
DEPARTMENT OF EDUCATION**34 CFR Part 300**

RIN 1820-AB65

[Docket ID ED-2012-OSERS-0020]

**Assistance to States for the Education
of Children With Disabilities****AGENCY:** Office of Special Education and
Rehabilitative Services, Department of
Education.**ACTION:** Final rule.

SUMMARY:

maintain its level of expenditures for the education of children with disabilities, the SEA is liable in a recovery action for either the amount by which the LEA failed to maintain its level of expenditures in that fiscal year or the amount of the LEA's Part B subgrant in that fiscal year, whichever is lower.

- We made conforming changes to §§ 300.204, 300.205, and 300.208.
- We added a new "Appendix E to Part 300—Local Educational Agency Maintenance of Effort Calculation Examples".

Public Comment

In response to our invitation in the NPRM, more than 300 parties submitted

requirement, which is to ensure a continuation of at least a certain level of non-Federal expenditures for the education of children with disabilities, and would provide a long-term financial incentive for noncompliance.

We also believe that permitting an LEA to reduce expenditures for the education of children with disabilities for reasons not specifically stated in the exceptions and adjustment in section 613(a)(2)(B) and (C) of the IDEA (20 U.S.C. 1413(a)(2)(B) and (C)) would likely have a negative effect on the amount and type of special education and related services available for

children with disabilities. This result would be contrary to the overall purpose of the IDEA, which is “to ensure that all children with disabilities have available to them a

public education year in section 2n601(dd (C)

¹ All references to a “fiscal year” in these regulations refer to the fiscal year covering that school year, unless otherwise noted.

☛ : The LEA would compare the amount of local funds only spent in the comparison year and the year for which it seeks to establish compliance. The LEA is not required to maintain effort on both an aggregate and a per capita basis. For example, if the LEA spent \$100 in local funds only in FY 2016–2017 and had 10 children with disabilities, the LEA spent \$10 in local funds only on a per capita basis. Assuming the LEA met MOE in FY 2016–2017 using those two methods, that is the amount (\$10 per child with a disability) that the LEA would have to spend in FY 2017–2018 in order to meet the compliance standard using local funds only on a per capita basis, and \$100 is the aggregate amount that the LEA would have to spend in FY 2017–2018 in order to meet the compliance standard using local funds only, assuming that, in FY 2017–2018, the LEA did not take any exceptions or adjustment in §§ 300.204 and 300.205. As noted above, the LEA is required to meet the compliance standard using only one of the four methods.

☞ : None.

☞ : A commenter noted that the tables in the NPRM did not address the difficulties encountered by LEAs that wish to use the exceptions and adjustment in §§ 300.204 and 300.205, or use per capita methods.

☛ : Tables 5 through 9 address this comment. Table 5 provides an example of how an LEA may meet the compliance standard using alternate methods from year to year without using the exceptions or adjustment in §§ 300.204 and 300.205, and provides information on the following scenario. In FY 2015–2016, the LEA meets the compliance standard using all four methods. As a result, in order to demonstrate that it met the compliance standard using any one of the four methods in FY 2016–2017, the LEA must expend at least as much as it did in FY 2015–2016 using that same method. Because the LEA spent the same amount in FY 2016–2017 as it did in FY 2015–2016, calculated using a combination of State and local funds and a combination of State and local funds on a per capita basis, the LEA met the compliance standard using both of those methods in FY 2016–2017. However, the LEA did not meet the compliance standard in FY 2016–2017 using the other two methods—local funds only or local funds only on a per capita basis—because it did not spend at least the same amount in FY 2016–2017 as it did in FY 2015–2016 using the same methods.

In FY 2017–2018, the LEA may meet the compliance standard using any one

of the four methods. To meet the compliance standard using a combination of State and local funds, or a combination of State and local funds on a per capita basis, the LEA must expend at least the same amount it did in FY 2016–2017 using either of those methods, since it met the compliance standard using those methods in FY 2016–2017. Or, if the LEA seeks to meet the compliance standard using the other two methods available, local funds only or local funds only on a per capita basis, in FY 2017–2018, it must expend at least as much as it did in FY 2015–2016 using either of those methods. This is because the LEA did not meet the compliance standard using local funds only or local funds only on a per capita basis in FY 2016–2017. In FY 2016–2017, to demonstrate that it met the compliance standard using local funds only, or local funds only on a per capita basis, the LEA is required to spend at least the amount it expended in FY 2015–2016 from those sources. Per the Subsequent Years rule, the amount of expenditures from local funds only and local funds only on a per capita basis in FY 2015–2016 becomes the required level of effort in FY 2017–2018. Numbers are in \$10,000s spent for the education of children with disabilities.

TABLE 5—EXAMPLE OF HOW AN LEA MAY MEET THE COMPLIANCE STANDARD USING ALTERNATE METHODS FROM YEAR TO YEAR

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
2015–2016	* \$500	* \$950	* \$50	* \$95	10
2016–2017	400	* 950	40	* 95	10
2017–2018	* 500	900	* 50	90	10

* LEA met compliance standard using this method.

☞ : We have not changed the regulation but we have included Tables 5 through 9 to illustrate examples of how an LEA may meet the compliance or eligibility standard using alternate methods from year to year, either with or without using the exceptions or adjustment in §§ 300.204 and 300.205.

