal year for which information is available is FY 2015-2016. The LEA must budget for FY 2017-2018 at least the same amount that it expended in local only, or State and local, funds, for the education of children with disabilities in FY 2015-2016.

Question B-8: Is an LEA required to provide budget amendments to the SEA if its expenditures change during a fiscal year, after the SEA determines that the LEA is eligible for a Part B subgrant for that fiscal year?

Answer: No. Once an SEA has determined an LEA's eligibility, the LEA does not need to provide amendments that reflect changes in expenditures in order to remain eligible for that year.

Question B-9: What happens if an LEA does not meet the eligibility standard?

Answer: If an SEA determines that an LEA does not meet the MOE eligibility standard using any of the four eligibility methods in §300.203(a), the SEA must provide the LEA with reasonable notice that the SEA has determined the LEA not eligible for an IDEA Part B subgrant and provide the LEA an opportunity for a hearing, pursuant to §300.221. If the SEA determines that the LEA is not eligible to receive a Part B subgrant for that fiscal year, the SEA retains the Part B subgrant that the LEA would have received, and the SEA is required to provide special education and related services directly to children with disabilities residing in the area served by that LEA pursuant to §300.227.

C. COMPLIANCE STANDARD

Authority: §300.203(b)

Question C-1: What is the compliance standard?

Answer: The compliance standard is an expenditure test to determine whether an LEA, in fact, met the requirement to maintain effort in a particular fiscal year. The compliance standard prohibits LEAs from reducing the level of expenditures from local, or State and local, funds for the education of children with disabilities below the level of those expenditures made by the LEA for that purpose from the same source for the preceding fiscal year, except as provided in §§300.204 and 300.205. In other words, an LEA must maintain (or increase) the amount of local, or State and local funds, it spends for the education of children with disabilities when compared to the preceding fiscal year, except as provided in §§300.204 and 300.205.

Question C-2: What are the four methods by which an LEA may meet the compliance standard?

Answer: As indicated in A-4, an LEA may meet the compliance standard using any one of the following methods:

(i) Local funds only;

(ii) The combination of State and local funds;

(iii) Local funds only on a per capita basis; or

(iv) The combination of State and local funds on a per capita basis.

The table below provides an example of how an LEA meets or does not meet the LEA MOE compliance standard using alternate methods from year to year without using the exceptions or adjustment in §§ 300.204 and 300.205.

Table C. Example of How an LEA May Meet the Compliance Standard Using Alternate Methods from Year to Year (this table is Table 5 in Appendix E of the final regulations)

Fiscal Year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child Count
2015–2016	$500*	$950*	$50*	$95*	10
2016–2017	$400	$950*	$40	$95*	10
2017–2018	$500*	$900	$50*	$90	10
*LEA met compliance standard using this method.					

Question C-3: What is the comparison year for the LEA MOE compliance standard?

Answer: The comparison year for the compliance standard is "the preceding fiscal year." However, due to the Subsequent Years rule in §300.203(c), the Department is, in effect, defining "the preceding fiscal year" to mean the last fiscal year in which the LEA met MOE, regardless of whether the LEA is seeking to establish compliance based on local funds only, or based on State and local funds.

The Subsequent Years rule does not prevent an LEA from using any of the four methods to meet the compliance standard in §300.203(b). However, an LEA that wishes to meet the compliance standard in a fiscal year using one particular method must be able to identify the amount of funds that the LEA expended in the most recent fiscal year in which the LEA met the compliance standard using that same method.

The table below illustrates how to calculate the required level of effort when an LEA fails to meet MOE in the preceding fiscal year.

Table D. Example of Level of Effort Required to Meet MOE Compliance Standard in Year Following Year in Which LEA Did Not Meet MOE Compliance Standard (this table is Table 4 in Appendix E of the final regulations)

Fiscal Year	Actual level of effort	Required level of effort	Notes
2012–2013	$100	$100	LEA met MOE.
2013–2014	$90	$100	LEA did not meet MOE.
2014–2015	$90	$100	LEA did not meet MOE. Required level of effort is $100 despite LEA's failure in 2013–2014.
2015–2016	$110	$100	LEA met MOE.
2016–2017	$100	$110	LEA did not meet MOE. Required level of effort is $110 because LEA expended $110, and met MOE, in 2015–2016.
2017–2018		$110	Required level of effort is $110, despite LEA's failure in 2016–2017.

