

A copy of Federal Regulations re: MOE are included as a supplement to the MSDE TAB #30. The e-CFR is updated daily and provides current guidance.

ELECTRONIC CODE OF FEDERAL REGULATIONS

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[Title 34](#) → [Subtitle B](#) → [Chapter III](#) → [Part 300](#) → [Subpart C](#) → §300.203

Title 34: Education

[PART 300—ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES](#)

[Subpart C—Local Educational Agency Eligibility](#)

§300.203 Maintenance of effort.

(a) *Eligibility standard.* (1) For purposes of establishing the LEA's eligibility for an award for a fiscal year, the SEA must determine 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:

- (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.

(2) When determining the amount of funds that the LEA must budget to meet the requirement in paragraph (a)(1) of this section, the LEA may take into consideration, to the extent the information is available, the exceptions and adjustment provided in §§300.204 and 300.205 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.

(3) Expenditures made from funds provided by the Federal government for which the SEA is required to account to the Federal government or for which the LEA is required to account to the Federal government directly or through the SEA may not be considered in determining whether an LEA meets the standard in paragraph (a)(1) of this section.

(b) *Compliance standard.* (1) 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.

(2) An LEA meets this standard if it does not reduce the level of expenditures for the education of children with disabilities made by the LEA from at least one of the following sources below the level of those expenditures from the same source for the preceding fiscal year, except as provided in §§300.204 and 300.205:

- (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.

(3) Expenditures made from funds provided by the Federal government for which the SEA is required to account to the Federal government or for which the LEA is required to account to the Federal government directly or through the SEA may not be considered in determining whether an LEA meets the standard in paragraphs (b)(1) and (2) of this section.

(c) *Subsequent years.* (1) If, in the fiscal year beginning on July 1, 2013 or July 1, 2014, an LEA fails to meet the requirements of §300.203 in effect at that time, the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required in the absence of that failure, not the LEA's reduced level of expenditures.

(2) If, in any fiscal year beginning on or after July 1, 2015, an LEA fails to meet the requirement of paragraph (b)(2)(i) or (iii) of this section and the LEA is relying on local funds only, or local funds only on a per capita basis, to meet the requirements of paragraph (a) or (b) of this section, the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required under paragraph (b)(2)(i) or (iii) in the absence of that failure, not the LEA's reduced level of expenditures.

(3) If, in any fiscal year beginning on or after July 1, 2015, an LEA fails to meet the requirement of paragraph (b)(2)(ii) or (iv) of this section and the LEA is relying on the combination of State and local funds, or the combination of State and local funds on a per capita basis, to meet the requirements of paragraph (a) or (b) of this section, the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required under paragraph (b)(2)(ii) or (iv) in the absence of that failure, not the LEA's reduced level of expenditures.

(d) *Consequence of failure to maintain effort.* If an LEA fails to maintain its level of expenditures for the education of children with disabilities in accordance with paragraph (b) of this section, the SEA 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. (Approved by the Office of Management and Budget under control number 1820-0600)

(Authority: 20 U.S.C. 1413(a)(2)(A), Pub. L. 113-76, 128 Stat. 5, 394 (2014), Pub. L. 113-235, 128 Stat. 2130, 2499 (2014))

[80 FR 23666, Apr. 28, 2015]

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Revised October, 2013

Division of Special Education/Early Intervention Services

Individuals with Disabilities Education Act (IDEA) Part B Maintenance of Effort and Excess Cost

The Individuals with Disabilities Education Act (IDEA) Part B funds must only be used to supplement and not to supplant State, local and other Federal funds [34 CFR §300.202(a)(3)]. This Technical Assistance Bulletin is intended to assist the local school systems and the SEED School of Maryland (LSSs) in addressing two very important tenets of the IDEA eligibility, compliance, and fiscal accountability. First, in order for an LSS to be eligible to receive IDEA Part B funds, the LSS is required to annually demonstrate maintenance of fiscal effort. Secondly, the IDEA Part B funds are for the cost of educating an elementary school or secondary school student with a disability that are in excess of the Average Annual Per Pupil Expenditure (APPE) for the LSS.

Please note that each LSS is responsible for maintaining sufficient documentation to verify eligibility and compliance with the MOE and Excess Cost, consistent with 34 CFR §§300.202-300.205 and related OMB and EDGAR regulations. Federal, State, and independent auditors may require this documentation at any time, and school systems may face penalties if unable to document MOE/Excess Cost compliance.