☞ : One commenter requested clarification of the two per capita methods, one based on local funds only and one based on a combination of State and local funds.

☛ : The regulations do not change the standards for meeting MOE using local funds only on a per capita basis or a combination of State and local funds on a per capita basis. The regulations continue to use the term

“per capita,” which, in context, refers to the amount per child with a disability served by the LEA, either in local funds per child with a disability or a combination of State and local funds per child with a disability.

When calculating the required level of effort on a per capita basis for the purpose of meeting the compliance standard, the LEA must determine the amount of local funds only (or a combination of State and local funds, as applicable) on a per capita basis that it expended for the education of children with disabilities, and reduce that amount by the exceptions or adjustment in §§ 300.204 and 300.205 calculated on a per capita basis. Specifically, the LEA must first divide the aggregate amount

of exceptions and the adjustment it properly takes under §§ 300.204 and 300.205 by the child count in the comparison year. The LEA must then subtract that result from the amount of local funds only (or a combination of State and local funds, as appropriate) on a per capita basis expended in the comparison year. Using other methods to determine the required level of effort (e.g., dividing the required level of aggregate effort using local funds only by the current year child count or dividing the exceptions and adjustment under §§ 300.204 and 300.205 properly taken by an LEA by the current year child count) may result in an inaccurate calculation of the required level of effort.

Table 6 provides an example of how an LEA may meet the compliance standard using alternate methods from year to year in years that the LEA used the exceptions or adjustment in §§ 300.204 and 300.205, including using the per capita methods. Numbers are in \$10,000s spent for the education of children with disabilities.

TABLE 6—EXAMPLE OF HOW AN LEA MAY MEET THE COMPLIANCE STANDARD USING ALTERNATE METHODS FROM YEAR TO YEAR AND USING E

“headcount” or a full-time equivalent (FTE) because FTE is more closely related to the cost of services than headcount.

D : By referencing FTE, we assume that the commenter was referring to using a per capita method of calculating effort that measures the cost per hour of special education and related services an LEA provides to children with disabilities, rather than the amount spent per child with a disability, in a particular fiscal year. Using a measure that depends on the cost of FTEs could allow LEAs to meet MOE by reducing the number of hours of special education and related services an LEA provides to children with disabilities. We therefore decline to adopt this method of measuring effort. This decision is consistent with the position we have taken on the meaning of “per capita.” As explained in the

in the preamble to the 2006 IDEA Part B regulations, “[w]e do not believe it is necessary to include a definition of ‘per capita’ . . . because we believe that, in the context of the regulations, it is clear that we are using this term to refer to the amount per child with a disability served by the LEA.” See 71 FR 46540, 46624 (Aug. 14, 2006).

None.

Some commenters asked for clarification on how to determine the amount an LEA must spend in local funds only or local funds only on a per capita basis to meet the compliance and eligibility standards if the LEA has never spent local funds for the education of children with disabilities in the past. The commenters asked whether these LEAs may use “zero” local funds as the amount spent in the comparison year and noted that, if this is the case, these LEAs will always meet the compliance and eligibility standards using local funds only, even in years when the level of expenditures for the education of children with disabilities made from a combination of State and local funds, or a combination of State and local funds on a per capita basis, is lower than the level of those expenditures in the comparison year.

D : LEAs, including an LEA that has not spent any local funds for the education of children with disabilities since the MOE requirement was enacted in 1997, are permitted to use any of the four methods to meet the compliance and eligibility standards. An LEA that has spent \$0 in local funds for the education of children with disabilities can meet the compliance and eligibility standards by continuing to budget and spend \$0 in local funds for the education of children with

disabilities. However, the Department believes that there are very few instances where LEAs have expended \$0 in local funds for the education of children with disabilities. We remind LEAs that, when demonstrating that they meet the compliance and eligibility standards using any of the four methods, they must be able to provide auditable data regarding their expenditures from the relevant sources in all relevant years. Simply because an LEA does not account for local funds separately from State funds does not mean that the LEA expends \$0 in local funds for the education of children with disabilities. We also remind LEAs that, regardless of which method they use to demonstrate that they meet the standards, they must continue to make a free appropriate public education (FAPE) available to all eligible children with disabilities.

None.

One commenter suggested that the MOE requirement be changed from a dollar requirement to a requirement that LEAs maintain only the same percentage of expenditures for the education of children with disabilities compared to the overall education budget.

D : Section 613(a)(2)(A)(iii) of the IDEA (20 U.S.C. 1413(a)(2)(A)(iii)) states that, except as provided in section 613(a)(2)(B) and (C) of the Act, Part B funds provided to an LEA must not be used to 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. Substituting a requirement that an LEA not reduce the percentage of its total budget spent for the education of children with disabilities would not ensure that the LEA would meet the requirement in the statute, which prohibits a reduction in the level of expenditures for the education of children with disabilities, and not a percentage of the overall education budget. In addition, this approach does not provide protection for children with disabilities when the overall amount of the education budget drops. Therefore, the Department declines to make this change.

None.

