

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

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became effective on July 1, 2015.

¹ These regulations

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 Years³ (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."

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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:

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A. GENERAL RULE

Authority: §300.203⁴

Question A-1:

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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

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Question A-8: May an LEA meet the compliance and/or eligibility sta

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	
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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

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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
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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 must determine 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. 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.

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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 foll A

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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

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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

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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
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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

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

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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

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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.