

Individuals with Disabilities Education Act (IDEA)

Maintenance of Effort Guidance

Overview of IDEA Maintenance of Effort

The term “Maintenance of Effort,” often shortened to “MOE,” refers to the requirement placed upon many federally funded grant programs that a subrecipient demonstrate that the level of local funding for a particular program remains relatively constant from year to year. Failure to meet MOE requirements may result in the subrecipient losing eligibility (Eligibility Standard) to receive federal funding or a repayment of funds (Compliance Standard).

The rules regulating MOE differ depending on the federal program requiring the effort. Some grant programs do not require MOE, whereas some grant programs such as the Individuals with Disabilities Education Act (IDEA) have very specific rules documented in its regulations.

Maintenance of Effort under IDEA

Part B of the Individuals with Disabilities Education Act, which addresses IDEA funding allocations to the State Education Agency (SEA) and Local Agency Agencies (LEAs), includes maintenance of effort provisions applicable separately at both the state and local levels. In this context, LEAs in New York are school districts, State Agencies, NYS School for the Deaf, and NYS School for the Blind that are responsible for FAPE (free appropriate public education for students with IEPs).

At the local level, IDEA Part B regulations require LEAs to expend the same amount of local and state funding on special education and related services as it expended in the previous fiscal year [34 CFR 300.203](#). Failure to meet MOE requirements may result in the LEA losing eligibility to receive IDEA funding or requiring an LEA to repay funds, using a non-federal source, to the SEA, who is required to send funds to the United States Department of Education.

There are a limited number of provisions outlined in the IDEA regulations to allow for decreases in an LEA’s local and state special education spending from one fiscal year to the next.

Allowed Exceptions to Maintaining Local Effort

Under IDEA, LEAs may reduce local and state financial effort from one fiscal year to the next under certain circumstances. These exceptions are listed in [34 CFR 300.204](#) and include:

- a) **The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.**

EXAMPLE: A special education teacher retires, and the salary and benefits of this long-term and experienced teacher is \$80,000. The LEA replaces this position with a qualified special education teacher at a salary and benefit of \$60,000. The LEA would be allowed to reduce their MOE obligation by \$20,000 (net difference between the experienced teacher salary and new teacher salary).

EXAMPLE: A dually licensed early childhood special education teacher voluntarily chooses to accept a teaching position in general education. Based on decreasing enrollment in the early childhood age group, the LEA determines there is not a need to replace the early childhood teaching position. The exception to MOE would be the full salary and benefits of the teacher that voluntarily took the general education position.

Note
Contract non-renewal, reduction in work force, forced transfer, eliminating positions or staff lay-off are not an allowable exception under IDEA.
“Departure for just cause” refers to the labor language regarding misconduct of an employee, or some other event relevant to the employee, which justifies the immediate termination of the employment contract.

b) A decrease in enrollment of students with disabilities.

Student with Disability (SWD) Child Count is based on the LEA reported count on BEDS Day (1st Wednesday in October of each school year). LEAs must certify their reported number by January each school year.

EXAMPLE: Between fiscal years, the LEA sees a decrease in the number of students with disabilities in which the LEA is financially responsible.

The exception amount for the LEA is determined by the prior year’s student with disabilities (SWD) per capita amount multiplied by the current year’s decrease in students with disabilities enrollment. In the chart below, the LEA spent \$800,000 using local and state funds on special education instruction and related services in FY 2019-2020.

BEDS Day 2019 Child Count (FY 2019-2020)	FY 2019-2020 SWD per Capita Amount	BEDS Day 2020, Child Count (FY 2020-2021)	FY 2020-2021 Decrease in SWD Exception Amount:
100	\$8,000 (\$800,000 / 100)	97 (3 less students)	\$24,000 (\$8,000 * 3)

New York State Education Department (NYSED) will not approve a LEA MOE Compliance Calculator if the SWD count reported on their Calculator does not match the verified SWD count in the PD system. LEAs are required to either change the SWD count on their LEA MOE Calculator or take the necessary steps to make corrections to the data they previously verified as accurate. LEA’s can contact the NYSED Information and Reporting Services (IRS) office with any concerns about their reported SWD count. The IRS office can be reached at datasupport@nysed.gov

- c) **A student with a disability that incurs an exceptionally costly special education program, as determined by the SEA, either leaves the district, ages out, graduates, or no longer needs the special education program.**

NYSED defines an “exceptionally costly special education program” under IDEA MOE when the per pupil expenditure amount for a particular student with disabilities is at least 25% greater than the average per pupil expenditure for that LEA. The Expenditures per Pupil information is located at <https://data.nysed.gov/> within the Student Report Card. The amount that can be applied is the total cost for that student if the total cost for that student meets the threshold requirement.