This Technical Assistance Bulletin 30/Revised October, 2013 makes three changes only:

- **Item number 3 on page 2: All types of expenditures for students with disabilities must be included in MOE calculations;**
- **Item number 4 on page 2: All expenditures for students with disabilities, regardless of program categorization, must be included in MOE calculations; and**
- **Item number 9 on page 4: Demonstration of the MOE figures based upon only local funds must be comprised of expenditures that are identifiable by funding source.**

All other information in this revised bulletin remains the same as in the original publication.

Maintenance of Effort (MOE)

1. What is MOE?

MOE under IDEA Part B means that an LSS that will receive IDEA funds under Part B is required to meet or exceed the level of expenditures for the education of children with disabilities for the preceding fiscal year. The focus is total expenditures or per capita

expenditures made by the LSS from either local funds or a combination of State and local funds for the education of children with disabilities. However, the LSS may request to reduce MOE under 34 CFR §§300.204 – 300.205 by submitting a formal request to the Assistant State Superintendent, Division of Special Education/Early Intervention Services.

[34 CFR §300.203 – 300.205]

2. May the lack of salary increases over the last several years, staff resignations and/or retirements, and flat or declining salary costs, be considered when assessing compliance with the Maintenance of Effort requirement?

Reductions in expenditures are allowed only if they meet the provisions of 34 CFR §300.204. Nothing in the IDEA permits an exception for negotiated reductions in staff salaries, benefits, or financial emergencies. Staff resignations or retirements are limited to special education and related services personnel as outlined below.

The LSS may request to reduce the level of expenditures under Part B below the level of those expenditures for the preceding fiscal year only if the reduction is attributable to any of the following:

- 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 LSS, consistent with IDEA regulations, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by MSDE, 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 a free appropriate public education (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.

[20 USC §1413(a)(2)(B) and 34 CFR §300.204 (a); 34 CFR §300.205]

3. Is there any type of expenditure that an LSS may exclude when calculating the amount of Local, or Local and State funds (including Bridge to Excellence funds expended for special education) it budgets/expends for the education of students with disabilities in order to demonstrate eligibility or compliance with the MOE requirements?

No. All types of special education expenditures, including, but not limited to, fixed costs, nonpublic placement costs, and transportation costs, must be included in the MOE calculations.

4. If expenditures for students with disabilities are not categorized as special education expenses in the local financial system or reported to the MSDE under the Special Education Category, must the LSS include these expenditures in its MOE calculation?

Yes. The IDEA requires that all expenditures for students with disabilities be included in the amounts utilized to demonstrate MOE eligibility/compliance. The incorrect categorization of expenses can impact MOE calculations and result in the LSS noncompliance with the MOE

requirement.

5. Are local school systems to include the parentally placed students that have service plans in the student count for the MOE per capita expenditures calculation?

Yes. The parentally placed students with disabilities that have service plans are included in the LSS child count.

6. May local school systems include administrative costs for students with disabilities (e.g. plant operation, administration, repairs, indirect costs), or must local school systems only include direct costs associated with students with disabilities (e.g. curriculum specialists, therapist costs) when calculating MOE?

Only costs that are direct costs for special education programs may be included. The LSS may not include indirect administrative costs in the MOE calculation.

7. What penalties, if any, will the LSS face if unable to meet the requirements of MOE?

In the event the LSS fails to maintain its required level of effort, MSDE must pay the U. S. Department of Education, Office of Special Education Programs (OSEP) from non-federal funds, or funds for which accountability to the federal government is not required, the difference between the amount of local, or a combination of State and local funds the LSS should have expended and the amount that it did expend. MSDE may then seek to recoup from the LSS from non-federal funds, or funds for which accountability to the federal government is not required, the amount by which the LSS did not maintain effort. If MSDE determines the LSS is not meeting the requirements of IDEA Part B, MSDE must prohibit the LSS from reducing the LSS's MOE. If MSDE determines that an LSS eligible to receive IDEA funds fails to comply with the requirements, MSDE must reduce or must not provide any further payments to the LSS until MSDE is satisfied that the LSS is complying with the requirements.

[20 U.S.C. §1413(a)(2)(B); 20 U.S.C. §1416(f);); 34 CFR §300.163(b) – (d); 34 CFR §300.222; 34 CFR §300.203; 34 CFR §300.608(a)]

8. Must the LSS utilize the identical method for calculating MOE each year?

There are four (4) methods available to the LSS for the determining compliance with the MOE requirement, in accordance with 34 CFR §300.203(b)(1):

- Local funds per capita
- State and local funds per capita
- Local funds, per total students with disabilities
- State and Local funds, per total students with disabilities

In the example provided, although the LSS was not able to show that it met MOE utilizing every calculation method, the LSS was compliant as long as at least one of the four calculation methods showed compliance with MOE requirements. The ability to use any one of the four methods from year to year allows flexibility that may be needed in circumstances of unforeseeable fluctuations in student enrollment and staffing. Since it is impossible to know in advance which calculation method may be required to demonstrate MOE in a given year, the MSDE recommends that each year, all four (4) methods should be calculated and backup documentation retained should circumstances dictate the need for the use of a calculation method

that was not used in the prior year.