Question C-4: May an LEA switch methods from year to year to meet the compliance standard?

Answer: Yes. LEAs may change methods to establish compliance from one year to the next as long as the LEA is using the same method for comparing the expenditures in the comparison year to the expenditures in the year for which it is establishing compliance, and the LEA is able to provide auditable data to document that it met the compliance standard using that method in the comparison year.

For example, an LEA met the compliance standard in FY 2017-2018 using a combination of State and local funds, and using a combination of State

and local funds on a per capita basis. However, during a compliance review for FY 2017-2018, the LEA provided data to the SEA demonstrating only that it met the compliance standard for FY 2017-2018 using a combination of State and local funds on a per capita basis. This data would be sufficient for the SEA to find that the LEA met the compliance standard. Subsequently, the State conducts a compliance review to determine if the LEA met the compliance standard in the next year, FY 2018-2019. The LEA provides information to the State that demonstrates that it met the compliance standard in FY 2018-2019 using a combination of State and local funds. In order to demonstrate that it met the compliance standard using that method, the LEA provides to the State the amount of State and local funds that the LEA spent for the education of children with disabilities in FY 2017-2018 and in FY 2018-2019 so that the State is comparing each year's expenditures using the same method.

The following table demonstrates how an LEA may meet the compliance standard using alternate methods from year to year in years that the LEA used the exceptions or adjustment in §§ 300.204 and 300.205.

Table E. Example of How an LEA May Meet the Compliance Standard Using Alternate Methods from Year to Year and Using Exceptions or Adjustment under §§300.204 and 300.205 (this table is Table 6 in Appendix E of the final regulations)					
Fiscal Year	**Local funds only**	**Combination of State and local funds**	**Local funds only on a per capita basis**	**Combination of State and local funds on a per capita basis**	**Child Count**
2015– 2016	$500*	$950*	$50*	$95*	10
2016– 2017	$400	$950*	$40	$95*	10
2017–2018	$450* In 2017-2018, the LEA was required to spend at least the same amount in local funds only that it spent in the preceding fiscal year, subject to the Subsequent Years rule. Therefore, prior to taking any exceptions or adjustment in §§300.204 and 300.205, the LEA was required to spend at least $500 in local funds only. In 2017-2018, the LEA properly reduced its expenditures, per an exception in §300.204, by $50, and therefore, was required to spend at least $450 in local funds only ($500 from 2015-2016 per Subsequent Years rule – $50 allowable reduction per an exception under §300.204).	$1,000*	$45* In 2017-2018, the LEA was required to spend at least the same amount in local funds only on a per capita basis that it spent in the preceding fiscal year, subject to the Subsequent Years rule. Therefore, prior to taking any exceptions or adjustment in §§300.204 and 300.205, the LEA was required to spend at least $50 in local funds only on a per capita basis. In 2017-2018, the LEA properly reduced its aggregate expenditures, per an exception in §300.204, by $50. $50/10 children with disabilities in the comparison year (2015-2016) = $5 per capita allowable reduction per an exception under §300.204. $50 local funds only on a per capita basis (from 2015-2016 per Subsequent Years rule) – $5 allowable reduction per an exception under §300.204 = $45 local funds only on a per capita basis to meet MOE.	$100*	10