APPROVED (example): In 2019-2020, the Expenditure per Pupil cost for a LEA was \$20,000. A student with disabilities from the district had a total cost of \$30,000 of which \$9,000 was for special educational services. Prior to the start of the next school year, the student moves to another district. Because the cost of this student was greater than 25% ($\$20,000 \times 1.25 = \$25,000$) of the average per pupil expenditure amount for that year, NYSED would accept the \$30,000 cost provided for that child as an exception for lowering MOE.

REJECTED (example): In 2019-2020, the Expenditure per Pupil cost for a LEA was \$20,000. A student with disabilities from the district had a total cost of \$22,000 of which \$5,000 was for special educational services. Prior to the start of the next school year, the student moves to another district. Because the cost of this student was not greater than 25% ($\$20,000 \times 1.25 = \$25,000$) of the average per pupil expenditure amount for that year, NYSED would not accept the \$22,000 cost provided for that child as an exception for lowering MOE.

- d) **The termination of costly expenditures for long-term purchases, such as remodeling for special education purposes, or the acquisition of a vehicle used for special education transportation.**

To qualify for this exception, equipment must have a per unit cost of \$5,000 or more - such as a vehicle purchased for special education. Items such as computers and mobile touchscreen devices would not qualify for this exception as the per unit cost for these items would be less than \$5,000.

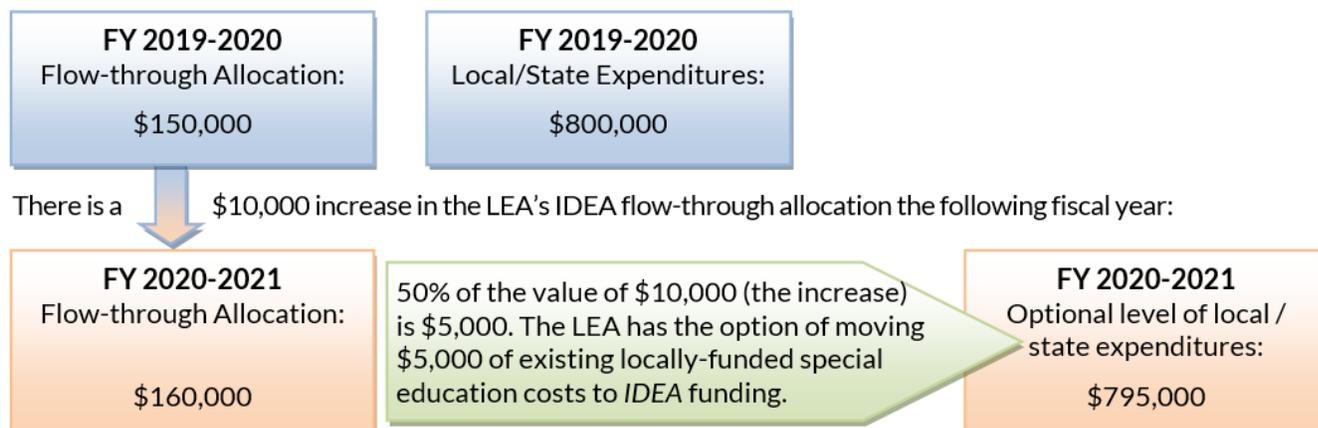
- e) **The assumption of the student's program costs by special education high-cost aid for a student with a disability.**

NYSED does not operate a High-Cost Fund, so this is not applicable in New York State.

Allowed Adjustments to Maintaining Local Effort - the 50% Rule

IDEA Part B regulations include one additional allowance for reducing an LEA's required annual special education expenditure level. This regulation is often referred to as the "50% adjustment rule." In the case of the 50% rule, if an LEA receives an increase in its IDEA flow-through allocation from one fiscal year to the next, the LEA may reduce its MOE obligations by a value of half of the increased amount [34 CFR 300.205](#). An increase in the IDEA preschool allocation is not taken into consideration. Local funds "freed up" from special education must be used to carry out activities that could be supported with funds under the Elementary and Secondary Education Act (ESEA).