[34 CFR §300.203]

9. If an LSS chooses to demonstrate MOE amounts based on local funds only, must each of the comprising expenditures be identifiable as having been paid for with local funds?

Yes. In accordance with 34 CFR §80.20(b)(2), “Grantees must maintain records which “identify adequately the source and application of funds for financially-assisted activities...” This means that if an LSS chooses to demonstrate the MOE based upon local funds only, the total of these funds must be able to be substantiated by a report of actual local expenditures that equal this total. A failure to maintain accounting procedures that delineate State and local funds could place an LSS at risk if maintenance of MOE in a given year had to be based upon local funds only. Since it is impossible to know in advance which calculation method may be required to demonstrate MOE in a given year, the MSDE recommends that each year, all four (4) methods should be calculated and backup documentation retained should circumstances dictate the need for the use of a calculation method that was not used in the prior year.

10. Our Excess Cost calculation is always going to result in a much higher rate than the MOE calculation, because they're not comparing the same set of expenditures. Should we allocate a portion of those expenses to special education in determining our MOE?

The MOE and Excess Costs tests are two distinct and different IDEA requirements. Each requirement uses an analysis of expenditures to ensure compliance with IDEA. Meeting the MOE test means that over time, the LSS has not reduced its fiscal effort to support students with disabilities. The Excess Cost requirement is to ensure the LSS only uses IDEA Part B fund to pay for the cost of educating a child with a disability in excess of the LSS’s APPE. Meeting compliance with both tests ensures federal IDEA funds are supplementing, not supplanting, local fiscal effort.

[20 USC §1413(a)(2)(B); 20 USC §1401(7); 34 CFR §300.16; 34 CFR §300.202; 34 CFR §300.203; 34 CFR §300.204 (a); 34 CFR §300.205]

Excess Cost

11. What is Excess Cost?

Excess costs are those costs for the education of an elementary school or secondary school student with a disability that are in excess of the average annual per pupil expenditure (APPE) in the LSS during the preceding school year. This provision means that the LSS must be able to demonstrate that it expended the total APPE for the education of children with disabilities during that fiscal year, in addition to the Part B funds, regardless of when during the year the Part B funds are spent. These costs are required to be calculated separately for elementary schools and secondary schools.

[20 USC §1401(7); 34 CFR §300.16; 34 CFR §300.202]

12. How does the LSS calculate the APPE?

The IDEA Appendix A example demonstrates this calculation using an elementary school example. First, the LSS must determine the total amount of its expenditures for elementary school students from ALL sources – local, State and Federal (including Part B funds, Title I funds, all other ESEA grants, etc.) in the preceding school year. The calculation includes the total amount spent for elementary school students, including children with disabilities. For the State Fiscal Year (SFY) 2013, the preceding school year is 2011-2012.

The second step, in paragraph a of Appendix A, requires that the LSS subtract the amount of capital outlay and debt expenditures. Capital outlay means expenditures for the acquisition of capital assets, such as equipment, buildings and land, or expenditures to make improvement to capital assets that materially increase their value or useful life. The capital outlay and debt services expenditures are excluded from the total amount of State, local and Federal funds expended for elementary school students, including children with disabilities.

Next, the LSS must subtract from the total expenditures the amount actually spent in the preceding year (but not funds that were carried over) from:

- IDEA Part B;
- Part A of Title I;
- Parts A and B of Title III; and
- State and local funds expended for programs under IDEA Part B, Part A of Title I and Parts A and B of Title III

The LSS does NOT deduct other Federal grant funds it may have received and included in the total amount expended, such as Teacher Quality Grants, Technology Grants, Migrant Education Grants, etc. Neither would the LSS deduct State and local funds expended for these types of services.

Next, the LSS must divide the amount by the average number of students including students with disabilities, enrolled in the LSS elementary schools during the preceding year, 2011-2012 (September 30, 2011 enrollment). This is how the LSS calculates the APPE for elementary school students for the previous year, 2011-2012.