Table E. Example of How an LEA May Meet the Compliance Standard Using Alternate Methods from Year to Year and Using Exceptions or Adjustment under §§300.204 and 300.205 (this table is Table 6 in Appendix E of the final regulations)					
Fiscal Year	**Local funds only**	**Combination of State and local funds**	**Local funds only on a per capita basis**	**Combination of State and local funds on a per capita basis**	**Child Count**
2018–2019	$405 In 2018-2019, the LEA was required to spend at least the same amount in local funds only that it spent in the preceding fiscal year, subject to the Subsequent Years rule. Therefore, prior to taking any exceptions or adjustment in §§300.204 and 300.205, the LEA was required to spend at least $450 in local funds only. In 2018-2019, the LEA properly reduced its expenditures, per an exception in §300.204 by $10 and the adjustment in §300.205 by $10. Therefore, the LEA was required to spend at least $430 in local funds only. ($450 from 2017-2018 – $20 allowable reduction per an exception and the adjustment under §§300.204 and 300.205).	$1,000* Because the LEA did not reduce its expenditures from the comparison year (2017-2018) using a combination of State and local funds, the LEA met MOE.	$45* In 2018-2019, the LEA was required to spend at least the same amount in local funds only on a per capita basis that it spent in the preceding fiscal year, subject to the Subsequent Years rule. Therefore, prior to taking any exceptions or adjustment in §§300.204 and 300.205, the LEA was required to spend at least $45 in local funds only on a per capita basis. In 2018-2019, the LEA properly reduced its aggregate expenditures, per an exception in §300.204 by $10 and the adjustment in §300.205 by $10. $20/10 children with disabilities in the comparison year (2017-2018) = $2 per capita allowable reduction per an exception and the adjustment under §§300.204 and 300.205. $45 local funds only on a per capita basis (from 2017-2018) – $2 allowable reduction per an exception and the adjustment under §§300.204 and 300.205 = $43 local funds only on a per capita basis required to meet MOE. Actual level of effort is $405/9 (the current year child count).	$111.11* Because the LEA did not reduce its expenditures from the comparison year (2017-2018) using a combination of State and local funds on a per capita basis ($1,000/9 = $111.11 and $111.11>$100), the LEA met MOE.	9
*LEA met MOE using this method.					

NOTE ABOUT TABLE: When calculating any exception(s) and/or adjustment on a per capita basis for the purpose of determining the required level of effort, the LEA must use the child count from the comparison year, and not the child count of the year in which the LEA took the exception(s) and/or adjustment. When determining the actual level of effort on a per capita basis, the LEA must use the child count for the current year. For example, in 2018-2019, the LEA uses a child count of 9, not the child count of 10 in the comparison year, to determine the actual level of effort.

Question C-5: May an LEA use a different method to meet the compliance standard in a fiscal year that it used to meet the eligibility standard for that same year?

Answer: Yes. An LEA is not required to use the same method to meet the compliance standard in a fiscal year that it used to meet the eligibility standard for that same year. For example, if an LEA meets the eligibility standard for FY 2016-2017 using local funds only, it is not required to meet the compliance standard for FY 2016-2017 using local funds only. Likewise, an LEA is not required to use the same method to meet the eligibility standard in a subsequent year that it used to meet the compliance standard in a preceding fiscal year. For example, if an LEA met the compliance standard for FY 2016-2017 using a combination of State and local funds, the LEA is not required to meet the eligibility standard for FY 2017-2018 using a combination of State and local funds.

D. EXCEPTIONS AND ADJUSTMENT/FLEXIBILITY

Authority: §§300.204 and 300.205

Question D-1: What are the allowable exceptions to the LEA MOE requirement?

Answer: Under §300.204, there are five instances where an LEA may reduce the level of expenditures for the education of children with disabilities made by the LEA 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). They are:

(a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel (e.g., special education teachers, speech pathologists, paraprofessionals assigned to work with children with disabilities);

(b) A decrease in the enrollment of children with disabilities;

(c) The termination of the obligation of the agency, consistent with IDEA Part B, 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—

(1) Has left the jurisdiction of the agency;

(2) Has reached the age at which the obligation of the agency to provide FAPE 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; and

(e) The assumption of cost by the high cost fund operated by the SEA under §300.704(c).

Question D-2: May an LEA apply the exceptions in §300.204 and the adjustment in §300.205 to meet both the eligibility and compliance standards?

Answer: Yes. An LEA may apply the exceptions in §300.204 and the adjustment in §300.205 to meet both the eligibility and compliance standards. When determining the amount of funds that an LEA must budget to meet the eligibility standard, the LEA may take into consideration, to the extent the information is available, the exceptions and adjustment that the LEA: (i) took in the intervening year or years between the most recent fiscal year for which information is available and the fiscal year for which the LEA is budgeting; and (ii) reasonably expects to take in the fiscal year for which the LEA is budgeting.

