



Office of the



State Superintendent of Education

## **Office of the State Superintendent of Education**

Division of Specialized Education

Guidance for Changes and Requirements of the

*Funding for Public Schools and Public Charter Schools Amendment Act of 2011*

June 8, 2012

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## Background

The [\*Funding for Public Schools and Public Charter Schools Amendment Act of 2011\*](#) makes significant changes to the way District of Columbia Public Charter Schools and the District of Columbia Public Schools (DCPS) spend and track the Uniform Per Student Funding Formula (UPSFF) funding they receive annually to support students with IEPs. This law also establishes enforcement mechanisms for public schools that do not meet “maintenance of effort” (MOE) requirements under Part B of the Individuals with Disabilities Education Act (IDEA, Part B).

Overall, the Act provides mechanisms by which the District will be able to analyze data to determine whether the funds appropriated to support students with IEPs are adequate and are being used appropriately. This information will in turn allow policymakers to make informed, strategic decisions in special education policy. Essentially, the Act represents the next step in the District of Columbia’s on-going efforts to reform education, improve services in local schools, reduce non-public placements, and increase accountability to parents and families.

## Purpose

The purpose of this guidance is to further explain (1) the *Funding for Public Schools and Public Charter Schools Amendment Act of 2011*; (2) the Individuals with Disabilities Education Act (IDEA), Part B Maintenance of Effort (MOE) requirement; and (3) how these two Acts are related.

### **Q1. What is the *Funding for Public Schools and Public Charter Schools Amendment Act of 2011*?**

The District of Columbia’s *Funding for Public Schools and Public Charter Schools Amendment Act of 2011* makes several significant changes that affect how District of Columbia public schools will spend and track their UPSFF special education funding. Specifically, the Act:

- Adds two new special education funding sources to the UPSFF: the Special Education Capacity Fund and the Special Education Compliance Fund. The Special Education Capacity Fund is specifically designated to increase the capacity of public schools to serve students with IEPs, including students returning from non-public placements. The Special Education Compliance Fund is specifically designated to support activities required to address identified noncompliance with federal and local regulations regarding students with IEPs.
- Clarifies which funding streams in the UPSFF should be used to support the provision of special education services. These funding streams are now collectively referred to as the “Special Education Payments.” More information about the changes to the UPSFF is available in [Q2-Q4](#).

- Limits the type of activities public schools can use their Special Education Payments to support. Allowable uses of Special Education Payments can be found in [Q8](#).
- Requires all DC public schools that receive Special Education Payments to comply with the IDEA, Part B MOE requirement, regardless of their special education LEA status. This requirement applies to public charter schools that have elected DCPS to serve as their LEA for IDEA, Part B purposes. More information about IDEA MOE requirements is available in [Q7](#) and [Q12-Q24](#).
- Requires public schools to track how their Special Education Payments are spent and submit a report to OSSE at least annually.
- Allows LEAs that meet MOE and receive a determination level of “meets requirements” during the IDEA annual determination process to spend any “unused” Special Education Payments for other educational purposes. More information about IDEA MOE requirements is available in [Q7](#) and [Q12-Q24](#).

**Q2. What changes does the *Funding for Public Schools and Public Charter Schools Amendment Act of 2011* make to the UPSFF?**

In the past, the UPSFF was made up of two components:

1. The “basic foundation level,” which is the baseline per-pupil amount an LEA will receive for each of its students; and
2. Weighted allocations that are added to the basic foundation level for certain students.

For example, the basic foundation level for Fiscal Year 2011 was \$8,770 per student. Examples of weighted allocations include but are not limited to pre-school students, whom for FY 2011 were weighted at 1.34, meaning LEAs generated an additional \$2,982 ( $\$8,770 \times 0.34$ ) per pre-school student, for a total of \$11,752, students in special education with Level 1 needs, whom for FY 2011 received an add-on of .52, meaning LEAs generated an additional \$4560 ( $\$8770 \times .52$ ) and students in special education schools, whom for FY 2011 were weighted at 1.17, meaning LEAs generated an additional \$1491 ( $\$8770 \times .17$ ). (Please note, the basic foundation level and the weighted allocation are subject to change. See [D.C. Official Code §§ 38-2903 through 2905](#) for current allocation amounts.)