A commenter stated that the Subsequent Years rule does not permit an LEA to take into account that the LEA met the compliance standard using a different method in a preceding fiscal year and would, for example, prevent an LEA from meeting the compliance standard using local funds cPj T* (funone.)Tj , of expenditur fiscal year a. Substituting a requiremenChanges:

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☞ : None.
 ☞ : One commenter recommended that the determination that an LEA receives pursuant to section 616 of the IDEA (20 U.S.C. 1416) be considered when deciding whether an LEA met the MOE compliance standard because that determination is based on IDEA Part B compliance requirements and is an indication that the LEA implemented the requirements of the IDEA.

☞ : Section 616 of the IDEA includes provisions related to monitoring, technical assistance, and enforcement of the IDEA. Pursuant to section 616(a)(1)(C) of the IDEA and 34 CFR 300.600(a), each State must determine annually whether an LEA meets the requirements and purposes of the IDEA. The commenter's suggestion is not consistent with section 613(a)(2)(A)(iii) of the IDEA (20 U.S.C. 1413(a)(2)(A)(iii)), which requires LEAs to maintain effort. Compliance with the MOE provision is a distinct requirement that cannot be met through compliance with other IDEA requirements or through meeting results targets.

☞ : None.
 ☞ : One commenter recommended that we add a new subsection to proposed § 300.203 entitled "Budget and Expenditure Categories" that would define or reference the terms "education" and "related services." The commenter recommended that the regulations allow LEAs to compare either "education" expenditures or "education and related services" expenditures to meet the compliance and eligibility standards. The commenter stated that, in States where certain federally-defined "related services" are considered "education" pursuant to State law, an annual MOE comparison of "education and related services" may be preferable. The commenter stated that, in that instance, the match provided in order to receive the Federal Medicaid reimbursement should be included in the calculation.

☞ : The Department disagrees that the regulations should include definitions of these terms. The terms "special education" and "related services" are defined in §§ 300.39 and 300.34, respectively. When calculating the amount an LEA spends for the education of children with disabilities, the LEA must include expenditures for related services, regardless of whether a State considers certain federally-defined related services as education pursuant to State law. LEAs must include the amount of local only, or State and local, funds spent for the education of children with disabilities when calculating the level of effort required to

meet the eligibility and compliance standards, even if those local only, or State and local, funds are also used to meet a matching requirement in the Medicaid program. We believe the regulations adequately address the expenditures that may be included in the MOE calculations, and therefore decline to add a new subsection addressing specific budget and expenditure categories.

☞ : None.
 ☞ : We received many comments about proposed § 300.203(a)(2)(ii), which provided that the comparison year for an LEA that seeks to establish compliance using local funds only, or local funds only on a per capita basis, is "the most recent fiscal year for which the LEA met the MOE compliance standard based on local funds only, even if the LEA also met the MOE compliance standard based on State and local funds. . . ." Some commenters stated that the comparison year must always be the "preceding fiscal year" because that is the language in the statute. Other commenters suggested that proposed subsection (a)(1) include the language "even if the LEA also met the MOE compliance standard based on State and local funds. . . ." A few commenters stated that, in almost all circumstances, the baseline for MOE when using expenditures of local funds only will be the year of the highest level of expenditures of local funds only, even if that level was not from the preceding fiscal year, and even if the LEA met MOE in the preceding fiscal year using a different method.

☞ : We agree with the commenters that, when an LEA seeks to meet the compliance standard using local funds only, or local funds only on a per capita basis, the comparison year should align with the language in section 613(a)(2)(A)(iii) of the IDEA (20 U.S.C. 1413(a)(2)(A)(iii)), which is "the preceding fiscal year." Using the same comparison year for local funds only and for State and local funds will simplify the requirement for LEAs, SEAs, and auditors, which should result in increased compliance and enforcement. Therefore, we changed the comparison year for meeting the compliance standard using local funds only in proposed § 300.203(a)(2)(ii) to "the preceding fiscal year" from "the most recent fiscal year for which the LEA met the MOE compliance standard based on local funds only, even if the LEA also met the MOE compliance standard based on State and local funds."

However, because we are adopting the Subsequent Years rule in § 300.203(c), the Department is, in effect, defining "the preceding fiscal year" to mean the last fiscal year in which the LEA met MOE, regardless of whether the LEA is seeking to establish compliance based on local funds only, or based on State and local funds. Because our change affects the comparison year for the MOE calculation using local funds only, the provision in proposed § 300.203(a)(2)(iii), which addresses the comparison year if the LEA has not previously met the MOE compliance standard based on local funds only, is no longer necessary.

With regard to the comment that the comparison year when using local funds only, or local funds only on a per capita basis, will usually be the year of the highest level of local funds only expenditures, the final regulations at § 300.203(b)(2) provide that, regardless of the method used, the comparison year is always the preceding fiscal year. However, the comparison year is subject to the Subsequent Years rule in § 300.203(c), which means that, if the LEA did not maintain effort in the preceding fiscal year using local funds only, the required amount to meet the MOE compliance standard using local funds only is the amount that would have been required in the absence of that failure, and not the LEA's reduced level of local funds only expenditures.

☞ : We have revised final § 300.203(b)(2) to specify that the comparison year, regardless of the method used, is the preceding fiscal year. We also removed proposed § 300.203(a)(2)(iii).