The following is an example of how the 50% rule is applied:



In the example above, if the LEA did reduce state / local special education expenditures by \$5,000 by moving costs from local funding to the IDEA grant, and had no other allowed exceptions under IDEA, the LEA would be required to use the \$5,000 of local special education funds "freed up" on other activities allowed under ESEA. An LEA could use these funds to pay for activities that are currently being funded with other local and state funds or for new activities.

The requirement to expend "freed-up funds" only applies to reductions in MOE due to applying the 50% rule. If maintenance of effort is reduced through any of the other allowable exceptions, the LEA is not required to expend an equal amount of funds on other activities.

Note

"Freed-up funds" refers only to reductions in MOE when applying the 50% rule. LEAs may free up funds by applying any of the other allowed exceptions under IDEA, and if the LEA is meeting the required MOE amount set in a prior fiscal year, the LEA is not required to spend those funds on other activities.

If the LEA does not see an increase in its flow-through allocation from one year to the next, then there is no amount available under the 50% rule adjustment.

LEAs restricted from using the 50% adjustment rule

There are provisions in IDEA that limit whether an LEA may reduce local effort using the 50% adjustment rule. Under the following circumstances, an SEA must prohibit the LEA from using the 50% rule to reduce effort:

- Under IDEA [Section 616\(d\)](#), the SEA determines that an LEA is not meeting the requirements of Part B of the Act, including meeting targets in the [State Performance Plan](#) (SPP). Therefore, if an LEA does not receive an SPP indicator determination of “Meets Requirements,” then the LEA cannot use the 50% rule.
- LEAs that have been identified as having significant disproportionality [34 CFR 300.646](#).
- The SEA has taken responsibility for students with disabilities in an LEA because the LEA is unable to establish and maintain programs of FAPE, or the SEA has taken action against the LEA under [IDEA Sect 613](#)

Note

An Adjustment Worksheet detailing each LEAs data for a particular school year is located at [SED IDEA Grant Guidance](#) under the Heading “Maintenance of Effort – Exceptions and Adjustment Guidance”. Each annual worksheet provides information by LEA if they are eligible to utilize the Adjustment and the maximum amount allowed.

The 50% Rule and Coordinated Early Intervening Services

IDEA contains a provision which permits LEAs to use up to 15 percent of their Part B funds for any fiscal year to implement coordinated early intervening services (CEIS).

CEIS funds are intended for students who have not been identified as students with disabilities but who have been determined to need additional academic and behavioral interventions to succeed in general education.

Although funded with IDEA dollars, coordinated early intervening services are not special education services. Expending IDEA funds for CEIS activities has a direct and substantial impact on an LEA’s ability to reduce MOE through the 50% rule.

Note

The following examples only apply to reducing MOE with the 50% rule. The other exceptions to reducing MOE as described in [34 CFR 300.204](#) (such as retirement of staff or students with costly special education programs moving out of the district) are not affected by an LEA’s use of CEIS funds.

Note

Please use the document named **Adjustment – MOE Reduction Decision Tree Worksheet** located on our website [SED IDEA Grant Guidance](#) under the heading Maintenance of Effort – Exceptions and Adjustment Guidance to help determine the maximum adjustment amount allowed if your LEA is utilizing funds for CEIS.

Utilizing MOE Exceptions

Applying IDEA MOE exceptions is not an “either/or” situation. All options may be utilized (if applicable) for the reduction of MOE. For example, an LEA can reduce its MOE obligation by \$40,000 due to a staff retirement and \$35,000 for a student who required a personal aide moving out of the district, for a total optional MOE reduction amount of \$75,000.

If an LEA has allowable exceptions or chooses to use the 50% rule and reduce its MOE obligations, the LEA will be able to maintain the new reduced expenditure level in subsequent years, until that LEA increases the level of special education expenditures, using local or state funds, on its own.

Circumstances which are Not Allowed Exceptions

The only exceptions allowed for a reduction in local special education financial effort are addressed in [34 CFR 300.204](#). If the reduction is due to any other reason, it will not qualify as an exception. The following are cost savings in which an LEA’s costs may be reduced, but would not be considered exceptions:

- Elimination of staff positions (even if the elimination was due to a decrease in students)
- A decrease in employee contributions to the NYS Retirement System
- Withdrawal from shared special education programs
- Savings due to contract rebids, such as transportation
- Annual fluctuations in costs such as substitute teachers or substitute paraprofessionals

The following is an excerpt from the comments in the IDEA regulations, page 46624:

Exception to Maintenance of Effort (§ 300.204)

Comment: One commenter recommended expanding the exceptions to the maintenance of effort requirements in § 300.204(a) to include negotiated reductions in staff salaries or benefits so that LEAs are not penalized for being proactive in reducing costs. Another commenter recommended revising § 300.204 to allow LEAs to apply for a waiver of the maintenance of effort requirements in cases of fiscal emergencies.