The *Funding for Public Schools and Public Charter Schools Amendment Act of 2011* adds two new special education funding sources to the UPSFF: the Special Education Capacity Fund and the Special Education Compliance Fund. The Special Education Capacity Fund is specifically designated to increase the capacity of public schools to serve students with Individualized Education Programs (IEPs), including students returning from non-public placements. The Special Education Compliance Fund is specifically

designated to support activities required to address identified noncompliance with federal and local regulations regarding the provision of special education services to students with IEPs.<sup>1</sup>

**Q3. What are Formula Base Payments in the Funding for Public Schools and Public Charter Schools Amendment Act of 2011?**

The *Funding for Public Schools and Public Charter Schools Amendment Act of 2011* uses the term “Formula Base Payments” to refer to the basic foundation level and weighted allocations discussed in [Q2](#) above, exclusive of special education weighted allocations and add-ons. Formula Base Payments do not include Special Education Payments under the UPSFF.

**Q4. What are Special Education Payments in the Funding for Public Schools and Public Charter Schools Amendment Act of 2011?**

The *Funding for Public Schools and Public Charter Schools Amendment Act of 2011* uses the term “Special Education Payment” to refer to funding appropriated by the District through the “Formula” in the following budget categories: Special Education Schools, Special Education Add-ons, Special Education Capacity Fund, Special Education Compliance Fund, Residential Add-ons for Special Education, and Special Education Add-ons for Students with Extended School Year (“ESY”) indicated in their Individualized Education Programs (IEPs). The Special Education Capacity Fund and Special Education Compliance Fund are new funding provided in the *Funding for Public Schools and Public Charter Schools Amendment Act of 2011* while the other special education payments pre-existed the Act.

Accordingly, the Special Education Payment is made up of a variety of components including:

- Supplemental funding generated by [students with IEPs \(this is funding for students based on level of need and for students in special education schools\)](#);
- Supplemental funding known as the [Special Education Capacity Fund](#);
- Supplemental funding known as the [Special Education Compliance Fund](#);
- Supplemental funding for students with IEPs in [residential](#) settings; and
- Supplemental funding for students with IEPs in [extended school year programs](#).

More information about these components is available in [Appendix A](#), but collectively they make up an LEA’s special education payments.

**Q5. Are LEAs required to spend Special Education Payments on particular costs?**

Yes. Expenditure of Special Education Payments by public schools is restricted for use in accordance with allowable special education costs, which are defined in [Q8](#).<sup>2</sup>

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<sup>1</sup> Please note, the *Funding for Public Schools and Public Charter Schools Amendment Act of 2011* includes other supplemental payments for certain general education activities as well. This guidance only addresses the supplemental Special Education Payments.

All Formula Special Education payments must be expended on allowable special education costs within the fiscal year within which they were appropriated. However, if an LEA (1) receives a determination level of “Meets requirements” during the IDEA annual determination process; and (2) Meets IDEA MOE requirements for that year ([Q7](#)), then it may spend its Special Education Payments on any cost otherwise permitted under the UPSFF, except for attorneys fees in connection with an IDEA due process hearing. Please see [Q9](#) for more information about attorney fees.

An LEA that does not meet both criteria – i.e. either does not receive a determination level of “meets requirements” during the IDEA annual determination process or does not meet MOE – must spend its Special Education Payments only on allowable special education costs, which are defined in [Q8](#).<sup>3</sup> If an LEA does not meet both criteria and fails to expend in its entirety Formula Special Education payment(s) on allowable special education costs within the fiscal year within which the funds are appropriated, the LEA must reserve the full amount of unspent funds. The reserved funds shall be expended pursuant to a Corrective Action Plan approved by OSSE. If an LEA fails to comply with this requirement, the District will withhold an amount equal to the unspent portion of such funds from the school’s next scheduled Formula base payment.

**Q6. What is the annual determination process under the IDEA and how does it affect an LEA’s use of its Special Education Payments?**

Federal law requires OSSE to determine, each year, the extent to which an LEA is performing under IDEA, Part B.<sup>4</sup> The OSSE must determine if the LEA receives a determination level of:

- Meets Requirements;
- Needs Assistance;
- Needs Intervention; or
- Needs Substantial Intervention.

If an LEA receives a determination level of “meets requirements” during the IDEA annual determination process, then the LEA may spend its Special Education Payments on any cost otherwise permitted under the UPSFF as long as the LEA also meets IDEA MOE requirements.