☞ : One commenter questioned the language in proposed § 300.203(a)(2)(i) and (ii) that permitted LEAs to meet the compliance standard using local funds only and the combination of State and local funds. The commenter stated that having two standards imposes an unnecessary burden on SEAs and LEAs, which could result in additional misapplication of the MOE compliance standard.

☞ : The Department agrees that proposed § 300.203(a)(2)(i) and (ii) could benefit from additional clarification and that confusion will not promote compliance. Therefore, we have revised final § 300.203(b)(2) (proposed § 300.203(a)(2)(i) and (ii)) to state the compliance standard more clearly.

However, the option to meet the compliance standard based on local funds only or a combination of State and local funds is not new. The 1999 IDEA Part B regulations provided additional flexibility to LEAs in the

event of increased funding from State sources by permitting LEAs to meet MOE based on State and local funds, and the 2006 IDEA Part B regulations maintained that language. As explained in the

in the preamble to the 1999 IDEA Part B regulations, if a State increases funding to LEAs to reduce the fiscal burden on local government, an LEA may not need to continue to put the same amount of local funds toward expenditures for the education of children with disabilities in order to meet the MOE requirement. See 64 FR 12406, 12571 (Mar. 12, 1999). However, if a State increases funding to an LEA, the LEA should not be able to replace any or all of its local funds with State funds unless the combination of State and local funds is not at least equal to the amount expended from the same source in a preceding fiscal year (subject to the Subsequent Years rule), as this would result in reductions in expenditures not contemplated by the statute.

We have revised final § 300.203(b)(2) to state the compliance standard more clearly and to specify that the comparison year, regardless of the method used, is the preceding fiscal year.

One commenter asked for clarification of the relationship between the amount by which an LEA is permitted to reduce its expenditures pursuant to §§ 300.204 and 300.205 and the amount the LEA must spend to meet the compliance standard in a future fiscal year. The commenter asked how the threshold for future compliance using local funds only or a combination of State and local funds is affected if an LEA reduces its expenditures in an amount less than the maximum amount permitted by §§ 300.204 and 300.205.

The LEA's actual level of expenditures for the education of children with disabilities in a preceding fiscal year, and not the reduced level of expenditures that the LEA could have spent had it taken all of the exceptions and the adjustment permitted by §§ 300.204 and 300.205, is the level of expenditures required of the LEA in a future fiscal year (which may be affected by the Subsequent Years rule in § 300.203(c)). For example, in FY 2015–2016, an LEA could have reduced its expenditures by \$100,000 (from \$2,100,000 to \$2,000,000) by taking all of the exceptions permitted by § 300.204. However, this LEA actually spent \$2,025,000 in FY 2015–2016. Therefore, this LEA only reduced its expenditures by \$75,000. In FY 2016–

2017, the LEA must spend at least \$2,025,000 if it chooses to use the same

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Part B grant or subgrant funds by the end of the fiscal year for which Congress appropriated the funds, they may obligate those funds during a carryover period of one additional year. Therefore, SEAs and LEAs must generally keep records to show compliance with the MOE requirement for a minimum of five years. SEAs and LEAs have the discretion to keep the records longer than the required retention period if necessary to meet State and local data retention requirements.

The Department recognizes that there is confusion about the information and data that LEAs and SEAs must maintain in order to meet the eligibility and compliance standards. In addition to the minimum five-year record retention requirement discussed above, an LEA that wishes to retain the flexibility to use any of the four methods to meet the MOE requirement in a particular fiscal year must have data and information that allow the LEA to determine the

fiscal year for which information is available. When an LEA is budgeting for the education of children with disabilities, the LEA selects a method by which it intends to meet the eligibility standard. The LEA identifies the amount it spent for the education of children with disabilities using that same method in the most recent fiscal year for which information is available. 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.

Tables 7 and 8 demonstrate how an LEA could meet the eligibility standard over a period of years using different methods from year to year. These tables assume that the LEA did not take any of the exceptions or adjustment in §§ 300.204 and 300.205. Numbers are in \$10,000s budgeted and spent for the education of children with disabilities.

TABLE 7—EXAMPLE OF HOW AN LEA MAY MEET THE ELIGIBILITY STANDARD IN 2016–2017 USING DIFFERENT METHODS

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
2014–2015	*\$500	*\$1,000	*\$50	*\$100	10	Final information not available at time of budgeting for 2016–2017. When the LEA submits a budget for 2016–2017, the most recent fiscal year for which the LEA has information is 2014–2015. It is not necessary for the LEA to consider information on expenditures for a fiscal year prior to 2014–2015 because the LEA maintained effort in 2014–2015. Therefore, the Subsequent Years rule in § 300.203(c) is not applicable.
2015–2016 .....	.....	.....	.....	.....	.....
How much must the LEA budget for 2016–2017 to meet the eligibility standard in 2016–2017?	500	1,000	50	100	.....

* The LEA met the compliance standard using all 4 methods.