Finally, the LSS must take the number of children with disabilities in the LSS's elementary schools, using the current year's child count (October 2012) to which the excess cost applies and multiply that number by the elementary APPE determined for the previous year – 2011-2012. The result is the minimum amount of State and local funds that the LSS must spend on the education of its elementary school children with disabilities to meet the excess cost requirement for the 2012-2013 school year.

The same steps are used for secondary school students.

[OSEP Fiscal Webinar, August 9, 2012]

13. What is the appropriate method for allocating elementary or secondary costs?

Each LSS needs to determine and document its method for apportioning schools, students, and costs, including administrative costs, attributable to elementary or secondary schools based upon

local written policies and procedures for identifying schools, programs, services, costs, and grade level assignments for elementary or secondary schools.

14. May an LSS apply the enrollment numbers of students and children with disabilities in its elementary schools to the relevant combined expenditure data on a proportional basis to determine how much non-IDEA Part B funds it has spent for the education of children with disabilities in its elementary schools?

No. Federal regulation 34 CFR §300.16 differentiates between children with disabilities in elementary and secondary schools. The MSDE understands that the LSS may not necessarily maintain and track expenditure data separately for elementary school students and secondary school students. However, elementary and secondary schools have distinct and separate costs. Using the computation described in the question would be inaccurate and potentially misleading. For example, school programs at the secondary level typically include such items as vocational education programs, athletic programs, music programs, etc., that do not apply to elementary schools. The costs of the separate programs are generally not comparable and therefore, the costs must be computed separately, including administrative costs. Therefore, the LSS **MAY NOT** compute the minimum average amount it must spend on the education of children with disabilities based on a combination of the enrollments in its elementary and secondary schools. Each LSS must have written policies and procedures that describe how the LSS calculates Excess Cost separately for elementary and secondary schools.

[20 USC §1401(78);34 CFR §300.16; OSEP April 8, 2008 letter to Ms. Plagata-Neubauer]

15. Must the LSS expend at least the average annual per student expenditure on the education of a child with a disability before IDEA funds under Part B are used to pay the excess cost of providing special education and related services?

The LSS must spend at least the average annual per student expenditure on the education of an elementary or secondary school child with a disability before IDEA Part B funds are used to pay the excess cost of providing special education and related services. The Office of Special Education Programs (OSEP) clarified that the LSS must be able to demonstrate that it expended the total APPE for the education of children with disabilities during that fiscal year in addition to the Part B funds it received, regardless of when during the year the Part B funds are spent. The OSEP is not looking at whether the Part B funds were spent before or after the LSS met the excess cost requirements, only whether at the end of the year, the LSS has met the excess cost requirement.

The education of a child with a disability may include regular education, as well as special education and related services. When determining if the LSS has spent the required minimum amount for the education of its children with disabilities, the LSS can include expenditures for regular education, such as salaries for regular education teachers for classes where children with disabilities are educated with nondisabled peers, if those costs can be reasonably attributed to the education of children with disabilities.

[20 USC §1413(a)(2)(A); OSEP April 8, 2008 letter to Ms. Plagata-Neubauer; OSEP September 25, 2009 letter to Mr. Kennedy]

16. In terms of grade-levels included, how are “elementary” and “secondary” to be defined?

It is the prerogative of each LSS to determine and document which grade levels it includes

within its definition of “elementary” and “secondary” schools.

17. Which categories from Maryland’s C-1-25 form should be included in “Total Expenditures for elementary or secondary school students from State and Local funds” on Page 1 of 3 of the Excess Cost Template?

Each LSS must determine the total amount of its expenditures for elementary and secondary school students from **ALL** sources, local, State, and Federal (including Part B), in the preceding school year. For calculating the Excess Cost for SFY 2013, the LSS is to use the expenditures of the most current completed fiscal year (SFY 2012).

[20 USC §1401(7); 34 CFR §300.16; 34 CFR §300.202; OSEP Excess Cost Webinar, August 9, 2012]

18. Should category 15 on the C-1-25 be used exclusively for “capital outlay and debt” on Page 1 of 3 of the Excess Cost Template or should equipment purchased in other categories also be included?

The LSS is to deduct capital outlay and debt expenditures for elementary and secondary from all sources. Capital outlay means expenditures for the acquisition of capital assets, such as equipment, buildings and land, or expenditures to make improvement to capital assets that materially increase their value or useful life. The capital outlay and debt services expenditures are excluded from the total amount of State, local and Federal funds expended for elementary school students and secondary school students, including children with disabilities.

[20 USC §1401(7); 34 CFR §300.16; 34 CFR §300.202; OSEP Excess Cost Webinar, August 9, 2012]

19. For question number five on Page 2 of 3 of the Excess Cost Template, please clarify the State Categories\Objects being requested?

