

Frequently Asked Questions
IDEA – MOE

Q1. We have a district changing its fiscal year to begin July 1. How will that impact their special education MOE when comparing FY10, 10 months in length, to FY09, 12 months in length?

A1. It may result in a perceived decline in effort and an initial assessment of noncompliance. The district will simply need to demonstrate through its local records that it, in fact, maintained effort for a comparable period of time (i.e., a twelve month period).

Q2. When calculating MOE reduction, is the entitlement based on tentative or maximum entitlement? Is it calculated before or after Indirect Costs?

A2. It is based on the maximum entitlement and is calculated before indirect costs are charged to IDEA Part B funds.

Q3. When should you reduce the EIS funds – before you deduct last year's entitlement or after you have figured the adjustment?

A3. This is actually up to the LEA. The primary observation is that the EIS and MOE requirements have an adverse effect on each other. The higher the adjustment taken to reduce MOE; the amount available for EIS will be lower. Conversely, the greater the amount expended for EIS, the lower the adjustment available for MOE.

Q4. I have a district that closed their special education content mastery lab. The special education teacher that was in there is now a home economics teacher. Can this salary be an exception for MOE?

A4. The transfer of an employee from a special education teacher position to a home economics teacher position does not meet the requirements for the first exception (departure of special education personnel) to MOE. The federal statute and regulation speak to the voluntary (i.e., resignation or retirement) or involuntary (i.e., termination) departure of special education personnel. In the instance cited in your email below, the individual in question is still employed by the district in a different capacity and did not leave (depart) the district.

Q5. MOE is looking at years 07-08 and 08-09; therefore, are the **2008 LEA determinations** (report dated May 19, 2008) what is used to determine if a district is able to take the 50% of the difference of formula funding for the two years as part of the calculation for MOE?

A5. Correct. The 2008 LEA determinations will be used to determine if the LEA may adjust its fiscal effort by up to 50% of the increase in its IDEA Part B entitlements.

Q6. The FAR Appendices, page 77 say Fund 266 is federal, even though its name is ARRA of 2009, Title XIV, State Fiscal Stabilization Fund. Does this fund impact special education MOE at all?

A6. Fund 266 may have an impact upon a LEA's compliance with the IDEA MOE requirement but this will largely depend on the degree to which the LEA classifies costs under PIC 23.

Q7. Are reductions in force across the district that also includes RIFs in special education an allowable MOE exception? Voluntary personnel departure yes, but what about RIFs?

A7. No. A reduction in force does not qualify as an exception pursuant to P.L. 108-446, Sec. 613(a)(2)(B)(i). Only voluntary departures and departures for just cause (i.e., involuntary termination due to dereliction of duty, etc.) are an allowable exception to the IDEA MOE requirement.

Q8. We are looking at possibly **not** replacing staff through attrition as a possible way to meet these significant budget cuts, what impact would this have on MOE?

A8. If special education staff resign or retire and are not subsequently replaced by the LEA, the LEA may claim an exception to MOE. A RIF **does not** qualify for an exception to MOE but the voluntary departure of staff would.

Q9. If we are required to utilize 15% of our federal funds for EIS, what will be the impact on MOE?

A9. The amount available to the LEA to reduce its fiscal effort will be reduced. In some instances, the LEA may not have an amount available to it.

Q10. My district chose to use stabilization ARRA funds to pay for teacher salaries at certain schools. This includes special education teachers who were funded locally. How does this impact MOE for special education?

A10. If the special education teachers were previously funded under 199; PIC 23 and were then subsequently funded under fund 266; PIC 23, the LEA may not see any MOE impact.

Q11. Three of my member districts were eligible to reduce MOE for 2009-2010. The Division of IDEA Coordination is asking that we report "the actual reduction amount from 2008-2009 to 2009-2010". I use the MOE Template created by your division, but the way the request reads, I believe I am to report the difference between the actual unallocated state and local expenditures (program intent code 23) for those 2 years. Is my interpretation correct?

A11. Currently, the instructions that the agency received from USDE states the following.

Report the actual dollar amount that each LEA reduced local, or State and local, expenditures under the IDEA MOE provision in IDEA 613(a)(2)(C) during SY 2009-10. Report the actual amount by which local, or State and local, expenditures were reduced; do not provide a projection of this amount.

Based on the latter statement, each LEA should use its Midyear Record 032 allocated data to report the required amount. You may use the IDEA MOE template, PRF1D007, Actual Compliance Report -- General Fund Allocated, and PRF5D010, Special Education Child/Counts by Funding Type, to prepare the required information. You should retain all of these documents in the event of an inquiry from the TEA or USDE.

Q12. For the entitlement amounts on the IDEA – MOE template (lines 25 and 26), do we only use regular IDEA-B or the total of IDEA-B and IDEA-B ARRA?

A12. For school year 2009-2010, you should compare the entitlements for both IDEA Part B Formula (**Do Not include Formula Preschool**) and ARRA Formula (**Do Not include ARRA Preschool Formula**) that your district received for school years 2008-2009 and 2009-2010. For school year 2011, you should only compare the entitlements for IDEA Part B regular.