TABLE 8—EXAMPLE OF HOW AN LEA MAY MEET THE ELIGIBILITY S

TABLE 8—EXAMPLE OF HOW AN LEA MAY MEET THE ELIGIBILITY STANDARD IN 2017–2018 USING DIFFERENT METHODS AND THE APPLICATION OF THE SUBSEQUENT YEARS RULE—Continued

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
						However, if the LEA seeks to use local funds only, or local funds only on a per capita basis, to meet the eligibility standard, the LEA must use information on expenditures for a fiscal year prior to 2015–2016 because of the subsequent years rule. That is, the LEA must deter-

* LEA met MOE using this method.

None.

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5.514 0 Td (Section 613(a) of the IDEA)Tj -6.514 -1.133 Td (20 U.S.C. 1413(a)) provides s on)Tj cal standard for an ac's budgets for the education of children with disabilities at least s on same total

2016–2017, the budget year. We agree with the commenters that the eligibility standard should permit LEAs to take into consideration the exceptions and

adjustment in the intervening fiscal year(s) and the budget year. Table 9 provides an example of how an LEA may consider the exceptions and

adjustment in §§ 300.204 and 300.205 when budgeting for the expenditures for the education of children with disabilities.

TABLE 9—EXAMPLE OF HOW AN LEA MAY MEET THE ELIGIBILITY STANDARD USING EXCEPTIONS AND ADJUSTMENT IN §§ 300.204 AND 300.205, 2016–2017

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
Actual 2014–2015 expenditures.	* \$500	* \$1,000	* \$50	* \$100	10	The LEA met the compliance standard using all 4 methods.* LEA uses the child count number from the comparison year (2014–2015).
Exceptions and adjustment taken in 2015–2016.	¥ 50	¥ 50	¥ 5	¥ 5	.....
Exceptions and adjustment the LEA reasonably expects to take in 2016–2017.	¥ 25	¥ 25	¥ 2.50			

must clarify whether a State must receive a detailed special education budget from each LEA outlining how the LEA has taken the exceptions and adjustment in §§ 300.204 and 300.205 or whether the State must receive an overall budgeted amount from the LEA for the education of children with disabilities for the upcoming fiscal year.

• : The requirement that, in order to find an LEA eligible for an IDEA Part B subgrant award for a fiscal

• : If an SEA determines that an LEA does not meet the MOE eligibility standard using any of the four methods in final § 300.203(a) (proposed § 300.203(b)), the SEA must provide notice that the LEA is not eligible for an IDEA Part B subgrant, as required by § 300.221(a). The SEA must also provide the LEA with reasonable notice and an opportunity for a hearing, pursuant to § 300.221(b). If the SEA determines that the LEA is not eligible to receive a Part B subgrant for that fiscal year, the SEA retains the amount of Part B funds that the LEA would have received. 34 CFR 300.227(a)(1). The SEA would then be required to provide special education and related services directly to children with disabilities residing in the area served by that LEA. 34 CFR 300.227(a)(1).

• : None.

• : None.

• : Current § 300.203(b)(3) provides that SEAs and LEAs may not consider any expenditures made from funds provided by the Federal government for which the SEA and LEA are required to account to the Federal government in determining an LEA's compliance with current § 300.203(a). While the proposed regulations included this requirement in the compliance standard in proposed § 300.203(a)(3), the proposed regulations did not include this requirement in the eligibility standard. This was an oversight. To ensure that this requirement applies to both the eligibility and compliance standards, we added § 300.203(a)(3).

• : We added new § 300.203(a)(3) to require that 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 eligibility standard in § 300.203(a)(1).

Failure To Maintain Effort and Consequence, § 300.203(d)

• : One commenter stated that proposed § 300.203(d) is based on a misreading of section 452 of GEPA (20 U.S.C. 1234a). The commenter stated that it is the responsibility of the LEA, rather than the SEA, to return any funds. Another commenter asked if an SEA has the right to seek recovery of funds from the LEA and requested that this right be included in the final regulation.

• : The liability of the SEA in a recovery action if an LEA fails to meet the compliance standard is not new. The SEA is responsible for ensuring that LEAs receiving an IDEA Part B subgrant comply with all applicable requirements of that statute and its implementing regulations, including the MOE requirement. If an LEA fails to meet the MOE requirement in a particular fiscal year, the Department has authority to take steps to recover the appropriate amount of funds from the SEA.

Section 452(a)(1) of GEPA (20 U.S.C. 1234a(a)(1)) provides that the Department may recover funds if a grantee has made an unallowable expenditure of funds or has otherwise failed to discharge its obligation to account properly for funds under the grant. Under IDEA Part B, it is the State (operating through the SEA), and not the LEA, that is the Department's grantee. As such, the authority granted to the Department pursuant to GEPA specifically authorizes recovery of funds from the SEA. Section 453(a)(1) of GEPA (20 U.S.C. 1234b(a)(1)) provides that the measure of recovery in such a circumstance is an amount that is proportionate to the extent of the harm that the violation caused to an identifiable Federal interest associated with the program under which the recipient received the award. An identifiable Federal interest includes, but is not limited to, compliance with expenditure requirements and conditions, such as maintenance of effort. Section 453(a)(2) of GEPA (20 U.S.C. 1234b(a)(2)). Accordingly, when an SEA fails to ensure that an LEA has met the compliance standard in final § 300.203(b), the SEA, not the LEA, is liable in a recovery action under these provisions for the amount by which the LEA failed to maintain its level of expenditures, or the amount of the LEA's Part B IDEA subgrant, whichever is lower.