If the OSSE concludes that an LEA receives a determination level of “needs assistance,” “needs intervention,” or “needs substantial intervention,” then the LEA must spend its Special Education Payments on allowable special education costs, which are defined in [Q8](#).

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<sup>2</sup> See D.C. Official Code § 38-1804.01(c)(2), available [here](#).

<sup>3</sup> See D.C. Official Code § 38-1804.01(c)(2), available [here](#).

<sup>4</sup> See 34 CFR § 300.600(a)(2), available [here](#).

**Q7. What is Maintenance of Effort (MOE) in the IDEA, Part B program?**

Maintenance of Effort (MOE) is a federal requirement under IDEA that requires local education agencies (LEAs) to spend the same amount of [state and/or local money](#) on the [education of children with IEPs](#) from [year-to-year](#).<sup>5</sup> For example, if an LEA spends \$1 million of local money on the education of students with IEPs one year, it generally must spend at least \$1 million the next.

To demonstrate compliance with the MOE requirement, an LEA must do two things:

1. At the beginning of the year, the LEA must budget to spend at least as much in local money on the education of children with IEPs as it spent in the most recent year for which expenditure information is available; and
2. At the end of the year, the LEA must demonstrate it actually spent at least as much local money on the education of children with IEPs as it spent in the year before.

**Q8. What are the allowable special education costs LEAs may fund with Special Education Payments under the UPSFF?**

“Allowable special education costs” means costs incurred for the following purposes:

**A. Instruction, salaries, benefits, supplies, textbooks, and other expenses including:**

- The cost of salaries and benefits of special education program teachers, regular program teachers, and teacher aides, allocated to the corresponding working time that each person devotes to special education, including services required by an individualized education program
- Teaching supplies and textbooks for special education programs
- The purchase, rental, repair, and maintenance of instructional equipment required to implement a student's individualized education program
- Professional development activities for teachers who work with, or provide services to, students with disabilities
- Contracted services, including fees paid for professional services, advice, and consultation regarding children with disabilities under the IDEA, and the delivery of special education services by public or private entities
- Transportation costs for special education instructional personnel who travel on an itinerant basis from school to school or to in-state and out-of-state individualized education program meetings

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<sup>5</sup> See 34 CFR §§ 300.203-300.205, available [here](#).



**B. Related services as defined in 34 CFR § 300.34 and supplementary aids and services as defined in 34 CFR § 300.42 including:**

- Salaries and benefits of professional supportive personnel, corresponding to the working time that each person devotes to implementing services required pursuant to an individualized education program (“IEP”) as defined in 34 CFR §300.22
- Salaries and benefits of clerical personnel who assist professional personnel in supportive services, corresponding to the working time that each person devotes to special education services or program
- Supplies for related services and supplementary aids and services
- Contracted services, including fees paid for professional advice and consultation regarding children with disabilities under the IDEA or related services and supplementary aids and services, and the delivery of such services by public or private agencies
- Transportation for special education-related services personnel and providers of supplementary aids who travel from school to school or to in-state and out-of state individualized education program meetings
- Equipment purchase, rental, repair, and maintenance required to implement related services and supplementary aids and services as required by a student's individualized education program

**C. Administrative expenses related to the direct implementation of IDEA, Part B programmatic and fiscal requirements within the public school including:**

- Salaries and benefits of staff who ensure programmatic and fiscal requirements of IDEA are being implemented, corresponding to the working time that each person devotes to the implementation of IDEA
- Contracted services, including fees paid for professional services, advice, and consultation regarding the implementation of IDEA, and the delivery of special education services to students with IEPs by public or private entities

**D. Assistive technology devices for students with IEPs, not including medical devices surgically implanted (*i.e.*, cochlear implant)**

**E. Implementation of due process hearing decisions**

**F. Implementation of compensatory education plans**

**G. Implementation of coordinated early intervening services programs (CEIS) as defined in 34 CFR § 300.226**

**H. Transition of a student back into public schools in the District who, as a result of an IEP decision or due process hearing decision, is currently attending non-public schools**

**Q9. May LEAs use Special Education Payments on attorney fees related to due process hearings?**

Generally speaking, LEAs may not use Special Education Payments on attorney fees related to due process hearings. However, there is one exemption: LEAs may use funds received under the [Special Education Compliance Fund](#) for attorneys fees related to IDEA due process hearings.<sup>6</sup> The Special Education Compliance Fund constitutes a portion of the Special Education Payment. LEAs will be informed what portion of their Special Education Payment is from Special Education Compliance Funds, at the time of receiving these funds.