Discussion: Section 300.204(a) through (d) reflects the language in section 613(a)(2)(B) of the Act and clarifies the conditions under which LEAs may reduce the level of expenditures below the level of expenditures for the preceding year. Nothing in the Act permits an exception for negotiated reductions in staff salaries or benefits or financial emergencies. Accordingly, to expand the exceptions to the maintenance of effort requirements, as recommended by the commenters, would be beyond the authority of the Department.

Changes: None.

This was further clarified in the August 2003 [OSEP policy letter to Brad White](#), an Audit Manager with the Washington State Auditor's Office. The letter stated that the LEA had reduced costs due to a reduction in retirement rates paid to certified staff. The response from OSEP was that since the costs were not due to the voluntary departure, by retirement or otherwise, of special education and related services personnel, then the cost savings did not qualify as an exception.

LEAs are encouraged to be good stewards of public funds and to find cost savings where appropriate. However, the funds saved by actions that are not allowed under the IDEA regulations as exceptions should be reinvested back into the special education program.

Supplement Not Supplant (S/nS)

In general, the federal supplement not supplant requirement is intended to ensure that services provided with federal funds are provided in addition to, and do not replace or supplant, services that students would otherwise receive through local or state funding. In some federal programs, this definition is expanded to include "particular costs" – meaning that if the activity was previously funded with local, state, or federal funds (depending on the program requirements), the activity cannot later be funded with federal funds.

Prior to 1992, regulations regarding IDEA formula funds also contained a "particular cost test" for determining whether supplanting occurred. This requirement meant, for example, that if an LEA spent flow-through funds to pay for a cross categorical special education teacher's salary and this salary had previously been charged to local funds, a supplanting violation would occur, even if the total amount of local funds spent on special education was greater or equal to the amount spent the previous year.

The "particular cost test" [was removed from the IDEA regulations](#) (p. 13 footnote) by an amendment published in the Federal Register on August 19, 1992. Therefore, no requirement currently exists related to supplanting special education "particular costs." This means that as long as an LEA is expending the required amount of local and state funding for special education as determined by IDEA's maintenance of effort requirement, costs can be moved from local and state funding to federal funding without violating the supplement/not supplant requirements of IDEA. Therefore, if an LEA reduces its MOE through the 50% rule, existing special education costs funded with local and state dollars can be moved to the IDEA grant.

Testing IDEA Maintenance of Effort

Under IDEA, an LEA's special education expenditure maintenance of effort – the comparison of special education financial data from one year to the next – is tested four different ways. An LEA only needs to meet one of the four tests to be in compliance. If an LEA fails all four tests, the LEA may report any combination of the allowed exceptions to gain compliance. If the LEA's reduction in effort was not due to any of the allowed exceptions, the LEA may be at risk for losing access to IDEA formula funds or be required to pay back funds to NYSED.

The Two MOE Comparisons - “Eligibility” and “Compliance”

To ensure LEAs are complying with IDEA's maintenance of effort requirement, NYSED must do an analysis of LEA's financial and child count data (the number of students with disabilities). Two different comparisons are completed for each fiscal year. The first comparison examines local and state special education budgeted costs to prior year actual local and state special education expenditures to determine if the LEA is eligible to receive the IDEA formula grant. The second comparison examines two fiscal years' actual local and state special education expenditures to determine if the LEA is in compliance with IDEA MOE requirements. During both analyses, financial data is tested four different ways.

Local and State Special Education Data

IDEA maintenance of effort compliance is determined through an analysis of the LEA MOE Compliance Standard Calculator.

Our partners at Questar III BOCES created a document **MOE Recommendations Worksheet** that may assist an LEA in completing their projected expenditures. This document is located on our website [SED IDEA Grant Guidance](#) under the section Maintenance of Effort – General Guidance

Student Data

The MOE tests include a comparison of per pupil expenditure costs. To determine per pupil expenditures, NYSED uses the data submitted by the LEA through their Student Information Repository Systems (SIRS) regarding their BEDS Day Child Count of students with disabilities. The BEDS Day Child Count reflects the number of students enrolled in the LEA's public schools who had active IEPs and students parentally placed in private schools within the LEA who had active Services Plans on BEDS Day of that year.