The SEA, in turn, following applicable State procedures, could seek reimbursement from the LEA. See July 26, 2006, letter to Ms. Carol Ann Baglin, available at [http://www.ed.gov/idea/060726](#).

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IDEA Part B funds actually spent by the
LEA in the fiscal year in which the LEA



(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and, taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing these final regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, or tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. In conducting this analysis, the Department examined the extent to which the changes made by these proposed regulations would add to or reduce the costs to States, LEAs, and others, as compared to the costs of implementing the current Part B

program regulations. Based on the following analysis, the Secretary has concluded that the changes could result in reduced costs for States and LEAs to the extent that increased understanding of the MOE requirement and use of all four methods to demonstrate that LEAs met MOE would result in States making fewer repayments to the Department and seeking fewer recoveries from LEAs. However, there is also the potential for additional costs for States and LEAs to the extent that LEAs are required to increase expenditures in the year following a failure to meet the MOE provisions under Part B of the Act or if a State or LEA incorrectly calculated MOE in a preceding year. The Secretary believes that the benefits of ensuring that adequate resources are available to provide FAPE for children with disabilities are likely to outweigh any costs to LEAs that violated the MOE requirement in the preceding year and do not plan to restore funding in the subsequent year to the level they should have maintained in the preceding year.

300.203

The effect of the final regulations on LEAs will depend on: (1) The degree of understanding by States and LEAs about the eligibility and compliance standards and the ability that the LEAs have to meet one of four methods; and (2) the likelihood that LEAs would violate the MOE requirement in any given year and seek to maintain funding at the reduced level in subsequent years. One possible source of information that could be used to estimate the effect of the final regulations on LEAs is data on previous findings of LEA violations. However, as

described in section 300.203, the Department has limited information on LEA violations. States are responsible for monitoring LEA compliance with the MOE requirement and resolving any audit findings in this area, but States are not required to report the number of LEAs that violated the MOE requirement, the basis of the violations, or the amount of funding involved.

Other sources of information on the likely effects of the final regulations are audit reports and OSEP’s fiscal monitoring of States’ implementation of the current regulations. OSEP’s fiscal monitoring, in conjunction with the Department’s Office of Inspector General’s (OIG) audit findings and reports, have identified a number of problems with State administration of the MOE requirement under the current regulations, suggesting that there is confusion about the MOE requirement and a lack of clarity in the existing regulations. Specifically, OSEP has

found that at least 40 percent of States have policies and procedures that are not consistent with how States should determine eligibility for, or compliance with, the MOE requirement. Most notably, it appears that some States have not allowed LEAs to use all four methods to demonstrate that they have met the MOE requirement for purposes of eligibility or compliance determinations, including the method that allows the LEA to demonstrate that it met the MOE requirement on the basis of local funds only. There is also some indication that States may have used an incorrect comparison year when LEAs made a local-to-local comparison.

In years in which States did not allow the LEAs to use all four methods to demonstrate they met MOE, it is possible that LEAs budgeted for, and expended, more than they would have if both States and LEAs had understood that they had flexibility to use any of the four methods. In these instances, the clarification made in the final regulations will result in a reduction in future expenditures on the part of LEAs. Additionally, in instances in which States did not appropriately allow the LEAs to use any of the four methods in meeting MOE, the State may have sought to recover funds from LEAs or made unnecessary repayments to the Department. Clarifying that all four methods may be used for MOE determinations should result in States making fewer repayments to the Department and seeking fewer recoveries from LEAs.

Alternatively, in those cases in which States may be allowing LEAs to use an incorrect comparison year when using the local funds only method, clarifying the comparison year may result in increased expenditures by LEAs. For example, in its May 20, 2013 Alert Memorandum, the OIG raised concerns about the comparison years used by the State of California in determining MOE compliance. According to that memorandum, the State used an incorrect comparison year when determining that two LEAs met the MOE requirement using local funds only method. Specifically, California allowed the LEAs that had never relied on local funds only to meet the MOE requirement to use a comparison year from three years earlier, instead of requiring a comparison of expenditures made with local funds only to the preceding fiscal year. In this case, the clarification made by the final regulations will require increased LEA expenditures. We do not know the extent to which the use by States and LEAs of incorrect comparison years has permitted lower expenditures than

would be required under the final regulations, or, alternatively, the extent to which using the incorrect comparison year has resulted in higher expenditures. However, in general, the findings made during fiscal monitoring demonstrating that States are providing less flexibility to LEAs than is allowable under the law suggest that the clarifications included in these regulations would reduce costs for both LEAs and States.

The regulations also specifically address the level of expenditures required by an LEA in the fiscal years following a fiscal year in which an LEA violated the MOE requirement. Specifically, the final regulations clarify that, in a fiscal year following a fiscal year in which the LEA failed to meet MOE, the required level of expenditures is the level of expenditures in the last fiscal year in which the LEA met the MOE requirement, not the reduced level of expenditures in the preceding fiscal year (the Subsequent Years rule).