LEAs may continue to use Formula Base Payments for attorneys fees related to IDEA due process hearings.<sup>7</sup>

These requirements apply to all LEAs regardless of their annual determination under IDEA or IDEA MOE status.

**Q10. What is the consequence if an LEA spends Special Education Payments on costs other than allowable special education costs?**

If an LEA fails to receive a determination of “meets requirements” and fails to meet IDEA MOE requirements and spends its Special Education Payments on costs other than allowable special education costs, then the District will withhold the equivalent amount deemed unallowable from the LEA’s next [Formula Base Payment](#).<sup>8</sup>

**Q11. Must LEAs track Special Education Payments and report on Special Education Payment expenditures?**

Yes, DCPS and public charter schools must track their Special Education Payment funds and report their expenditures to the OSSE at least once each year, as required by OSSE.<sup>9</sup> The OSSE will use these reports to determine whether:

- An LEA met the IDEA, Part B MOE requirement;<sup>10</sup>
- An LEA only used the Special Education Compliance Funds and/or Base Payments to pay for attorneys fees related to IDEA due process hearings; and
- An LEA that does not receive a determination of “meet requirements” as determined by OSSE (Q.6) or meet the IDEA MOE requirements spent Special Education Payment funds only on allowable special education costs.

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<sup>6</sup> See D.C. Official Code § 38-1804.01(c)(3), available [here](#).

<sup>7</sup> See D.C. Official Code § 38-1804.01(c)(3), available [here](#).

<sup>8</sup> See D.C. Official Code § 38-1804.01(c)(5)(B), available [here](#).

<sup>9</sup> See D.C. Official Code § 38-1804.01(d), available [here](#).

<sup>10</sup> See D.C. Official Code § 38-1804.01(e), available [here](#).

**Q12. Is there a standard template for LEAs to report their Special Education Payments?**

Yes, OSSE provides a template for LEAs to reports their Special Education Payments. The required template is provided along with this guidance.

**Q13. Who must comply with the IDEA, Part B MOE requirement?**

All LEAs that receive IDEA, Part B funding, either section 611 or section 619 grants, must comply with the IDEA, Part B MOE requirement.<sup>11</sup> In addition, the *District of Columbia’s Funding for Public Schools and Public Charter Schools Amendment Act of 2011* requires DCPS and all public charter schools that receive IDEA, Part B funding and [Special Education Payments](#) under the UPSFF to comply with the IDEA, Part B MOE requirement.<sup>12</sup> The law specifically requires public charter schools that receive Special Education Payments to comply with MOE even if they have elected DCPS as their LEA for IDEA, Part B purposes.<sup>13</sup>

**Q14. What funding sources are compared when calculating MOE?**

Under IDEA, an LEA considers either:

- The amount of “local” money the LEA spends on the education of children with IEPs; or
- The amount of combined “state” and “local” money the LEA spends on the education of children with IEPs.<sup>14</sup>

The District of Columbia does not distinguish between “state” and “local” money; therefore, LEAs should include any public, non-federal funds they spend on the education of children with IEPs.<sup>15</sup> In general, this will mean UPSFF funds, but it is possible an LEA may receive other public, non-federal funds that should be included as well. For example, if an LEA receives funds from OSSE as a result of a memorandum of understanding to provide services to children with IEPs, those funds should be included in the calculation. Also, if an LEA receives additional public funds from any DC Government entity, those funds should be included in the calculation.

If an LEA receives and spends private funds to provide services to children with IEPs, those funds should **not** be included in the calculation.

In general, federal funds **may not** be included in the MOE calculation.<sup>16</sup> In rare instances, the federal government provides funds to an LEA for which there is no accountability back to the federal

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<sup>11</sup> See 34 CFR § 300.203, available [here](#).

<sup>12</sup> See D.C. Official Code § 38-1804.01(c)(1)(A), available [here](#).

<sup>13</sup> See D.C. Official Code § 38-1804.01(c)(1)(B), available [here](#).

<sup>14</sup> See 34 CFR § 300.203(b), available [here](#).