If the LEA determines that the BEDS Day Child Count captured during the annual data submission snapshot is incorrect, a LEA should contact the Information and Reporting Services at datasupport@nysed.gov to determine steps to make necessary corrections to their data.

MOE “Eligibility” Determination

To determine whether the LEA is eligible to receive the current year's IDEA formula grant, a LEA must submit a LEA MOE Eligibility Standard Calculator as part of their annual submission requirements. The data is compared in four different tests. The four tests determine that:

1. At least the same total combination of local and state funds are budgeted as the last year the LEA expended the most local and state funds on special education activities; or
2. At least the same amount of local funds are budgeted as the last year the LEA expended the most local funds on special education activities; or

3. At least the same student per capita amount from local and state funds are budgeted as the last year the LEA expended the most local and state funds on special education activities; or
4. At least the same student per capita amount from local funds are budgeted as the last year the LEA expended the most local funds on special education activities.

The LEA needs to pass only one of the four tests to ensure eligibility for the IDEA formula grant. If an LEA fails all four tests based on the comparison of the current year's budget to qualifying prior year actual expenditures, the LEA must determine if there are any allowable exceptions under IDEA [34 CFR 300.204](#) and/or Adjustment under IDEA [34 CFR 300.205](#). If an LEA can't meet in any of the four test, then the LEA is not eligible to receive an IDEA award.:

MOE "Compliance" Determination

A final analysis of an LEA's MOE compliance does not occur until after the fiscal year has closed. The LEA must submit their LEA MOE Compliance Standard Calculator to determine the LEA has meet this requirement. The expenditure data is compared in four different tests. The four tests determine that:

1. At least the same total combination of local and state funds were expended as the last year the LEA expended the most local and state funds on special education activities; or
2. At least the same amounts of local funds were expended as the last year the LEA expended the most local funds on special education activities; or
3. At least the same student per capita amount from local and state funds were expended as the last year the LEA expended the most local and state funds on special education activities; or
4. At least the same student per capita amount from local funds were expended as the last year the LEA expended the most local funds on special education activities.

The LEA needs to pass only one of the four tests to be in compliance with MOE requirements. If an LEA fails all four tests based on the comparison of two fiscal years' expenditures, then the LEA must submit documentation to support MOE exceptions allowed under IDEA [34 CFR 300.204](#)

If the LEA is not able to establish an allowable exception to the MOE reduction, non-compliance will be determined. The LEA must pay the MOE difference to the New York State Department of Education who in turn must send the funds back to the US Department of Education. Federal grant dollars may not be used to make this payment. The LEA's failure to meet MOE compliance **does not** impact any future formula amounts the LEA may receive under IDEA.

The following is a simplified example of the reduction of an LEA's MOE and the penalty amount the LEA must pay:

Comparison Year	FY 2020-2021	Max MOE 50% Reduction (due to allocation increase)	Difference in fiscal years' MOE
\$1,300,000	\$1,290,000	\$0	(\$10,000)

The example uses “Comparison Year” as the base year rather than identifying a fiscal year. This is because the last year the LEA spent the most local and state funds on special education activities may not be the immediate past fiscal year.

This demonstrates an LEA reducing its expenditures by \$10,000 between the comparison fiscal year and fiscal year 2020-2021 (the year being tested). The LEA did not receive an increase in its IDEA flow-through allocation, so there was no option for a reduction through the 50% rule.

If the LEA does not qualify for any exceptions allowed under 34 CFR § 300.204 or only a portion of the difference can be accounted for through allowed exceptions, then the LEA will be required to pay a penalty of \$10,000 (or the amount not covered by approved exceptions). Federal grant dollars cannot be used to make this payment.

Consequences of Failure to Meet MOE

If an LEA fails to maintain its level of expenditures for the education of children with disabilities [34 CFR 300.203 \(d\)](#), NYSED is liable in a recovery action under section 452 of the General Education Provisions Act ([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 accordance with [paragraph \(b\)](#) of this section in that fiscal year, or the amount of the LEA's Part B subgrant in that fiscal year, whichever is lower.