We believe that this clarification in the regulations will improve State administration of the program, and that it is consistent with the IDEA and in the best interest of children with disabilities. We do not expect this change to have a significant impact on LEA expenditures in the near term based on available data concerning the extent of LEA violations and the likelihood of future violations. However, this change would eliminate the risk, under the current regulations, that State policy could permit LEAs that reduce spending in violation of the MOE requirement to maintain the reduced level of expenditures in subsequent years.

The Department typically learns of an LEA violation in conjunction with its review of audit findings. In the relatively few instances in which the Department has issued program determination letters to States concerning audit findings about LEA failure to maintain the appropriate level of effort, most of the findings concerned the absence of an effective State system for monitoring MOE rather than specific MOE violations.

Since 2004, the only program determination letter that identified specific questioned costs for LEA failure to meet MOE involved Oklahoma. In December 2006, the Department issued a program determination letter to the Oklahoma SEA seeking recovery of \$583,943.29 expended under IDEA Part B due to audit findings that 76 LEAs had not met their required level of effort for funds in Federal fiscal Year (FFY) 2003. In School Year (SY) 2009–2010, Oklahoma reported having 532 LEAs;

accordingly, approximately 14 percent of the State's LEAs were affected by these audit findings. After reviewing additional materials provided by the State that supported the application of the MOE exceptions in § 300.204, the Department reduced the amount of its determination to \$289,501.76. The final claim against Oklahoma was settled for \$217,126.32.

We also searched the Federal Audit Clearinghouse for information about single audits of Federal awards conducted by States or private accounting firms of LEAs that expend \$500,000 or more in a year in Federal award funds, as required by Office of Management and Budget (OMB) Circular A–133. The Federal Audit Clearinghouse is located at the following link:

<http://www.auditclearinghouse.gov/> / 1400. We searched for audit findings in response to area “G” of the compliance supplement to OMB Circular A–133, which relates to “Matching, Level of Effort, and Earmarking,” for audits related to Code of Federal Domestic Assistance section 84.027 (funds awarded under section 611 of the IDEA). Single audits of Federal awards are not available for all LEAs through the Federal Audit Clearinghouse, but there is information on single audits for 9,024 LEAs for FY 2009, which represents approximately 60 percent of LEAs.

Our search identified 25 audits that contained findings related to section G of the compliance supplement, four of which were accompanied by audit reports that included questioned costs related to failure to achieve the required MOE. Only two of the four audits specified amounts of questioned costs, for \$10,428 and \$153,621.53, respectively. Although these findings do not necessarily represent all violations of the MOE requirement, both the small number and size of questioned costs related to failure to meet this requirement suggest that MOE violations are not extensive. Audit findings for fiscal years 2007, 2008, 2010, and 2011 (to the extent available) were generally consistent with the findings for 2009.

Another source of information for estimating the likelihood of future MOE violations are data on the extent to which LEAs have reduced expenditures pursuant to the new flexibility provided in the 2004 amendments to the IDEA. Pursuant to section 613(a)(2)(C) of the IDEA, for any fiscal year in which an LEA receives an allocation under section 611(f) that exceeds its allocation for the previous fiscal year, an LEA that otherwise meets the requirements of the IDEA may reduce the level of

expenditures that are otherwise required to meet the MOE requirement by not more than 50 percent of the amount of the increased allocation. Since May 2011, States have been reporting the amount that each LEA received in an IDEA subgrant under section 611 or section 619, whether the State had determined that the LEA or educational service agency (ESA) had met the requirements of Part B of the IDEA, and whether each LEA or ESA had reduced its expenditures pursuant to § 300.205.

Data are available at <http://www.fda.gov/monitoring/712> (Table 8 LEA-level files, revised 2/29/12, accessed 11/03/14).

The data we have collected to date include reductions taken in the year in which LEAs were most likely to make reductions because of the availability of an additional \$11.3 billion for formula grant awards under the Grants to States program provided under the American Recovery and Reinvestment Act of 2009 (ARRA). Because these additional funds increased the annual allocation to most LEAs in FFY 2009 over FFY 2008, LEAs meeting conditions established by the State and the Department were permitted to reduce the level of support they would otherwise be required to provide during SY 2009–2010 by up to 50 percent of the amount of the increase.

Of the 14,936 LEAs that received allocations under section 611 in FFY 2008 and FFY 2009, States reported that 12,061 received increased allocations under section 611 and met other conditions so that they were eligible to reduce their level of effort. Notably, only 4,237 LEAs (or 36 percent) reported that they reduced their level of effort. If they met the conditions, LEAs were permitted to reduce effort by up to 50 percent of the increase in their allocation, but they typically reduced spending only by 38 percent.

Larger LEAs were more likely to reduce expenditures than LEAs in general. For the 100 largest LEAs, based on their FFY 2008 allocations under section 611, 31 of the 51 LEAs that were eligible to reduce expenditures actually did so, and these LEAs reduced expenditures by an average of 73 percent of the allowable amount.

Of the 4,237 LEAs that reported reducing expenditures, only 32 had been determined to have not met the requirements of IDEA Part B and may have violated the MOE requirement, unless one of the exceptions to the MOE requirement in § 300.204 were applicable. The combined amount of MOE reductions for these LEAs was \$19,304,506, with a median reduction of \$745. One of these LEAs reported a

reduction of \$18,358,631, which represents 41 percent of the increase in that LEA's allocation from the previous year; but the reductions that were taken by the remaining LEAs were relatively small.