Question D-3: May an LEA reduce its required level of effort by taking more than one exception in the same fiscal year?

Answer: Yes, an LEA may reduce its required level of expenditures for the education of children with disabilities by taking more than one exception in the same fiscal year. For example, an LEA may reduce its level of expenditures for the education of children with disabilities because of the voluntary departure of a special education teacher, and further reduce its level of effort for the same fiscal year because of the termination of the LEA's obligation to provide a program of special education to a particular child with a disability that is an exceptionally costly program because the child leaves the jurisdiction of the LEA. LEAs must maintain documentation to demonstrate the LEA properly took the exceptions.

Question D-4: How does taking the exceptions in §300.204 and/or the adjustment in §300.205 affect the required amount of expenditures that an LEA must make in a subsequent year?

Answer: If an LEA properly takes the exceptions or the adjustment to reduce the level of local, or State and local, expenditures otherwise required in a fiscal year, the LEA would be required in subsequent fiscal years to maintain effort at the reduced level – except to the extent that the LEA increases the actual level of expenditures above the required level of expenditures for that fiscal year. In addition, the LEA's actual level of expenditures in a preceding fiscal year, and not the reduced level of expenditures that the LEA could have spent had it taken all of the exceptions and the adjustment permitted by §§300.204 and 300.205, is the level of expenditures required of the LEA in a future fiscal year (which may be affected by the Subsequent Years rule).

The following table illustrates how taking, or not taking, an allowable exception or adjustment, and an increase in actual expenditures, affect the required level of effort in subsequent years.

Table F. Comparison of Required Levels of Effort for Two Hypothetical LEAs

	Actual FY 2015−2016 Expenditures Using a Combination of State and Local funds	**Allowable Exception in §300.204 Taken in FY 2016−2017**	**Actual FY 2016−2017 Expenditures Using a Combination of State and Local funds**	**Required Level of Effort Using a Combination of State and Local Funds in FY 2017−2018**
LEA #1	$250,000*	$10,000	$240,000*	$240,000
LEA #2	$250,000*	$10,000	$260,000*	$260,000
* LEA met MOE.				

E. CONSEQUENCES OF LEA MOE FAILURE

Authority: §300.203(d); section 452 of the General Education Provisions Act (GEPA) (20 U.S.C. 1234a)

Questions E-1: What are the consequences of an LEA's failure to meet the MOE compliance standard?

Answer: If an LEA fails to meet the MOE compliance standard, the SEA is liable in a recovery action under section 452 of GEPA (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. Table G shows how to determine the amount of a required recovery based on an LEA's failure to meet the MOE compliance standard.

Table G. Example of How to Calculate the Amount of an LEA's Failure to Meet the Compliance Standard in 2016–2017 and the Amount an SEA Must Return to the Department (This table is Table 10 in Appendix E of the final regulations)

Fiscal year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child count	Amount of IDEA Part B subgrant
2015−2016	*$500	*$950	*$50	*$95		Not relevant
2016−2017	$400	$750	$40	$75	10	$50
Amount by which an LEA failed to maintain its level of expenditures in 2016-2017.	$100	$200	$100 (the amount of the failure equals the amount of the per capita shortfall ($10) times the number of children with disabilities in 2016–2017 (10)).	$200 (the amount of the failure equals the amount of the per capita shortfall ($20) times the number of children with disabilities in 2016–2017 (10)).		
The SEA determines that the amount of the LEA's failure is $100 using the calculation method that results in the lowest amount of a failure. The SEA's liability is the lesser of the four calculated shortfalls and the amount of the LEA's Part B subgrant in the fiscal year in which the LEA failed to meet the compliance standard. In this case, the SEA must return $50 to the Department because the LEA's IDEA Part B subgrant was $50, and that is the lower amount.						
* LEA met MOE using this method.						

Question E-2: How do the GEPA requirements interact with LEA MOE?