Question number five on Page 2 of 3 of the Excess Cost Template asks the LSS to subtract local and State funds expended for programs under ESEA, Title I, Part A, and Title III, Parts A and B, in accordance with 20 USC §1401(7) and IDEA Part B Appendix A.

[20 USC §1401(7); 34 CFR §300.16; 34 CFR §300.202; OSEP Fiscal Accountability Webinar, 7/21/2009]

20. Please confirm which State fiscal year expenditures are to be used to calculate the Excess Cost?

The LSS must determine the total amount of its expenditures for elementary school students or secondary school students from ALL sources, local, State and Federal (including Part B funds), in the preceding school year. For computing the amount for the 2012-2013 school year, the calculations are based on the preceding school year’s (2011-2012) actual expenditures.

[20 USC §1401(7); 34 CFR §300.16; 34 CFR §300.202; OSEP Excess Cost Webinar, August 9, 2012]

Excess Costs Calculation
34 CFR 300 – Appendix A

Example: The following example shows how to compute the minimum average amount an LSS must expend on the education of each of its elementary school students with disabilities before it may use funds under Part B of the IDEA.

Objective	Procedure	Action	Calculated Amount
(a) LSS must determine the total amount of expenditures for elementary school students from all sources— local, State, and Federal (including IDEA Part B)— in the preceding school year.	The LSS spent the following amounts last year for elementary school students (including its elementary school students with disabilities):	(1) State and local tax funds. (2) Add total of all Federal funds. (3) Total expenditures	\$6,500,000 +\$600,000 =\$7,100,000
(b) Capital outlay and debt service relating to education of elementary school students are excluded.	The LSS spent \$60,000 for capital outlay and debt service and this must be subtracted from total expenditures.	(4) Subtract capital outlay and debt service (5) Equals total expenditures for elementary school students	-\$60,000 =\$7,040,000
(c) Next, the LSS must subtract amounts spent for educating elementary school students from: (1) IDEA Part B allocation; (2) ESEA, Title I, Part A allocation; (3) ESEA Title III, Parts A and B allocation; (4) State and local funds for students with disabilities, and (5) State or local funds for programs under ESEA Title I-Part A, and Title III Parts A and B.	These funds are subtracted from the expenditures.	Add all 5 sources below and subtract from total expenditures in (b) above. (1) IDEA Part B allocated funds (2) ESEA, Title I, Part A allocated funds (3) ESEA Title III, Parts A and B allocated funds (4) State and local funds for students with disabilities (5) State or local funds for programs under ESEA Title I-Part A, and Title III-Parts A and B Add (1) – (5) above to obtain total of other Federal, State, & local funds Subtract from figure in Step (b). Total expenditures less capital outlay & debt ser.	\$200,000 +\$250,000 +\$50,000 +\$500,000 +\$150,000 =\$1,150,000 \$7,040,000 -\$1,150,000 =\$5,890,000

Objective	Procedure	Action	Calculated Amount
(d) The LSS must next determine the average annual per student expenditure for its elementary school students during the preceding year (including students with disabilities).	The LSS had an average elementary school enrollment (ADM) for the preceding school year of 800 (including 100 students with disabilities). The total expenditure is divided by the average total number of students.	(1)Amount from Step (c) (2) Divided by the average number of students enrolled (3)Average annual per student expenditure	\$5, 890,000 /800 =\$7,362
(e) Determine the total minimum amount of funds the LSS must spend for the education of its elementary school students with disabilities.	The LSS multiplies the number of elementary school students with disabilities in the LSS times the average annual per student expenditure obtained in Step (d) above	(1)Number of students with disabilities in the LSS's elementary schools. (2)Average annual per student expenditure (3)Total minimum amount of funds the LSS must spend for the education of students with disabilities enrolled in its elementary schools before using Part B funds	100 x\$7,362 =\$736,200

The same procedure must be followed for calculation of excess costs for students with disabilities in the LSS's secondary schools [34 CFR §300.16].

For more information, call 410-767-0249

MARYLAND STATE DEPARTMENT OF EDUCATION
Lillian M. Lowery, State Superintendent of Schools
Marcella E. Franczkowski, Assistant State Superintendent
Division of Special Education/Early Intervention Services
200 West Baltimore Street
Baltimore, MD 21201

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Charlene M. Dukes, Ed.D.
President, State Board of Education

Lillian M. Lowery, Ed.D.
State Superintendent of Schools

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/Early Intervention Services

Martin O'Malley
Governor