Q13. In calculating excess cost can a district use the district wide percentage of students with disabilities (8%) to calculate the proportionate amount of general education expenses used to serve special education students or does it have to be a class by class calculation? For example, \$100,000 for general education teacher X 8% (percent of students in district that are special education) = \$8,000 for excess cost.

A13. In calculating the excess cost the district is required to compute the minimum average amount separately for children with disabilities in its elementary schools and for children with disabilities in its secondary schools. Districts 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 schools and secondary schools. (Refer to Appendix A to Part 300 of 34 CFR – Excess Costs Calculation)

Q14. Is it permissible to move 10 diagnostician positions from local funds to the federal budget as long as the overall amount of the district's MOE remain the same?

A14. Yes. On October 3, 1992 the Part B regulation regarding a 'particular cost test' for determining whether supplanting occurred was removed from the regulations. Therefore, no requirement currently exists related to supplanting 'particular costs' and if a LEA maintains local, or state and local effort, it will not violate the supplement/not supplant requirement of IDEA.

Q15. If a teacher is funded out of federal dollars one year must he/she remain funded out of federal dollars as long as she/he is in the district or can he/she be moved to local as long as the overall amount of the district's MOE remains the same?

A15. A teacher that is paid from federal funds may be, at the district's discretion moved to and paid from local funds. In doing so, the district should review their budget for the ongoing years to ensure that they are and will be in compliance with the MOE requirement.

Q16. How will a program change under financial exigency impact a district's MOE requirements, for example if we use aides in lieu of teachers for one or more special education programs?

A16. Financial exigency is not an exception for meeting MOE for IDEA.

Also consider Texas Administrative Code (TAC 230.560) which clearly outlines the role descriptions for educational aides. Use this information in determining the activities to assign to an educational aide as well as the information from federal regulations.

A student who is eligible for special education services as a student with a disability must have: A representative of the public agency who— (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities (i.e. special education teacher) (34 CFR § 300.321 IEP Team). Every child who receives special education services in the state of Texas has a special education teacher who is a member of the ARD Committee, collaborates on the development of appropriate goals/objectives, and is explicitly involved in the implementation of the IEP.

How and where services are provided is determined by the ARD Committee; however, the Special Education Teacher is part of the equation and is ultimately responsible. The Special Education Teacher is responsible for providing or supervising the provision of the Specially Designed Instruction in our state.

Q17. If state and or local program funds are no longer available to support a state mandated program, may the cost of that program be picked up by IDEA funding?

A17. If a program is state mandated, whether it is funded by the state or not, IDEA dollars cannot be used to support the program. However, if the program was previously state mandated and is no longer state mandated and the district decides to continue with the program, the cost of the program can be funded with IDEA dollars as long as the program falls within the scope of allowable IDEA expenditures.

Q18. What is the consequence regarding IDEA MOE if a district chooses to no longer participate in the Regional Day School Program for the Deaf (RDSPD), therefore no longer receives the state funding to support that program?

A18. The amount of state funding the district loses because they choose to no longer to participate in the RDSPD will not count against the district in calculating IDEA MOE.

Q19. If an LEA reduces their MOE, in what year does the district have to spend the amount of the reduction on ESEA activities?

A19. The LEA must spend the amount of the reduction for ESEA activities in the same year the LEA took the reduction. The LEA must also demonstrate in the detailed general ledger that the amount of the reduction was spent on ESEA activities by using a local option code that uniquely identifies the amounts expended for ESEA activities.

Q20. If an LEA was eligible to reduce their MOE and chose not to and the district later determines that they did not meet MOE; may the LEA then choose to use the flexibility option?

A20. No. The flexibility rule is not an after-the-fact option. The LEA should exercise the flexibility to reduce their MOE at the beginning of the school year and/or once they know their current year entitlements for IDEA B - Formula.

Q21. What are the consequences if a LEA did not correctly estimate the reduction in MOE and reduced more than they were allowed?

A21. The LEA amount of the reduction that the LEA uses must be the actual amount (not an estimate). The actual amount of the adjustment is based upon on the LEA's increase in entitlements from one year to the next and any amount expended for EIS activities.

Q22. If a LEA was eligible to reduce their MOE in 2009-2010 but chose not to reduce; may the LEA now reduce their MOE for 2009-2010?

A22. No. The flexibility rule is not an after-the-fact option. The LEA should exercise the flexibility to reduce their MOE at the beginning of the school year and/or once they know their current year entitlements for IDEA B - Formula.

Q23. Does the release of a probationary special education staff member qualify under the exception for "just cause" termination since by law probationary staff can be released without a RIF?

A23. No, releasing a probationary special education staff member does not qualify under the exception for "just cause". Terminating a staff member for "just cause" would mean that there was misconduct or negligence on behalf of the staff member.

Q24. Since a probationary contract allows for non-renewal during the probationary period, wouldn't that be considered just cause?

A24. Deciding to not give a probationary teacher a new contract--particularly if the decision is made for economic reasons and not based on the teacher's performance--isn't "just cause". Terminating for "just cause" would mean that there was misconduct or negligence on behalf of the teacher.