<sup>15</sup> Please note this does not include privately donated funds. Private donations do not have to be included in the MOE calculation.

<sup>16</sup> See 34 CFR § 300.203(b)(3), available [here](#).

government. In other words, these funds are provided to the LEA with no “strings attached.” In those cases, the federal funds may be treated as “state and/or local” money for MOE purposes.<sup>17</sup>

For example, under some Impact Aid programs under the Elementary and Secondary Education Act (ESEA), LEAs receive money that they may spend however they choose, consistent with state and local requirements. For example, Impact Aid payments under section 8002 of the ESEA (Payments for Federal Property) compensate school districts for the tax revenue they lose by having non-taxable federal land in their district. A district may treat these payments as general revenue and does not need to report how the funds were spent to the federal government. Therefore, these payments **can** be treated as “state and/or local” funds for MOE purposes.

Compare these payments to Impact Aid payments under section 8003(d) of the ESEA (Payments for Federally Connected Children), which some districts receive on behalf of certain students with IEPs. These payments do have to be used for specific costs and LEAs must be able to prove to the federal government that the money was spent appropriately. In this case the payments **cannot** be treated as “state and/or local” funds for MOE purposes.

There are very few federal programs that could be included in an LEA’s MOE calculations. If you have questions about a specific program, please contact Zita Rostás at [zita.rostas@dc.gov](mailto:zita.rostas@dc.gov) or Faith Leach at [faith.leach@dc.gov](mailto:faith.leach@dc.gov).

**Q15. How should State Fiscal Stabilization Funds (SFSF) and Ed Jobs Funds be treated for purposes of MOE?**

SFSF and Ed Jobs money may be treated as “state and/or local funds” for MOE purposes in certain circumstances.

An LEA may use SFSF funds as “state and/or local funds” for MOE purposes if:

- The LEA spent the SFSF funds on an allowable special education cost (see [Q8](#)); and
- The LEA maintains auditable data demonstrating it separately accounts for SFSF funds.<sup>18</sup>

An LEA may use Ed Jobs funds as “state and/or local funds” for MOE purposes if:

- The LEA spent the Ed Jobs on an allowable special education cost (see [Q8](#)); and
- The LEA maintains auditable data demonstrating it separately accounts for Ed Jobs funds.<sup>19</sup>

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<sup>17</sup> See OSEP letter (Jan 24, 2008), available [here](#).

<sup>18</sup> See U.S. Department of Education Non-Regulatory Guidance on IDEA, Part B ARRA Funds, Q&A H-9 (Sept. 9, 2010), available [here](#).

<sup>19</sup> See U.S. Department of Education Non-Regulatory Guidance on IDEA, Part B MOE Guidance on the Education Jobs Program, Q&A B-1 (May 2011), available [here](#).

**Q16. What expenditures are considered to be for “the education of children with IEPs” that should be included in an LEA’s MOE calculation?**

Section 4003 of the *Funding for Public Schools and Public Charter Schools Amendment of Act of 2011* specifies the allowable special education costs. All of these costs, **except** the funds spent on implementation of coordinated early intervening services programs (CEIS) as defined in 34 CFR § 300.226, should be included in an LEA’s MOE calculation. These costs are listed in the chart in [Q8](#).

If an LEA is unsure how to categorize a specific special education cost, or believes a cost that is not on this list should be included in the LEA’s MOE calculation, please contact Zita Rostás at [zita.rostas@dc.gov](mailto:zita.rostas@dc.gov) or Faith Leach at [faith.leach@dc.gov](mailto:faith.leach@dc.gov).

**Q17. Should LEAs look at their total expenditures, or their per-pupil expenditures to calculate IDEA MOE?**

Both. An LEA may calculate MOE on either an aggregate or per-pupil basis.<sup>20</sup> In other words, the LEA may look at its total state and/or local spending on the education of students with IEPs from year-to-year, or its per-student spending from year-to-year.

The U.S. Department of Education’s Office of Special Education Programs (OSEP) advises that LEAs should use a consistent measure from year-to-year.<sup>21</sup> In other words, if an LEA looked at its total expenditures to satisfy MOE in 2009-2010, then it should look at total expenditures to satisfy MOE in 2010-2011. If an LEA wishes to change the way it measures MOE – from total expenditures to per-pupil expenditures or vice versa – then it should go back one year and recalculate MOE using the changed measure. In other words, if an LEA looked at its total expenditures to satisfy MOE in 2009-2010, then before switching to per-pupil expenditures in 2010-2011 the LEA should ensure it can satisfy MOE based on per-pupil spending in 2009-2010.

