

**Technical Assistance Paper
Special Education Fiscal Accountability and Restricted Use of Funds
Utah State Office of Education
Special Education, School Finance and Statistics Departments
4-6-2010**

During years when Local Education Agencies (LEAs) face reductions in State funding, questions emerge as LEA personnel analyze all programs to determine where the reductions can be applied if those reductions become necessary. The following is a summary of how State statutes and Federal laws interact to define the use of special education funds. This information is designed to help inform LEA personnel as they consider budget issues.

Utah Code

Three State Code references address the expenditure of State funds for students with disabilities. 53A-17a-111(2) reads, "Disability program monies allocated to districts are restricted and shall be spent for the education of students with disabilities, but may include expenditures for approved programs of services conducted for certified instructional personnel who have students with disabilities in their classes". In 53A-17a-112(3a) we find, "Monies appropriated in Section 53A-17a-104 for self contained regular special education programs may not be used to supplement other school programs". 53A-17a-146 specifies that a school district or charter school may not reduce or reallocate spending of funds distributed to a school district or charter school for a special education program within the basic school program.

Federal Regulations: Supplement Not Supplant

There are requirements in the Individuals with Disabilities Education and Improvement Act (IDEA) that would also impact reduction considerations. Federal IDEA funds must be used to supplement the level of Federal, State and local funds expended for special education and related services provided to students with disabilities, and in no case to supplant those Federal, State and local funds (34 CFR §300.161). Federal IDEA funds provided to the LEA must be used only to pay the excess costs of providing special education and related services to students with disabilities. They must be used to supplement State, local and other Federal funds and not to supplant those funds (34 CFR §300.202).

Federal Regulations: Maintenance of Effort (MOE)

Another provision in the IDEA, Maintenance of Fiscal Effort (MOE), requires that funds provided to an LEA under the IDEA must not be used to reduce the level of expenditures for the education of students with disabilities below the level of those expenditures for the preceding fiscal year (34 CFR §300.203). Federal IDEA funds may not be considered in Maintenance of Effort calculations. The Utah Consolidated Application (UCA) has required that special education Maintenance of Fiscal Effort be documented annually. The LEA has been required to enter the total amount of both State (Minimum School Program) dollars and local dollars spent on special education. If the expenditures of the year of application of local dollars or state and local dollars were less than the previous year, an explanation had to be attached. There are only five explanations that are acceptable under IDEA. An LEA may reduce the level of expenditures by an LEA under Part B of the IDEA below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:

1. The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.
2. A decrease in the enrollment of children with disabilities.

3. The termination of the obligation of the LEA to provide a program of special education to a particular child with a disability that is an exceptionally costly program because the child—
 - a. Has left the jurisdiction of the LEA;
 - b. Has reached the age at which the obligation of the LEA has terminated; or
 - c. No longer needs the program of special education.
4. The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.
5. The assumption of cost by the high cost fund operated by the State Education Agency (SEA) (34 CFR §300.204).

Nothing in the IDEA permits an exception for financial emergencies. The Federal Register further states that to expand the exceptions to the Maintenance of Effort requirements would be beyond the authority of the Department of Education (pg. 46624 of the Federal Register, 34 CFR Parts 300 and 301).

The Federal Regulations also state that if the USOE determines that an LEA is not meeting the requirements of Part B, including the targets in the State Performance Plan, the USOE must prohibit the LEA from reducing its maintenance of effort for any fiscal year (34 CFR §300.608).

Beginning with the 2010-11 school year, the UCA MOE figures will be populated by the Utah State Office of Education (USOE) School Finance Department based on data contained in the USOE's Annual Program Report. The Annual Program Report is available from LEA Business Administrators on October 1 of each year. The data needed for Special Education MOE may be found in Schedule B of the document.

For any fiscal year for which the IDEA Part B allocation received by an LEA exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required for MOE by not more than 50 percent of the amount of that excess. Further details can be found in the Federal Regulations (CFR §300.205) and the ARRA Guidance which can be found at <http://www2.ed.gov/policy/gen/leg/recovery/programs.html> under Individuals with Disabilities Education Act, Part B.

Consequences

There are consequences if an LEA does not comply with the MOE requirements. After reasonable notice and an opportunity for a hearing, if the USOE finds that an LEA is failing to comply with the nonsupplanting and MOE provisions of IDEA, the LEA shall meet with the USOE to submit a plan for approval which describes how the LEA will meet the MOE requirements in subsequent years and how the LEA will meet its obligation to the USOE for the amount by which the LEA failed to meet MOE. Failure to complete this action or failure to carry out a USOE approved plan will render the LEA ineligible to receive their IDEA Part B allocation until the preceding procedure has been met and the USOE is satisfied that the LEA is complying with the requirements.

Questions that you may have about the Federal Regulations or any of the fiscal accountability requirements may be addressed to the State Director of Special Education or the Audit and Finance Specialist at the USOE.