Answer: Under 20 U.S.C. 1234b, a failure to comply with expenditure requirements, including the IDEA's LEA MOE requirement, is a harm to an identifiable Federal interest. If an LEA fails to meet the MOE requirement, the SEA is liable in a recovery action for the amount that is proportionate to the extent of the harm the violation caused to the identifiable Federal interest – that is, the amount by which the LEA failed to maintain its level of expenditures for the education of children with disabilities, or the amount of the LEA's Part B subgrant, whichever is lower. The SEA is responsible for ensuring that LEAs receiving an IDEA Part B subgrant comply with all applicable requirements of that statute and its implementing regulations, including the MOE requirement. If an LEA, in a particular fiscal year, fails to meet the MOE requirement, the Department has authority to take steps to recover the appropriate amount of funds from the SEA. The SEA, in turn, following applicable State procedures, could seek reimbursement from the LEA. See July 26, 2006, letter to Ms. Carol Ann Baglin, available at http://www2.ed.gov/policy/speced/guid/idea/letters/2006-3/baglin072606moe3q2006.pdf.

Question E-3: Why does the SEA have to pay funds when an LEA fails to meet its MOE requirement?

Answer: The SEA (acting on behalf of the State), not the LEA, is the grantee in the IDEA Part B program. As a condition of eligibility for an IDEA Part B grant, States must provide an assurance to the Department that the SEA is responsible for ensuring that, among other things, all requirements of Part B are met. IDEA § 612(a)(11)(A)(i) (20 U.S.C. 1412(a)(11)(A)(i)). SEAs may minimize LEA noncompliance by carefully reviewing the LEA's application for an IDEA Part B subgrant to determine if the LEA meets the eligibility standard, by monitoring for compliance on a regular basis, and by providing technical assistance to LEAs. SEAs that find an LEA is failing to comply with the MOE requirement may take further enforcement action as provided in §300.222.

Question E-4: Have the revised LEA MOE regulations modified the Department's position on the consequences of an LEA's failure to maintain effort?

Answer: No. The revised regulations cite to the recovery of funds provision in GEPA, a bill that was enacted in 1968. We included a provision addressing the consequences of an LEA's failure to maintain effort in the proposed and final regulations not because this is a change in law, but to highlight the importance of the LEA MOE requirement and the significance of the remedies for a failure to comply. In addition, the comments to the proposed LEA MOE regulations indicated that some SEAs and LEAs may not have been aware of the consequence of an LEA's failure to meet the MOE compliance standard.

Question E-5**:** How should funds be remitted to the Department?

Answer: If the SEA is remitting $100,000 or more, it should use the FEDWIRE system. The FEDWIRE form and instructions are posted on http://www2.ed.gov/programs/safra/fed-wire-form.pdf. A copy of the form with a cover letter should be sent to the Office of Special Education Programs (OSEP). The cover letter should identify that these funds are being sent to the Department to pay back the Federal government for the failure of an LEA (or LEAs) to meet the MOE requirement under §300.203, are not Federal funds, and are not tied to a particular Federal grant award.

For payments less than $100,000 as a result of an audit or monitoring finding, the SEA should cut a check and send it to a "lock box" in St. Louis, with a copy to OSEP of both the cover letter and the check. The cover letter should identify that these funds are being sent to the Department to pay back the Federal government for the failure of an LEA (or LEAs) to meet the MOE requirement under §300.203, are not Federal funds, and are not tied to a particular Federal grant award. Make the check payable to "Accounts Receivable U.S. Department of Education."

If the repayment is a result of an audit or monitoring finding, the check should be mailed to the following address:

U.S. Department of Education
P.O. Box 979026
St. Louis, MO 63197-9000
ATTN: Accounts Receivable Group/OCFO

If the repayment is made on a voluntary basis, due to the State identifying noncompliance, the check should be mailed to the following address:

U.S. Department of Education
P.O. Box 979053
St. Louis, MO 63197-9000
ATTN: Accounts Receivable Group/OCFO

The letter should advise that the funds be posted to "Miscellaneous Receipts" in the unbilled lock box.