**Q18. What years should an LEA compare when determining MOE?**

This will depend on the most recent year for which the LEA has final expenditure data.<sup>22</sup> As discussed in [Q7](#), LEAs must calculate MOE twice.

First, at the beginning of the school year, the LEA must budget to spend at least as much in state and/or local money as it spent in the “most recent year for which expenditure information is available.”<sup>23</sup> This refers to the most recent year for which the LEA has *final* expenditure data.<sup>24</sup>

<sup>20</sup> See 34 CFR § 300.203(b), available [here](#).

<sup>21</sup> See OSEP letter (Jun. 28, 2010), available [here](#).

<sup>22</sup> See OSEP letter (Jun. 28, 2010), available [here](#).

<sup>23</sup> See 34 CFR § 300.203(b), available [here](#).

<sup>24</sup> See 34 CFR § 300.203(b), available [here](#).

For example, when the LEA develops its budget for the 2012-2013 school year, it may not have final expenditure data from 2011-2012 available. In that case, the LEA should look back to its 2010-2011 final expenditures and make sure it budgets to spend at least that amount in 2012-2013.

**EXAMPLE**

IF

Final 2010-2011 expenditures: \$1 million  
Final 2011-2012 expenditures: Unavailable

THEN

The LEA's 2012-2013 budget must equal or exceed \$1 million to comply with the first part of the IDEA, Part B MOE requirement

Second, the LEA must demonstrate it actually spent at least as much in state and/or local funds in a given year as it spent the year before. Using the example above, once final 2011-2012 expenditure data becomes available, to properly determine MOE for 2012-2013, the LEA must ensure it spent at least as much in 2012-13 as it spent in 2011-2012.

**EXAMPLE**

IF

Final 2010-2011 expenditures: \$1 million

THEN

The LEA's final 2011-2012 expenditures must equal or exceed \$1 million to comply with the second part of the IDEA, Part B MOE requirement

**Q19. How does an LEA prove it has budgeted to spend a sufficient amount of state and/or local money on the education of children with IEPs to satisfy MOE?**

When an LEA applies to OSSE for IDEA, Part B funds it must sign a series of assurances stating it will comply with various IDEA requirements, including MOE.<sup>25</sup> By signing this assurance the LEA certifies it has budgeted to spend at least as much in state and/or local money for the education of children with IEPs as it spent in the most recent year for which final expenditure data is available. Signing this assurance establishes the LEA's initial eligibility to receive IDEA, Part B funds.

**Q20. What is the consequence if an LEA does not budget to spend a sufficient amount of state and/or local money on the education of children with IEPs to satisfy MOE?**

<sup>25</sup> See 34 CFR § 300.200, available [here](#).

An LEA must provide OSSE with a credible assurance that it meets the first MOE requirement in order to establish the LEA's eligibility for IDEA, Part B funds.<sup>26</sup> An LEA that cannot sign the MOE assurance in the IDEA, Part B application is not eligible to receive IDEA, Part B funds.

**Q21. How does an LEA prove it has spent a sufficient amount of state and/or local money on the education of children with IEPs to satisfy MOE?**

The *Funding for Public Schools and Public Charter School Amendments Act of 2011* requires DCPS and public charter schools to provide OSSE with a certified report at least once each year detailing how they spent [Special Education Payments](#) under the USPF. <sup>27</sup> OSSE will use these reports to verify that LEAs satisfied the MOE requirement.<sup>28</sup> The format for the report is provided by OSSE along with this guidance.

If an LEA uses other public funding sources not included in its Special Education Payments to serve children with IEPs, it must include these in its MOE calculation.

More information about the reporting requirement is available in [Q11](#).

**Q22. What is the consequence if an LEA does not spend a sufficient amount of state and/or local money on the education of children with IEPs to satisfy MOE?**

If an LEA does not spend a sufficient amount of state and/or local money on the education of children with IEPs to satisfy MOE, the *Funding for Public Schools and Public Charter Schools Amendment Act of 2001* requires the District to withhold the amount of the violation from the LEA's next [Formula Base Payment](#) under the USPF.<sup>29</sup> The District will refund the withheld money to the U.S. Department of Education.

**EXAMPLE**

**IF**

Final 2010-2011 expenditures: \$1 million

Final 2011-2012 expenditures: \$800,000

**THEN**

The LEA has failed to maintain effort by \$200,000. The District will withhold \$200,000 from the LEA's next USPF base allocation, and will refund the money to the U.S. Department of Education.

<sup>26</sup> See OSEP letter (Jul. 26, 2006), available [here](#).

<sup>27</sup> See D.C. Official Code § 38-1804.01(d), available [here](#).

<sup>28</sup> See D.C. Official Code § 38-1804.01(e)(3), available [here](#).

<sup>29</sup> See D.C. Official Code § 38-1804.01(c)(1)(D), available [here](#).

If an LEA fails to meet MOE, its MOE target for the next year will not be reset. In other words, in the year after a violation the LEA should look back to what it *actually* spent the year when it met MOE rather than the amount the LEA spent in the year when it did not meet MOE.

**EXAMPLE**

IF

Final 2010-2011 expenditures: \$1 million

Final 2011-2012 expenditures: \$800,000

THEN

In 2012-2013 the LEA will have to spend \$1 million to meet MOE. However, the LEA failed to maintain effort by \$200,000 in 2011-2012, and the District of Columbia will withhold \$200,000 from the LEA's next UPSFF base allocation and refund it to the U.S. Department of Education.

**Q23. Are there circumstances when the LEA may budget or spend less than it did in the prior year and still meet MOE?**

Yes, there are two ways an LEA can reduce its MOE target, meaning the LEA could budget and spend less in state and/or local money on the education of children with IEPs than it did in the prior year and still comply with MOE.

*Reduction Due to Justifiable Cost Decreases*

An LEA may reduce its spending if the reduction is due to:

- The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel;
- A decrease in the enrollment of children with IEPs;
- The termination of the LEA's obligation, consistent with IDEA, Part B, to provide an exceptionally costly program of special education to a particular child because:
  - The child left the LEA;
  - The child is old enough that he/she is no longer eligible for FAPE; or
  - The child no longer needs the program of special education; or
- The termination of an expensive long-term purchase, such as acquiring equipment or constructing school facilities.<sup>30</sup>

**EXAMPLE**

IF

<sup>30</sup> See 34 CFR § 300.204, available [here](#).



An LEA spends \$2,000 per student in 2010-2011, but the next year an experienced special education teacher retires and is replaced by a less experienced teacher. As a result, the LEA's salary costs go down, and in 2011-2012 the LEA only spends \$1,900 per student.

**THEN**

The LEA has met MOE since the reduction is justified by the retirement of the special education teacher.

*Reduction Due to IDEA Flexibility Provision*

An LEA may also reduce its spending if:

- The LEA received a determination of “meets requirements” during the IDEA annual determination process under 34 CFR § 300.600(a)(2);
- OSSE determines the LEA does not have to set aside funds for early intervening services because the LEA does not have significant disproportionality;<sup>31</sup>
- The LEA's IDEA, Part B grant has increased from the prior year; and
- The LEA spends the “freed-up” state and/or local money on activities that are authorized under the Elementary and Secondary Education Act (ESEA).<sup>32</sup>

In other words, an LEA that – (1) receives a determination of “meets requirements” during the IDEA annual determination process (2) does not have significant disproportionality, and (3) receives a bigger IDEA, Part B grant than it got last year – may spend some of the state and/or local money it would have spent to meet the IDEA, Part B MOE requirement on ESEA-related expenses instead. The reduction cannot be more than 50% of the increase to the LEA's IDEA, Part B grant.

**EXAMPLE**

**IF**

2010-2011 IDEA, Part B grant: \$850,000  
2011-2012 IDEA, Part B grant: \$900,000

**THEN**

The LEA's grant has increased by \$50,000. The LEA may reduce its state and/or local spending on the education of children with IEPs by up to \$25,000 (50% of the grant increase) so long as the LEA receives a determination of “meets requirements”, does not have to set aside funds for early intervening services because of significant disproportionality, and the LEA spends the “freed-up” \$25,000 of state and/or local funds on ESEA activities.

<sup>31</sup> See 34 CFR § 300.646. Significant disproportionality means students from a particular racial/ethnic background who receive special education services are over or under represented, when compared to the overall student population with respect to being identified as a child with a disability, being placed in particular educational settings, and the incidence, duration or type of disciplinary actions, including suspensions or expulsion.

<sup>32</sup> See 34 CFR § 300.205, available [here](#).

It is important to note that taking advantage of the above flexibility affects the amount of money an LEA may reserve for early intervening services.

Most LEAs have the option to reserve up to fifteen percent of their section 611 allocation for early intervening services to students who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.<sup>33</sup> An LEA that chooses to reserve and spend funds on early intervening services must count the amount it spends toward the MOE reduction. Conversely, an LEA that chooses to reduce its level of local expenditures for MOE purposes must count the amount it reduces towards the 15% early intervening services set aside.

#### EXAMPLE

An LEA receives \$900,000 in 2010-2011 and \$1,000,000 in 2011-2012. The LEA now has two flexibility options available:

1. Because the LEA's allocation increased by \$100,000, it could reduce its state/and or local expenditures by \$50,000 (50% of \$100,000); or
2. The LEA could spend up to \$150,000 (15% of \$1,000,000) for early intervening services.

These two flexibilities interact with each other for the purposes of calculating MOE. For example:

- If the LEA chooses not to set aside any funds for early intervening services, it may reduce its state and/or local expenditures by \$50,000 ( $\$50,000 - \$0 = \$50,000$  left for reduction)
- If the LEA chooses to set aside \$150,000 (15% of 1,000,000) for early intervening services, it may not reduce its state and/or local expenditures ( $\$50,000 - \$150,000 = \$0$  left for reduction)
- If the LEA chooses to set aside \$30,000 for early intervening services, it may reduce its level of its state and/or local by \$20,000 ( $\$50,000 - \$30,000 = \$20,000$  left for reduction)

#### **Q24. Can either OSSE or the U.S. Department of Education waive the IDEA, Part B MOE requirement?**

No, neither OSSE nor the U.S. Department of Education have the authority to waive the IDEA, Part B requirement for LEAs.

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<sup>33</sup> See 34 CFR § 300.226, available [here](#). LEAs with significant disproportionality are required to set funds aside for coordinated early intervening services. See 34 CFR § 300.646.



### Appendix A: Breakdown of Special Education Payments

Under the UPSFF, Special Education Payments are generated by a variety of components. This chart provides an overview of the components that make up the Special Education Payments. The weights assigned to each of these components can be found in D.C. Official Code § 38-2905.

Level 1 Special Education	8 hours or less per week of specialized services
Level 2 Special Education	More than 8 but less than or equal to 16 hours per week of specialized services
Level 3 Special Education	More than 16 but less than or equal to 24 hours per week of specialized services
Level 4 Special Education	24+ hours per week of specialized services
Special Education Capacity Fund	To support activities required to improve the quality of special education programming available to students and to ensure that all personnel necessary to carry out IDEA, Part B pursuant to 34 CFR § 300.207, are appropriately and adequately prepared, subject to the requirements on 34 CFR § 300.156 related to personnel qualifications for teachers, related service providers, and paraprofessionals
Special Education Compliance Fund	To support activities required to address identified noncompliance with federal and local laws and regulations regarding the provision of special education services to students with disabilities
Residential	For schools that provide students with room and board in a residential setting, in addition to their instructional program
Level 1 Special Education-Residential	To support the after-hours level 1 special education needs of students living in a DC public school that provides students with room and board in a residential setting
Level 2 Special Education-Residential	To support the after-hours level 2 special education needs of students living in a DC public school that provides students with room and board in a residential setting
Level 3 Special Education-Residential	To support the after-hours level 3 special education needs of students living in a DC public school that provides students with room and board in a residential setting
Level 4 Special Education-Residential	To support the after-hours level 4 special education needs of students living in a DC public school that provides students with room and board in a residential setting
Level 1 Special Education-ESY	To support the summer school/program need for students who require extended school year

	services in their IEPs
Level 2 Special Education-ESY	To support the summer school/program need for students who require extended school year services in their IEPs
Level 3 Special Education-ESY	To support the summer school/program need for students who require extended school year services in their IEPs
Level 4 Special Education-ESY	To support the summer school/program need for students who require extended school year services in their IEPs