The combined amount by which eligible LEAs in the 50 States, the District of Columbia, and Puerto Rico could have reduced their level of effort in SY 2009–2010 was \$5.6 billion, but the actual combined reduction was only 27 percent of that amount, or \$1.5 billion. Because most LEAs did not reduce expenditures when they had an opportunity to do so, which would have led to an allowable reduction of their level of effort required in future years, it is reasonable to assume that a smaller number of LEAs would undertake reductions that constitute violations of the MOE requirement. We believe that it is highly unlikely that the 4,205 LEAs that met the requirement of section 613(a)(2)(C) of the IDEA and reduced their level of effort would seek further reductions that would violate the MOE requirement because they legitimately lowered their own required level of effort when they made those previous reductions.

Based on available audit findings and data, the Department believes that LEAs generally are unlikely to reduce expenditures in violation of the MOE requirement. Moreover, we believe that the requirement that LEAs make FAPE available to all eligible children with disabilities provides another critical protection against unwarranted reductions of expenditures to support education for children with disabilities. However, to ensure that State policy and administration of the MOE requirement are consistent with the Department's position on the required level of future expenditures in cases of LEA violations, we think that it is critical to change the regulations to clearly articulate the Department's interpretation of the law.

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Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), we have assessed the potential information collections in these proposed regulations that would be subject to review by OMB (Report on IDEA Part B Maintenance of Effort Reduction (§ 300.205(a)) and Coordinated Early Intervening Services (§ 300.226)) (Information Collection 1820–0689). In conducting this analysis, the Department examined the extent to which the amended regulations would add information collection requirements for public agencies. Based on this analysis, the Secretary has concluded that these amendments to the Part B

regulations would not impose additional information collection requirements.

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of the Department's specific plans and actions for this program.

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotope, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.fdsys.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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(Catalog of Federal Domestic Assistance Number 84.181)

List of Subjects in 34 CFR Part 300

Administrative practice and procedure, Education of individuals with disabilities, Elementary and secondary education, Equal educational opportunity, Grant programs—education, Privacy, Private schools, Reporting and recordkeeping requirements.

Dated: April 9, 2015.

Arne Duncan,

For the reasons discussed in the preamble, the Secretary amends part 300 of title 34 of the Code of Federal Regulations as follows:

PART 300—ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

■ 1. The authority citation for part 300 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3, 1406, 1411–1419, 3474, unless otherwise noted.

■ 2. Section 300.203 is revised to read as follows:

§ 300.203 Maintenance of effort.

(a) (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) **Standard for LEAs with reduced level of expenditures.** (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) **Standard for LEAs that fail to meet MOE compliance standard.** (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) **Standard for LEAs that fail to maintain MOE compliance standard.** 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))

§ 300.204 [Amended]

■ 3. Section 300.204 is amended by removing, from the introductory text, the citation “§ 300.203(a)” and adding, in its place, the citation “§ 300.203(b)”.

§ 300.205 [Amended]

■ 4. Section 300.205 is amended by removing, from paragraph (a), both instances of the citation “§ 300.203(a)”, and adding, in both places, the citation “§ 300.203(b)”.

§ 300.208 [Amended]

■ 5. Section 300.208 is amended by removing, from paragraph (a), the citation “300.203(a)” and adding, in its place, the citation “300.203(b)”. Appendix E to Part 300 [Redesignated as Appendix F to Part 300]

■ 6. Appendix E to part 300 is redesignated as Appendix F to part 300.

■ 7. A new Appendix E is added to read as follows:

Appendix E To Part 300—Local Educational Agency Maintenance of Effort Calculation Examples

The following tables provide examples of calculating LEA MOE. Figures are in \$10,000s. All references to a “fiscal year” in these tables refer to the fiscal year covering that school year, unless otherwise noted.

Tables 1 through 4 provide examples of how an LEA complies with the Subsequent Years rule. In Table 1, for example, an LEA spent \$1 million in Fiscal Year (FY) 2012–2013 on the education of children with disabilities. In the following year, the LEA was required to spend at least \$1 million but spent only \$900,000. In FY 2014–2015, therefore, the LEA was required to spend \$1 million, the amount it was required to spend in FY 2013–2014, not the \$900,000 it actually spent.

TABLE 1—EXAMPLE OF LEVEL OF EFFORT REQUIRED TO MEET MOE COMPLIANCE STANDARD IN YEAR FOLLOWING A YEAR IN WHICH LEA FAILED TO MEET MOE COMPLIANCE STANDARD

Fiscal year	Actual level of effort	Required level of effort	Notes
2012–2013	\$100	\$100	LEA met MOE.
2013–2014	90	100	LEA did not meet MOE.
2014–2015 .....	.....	100	Required level of effort is \$100 despite LEA's failure in 2013–2014.

Table 2 shows how to calculate the required amount of effort when there are

consecutive fiscal years in which an LEA does not meet MOE.

TABLE 2—EXAMPLE OF LEVEL OF EFFORT REQUIRED TO MEET MOE COMPLIANCE STANDARD IN YEAR FOLLOWING CONSECUTIVE YEARS IN WHICH LEA FAILED TO MEET MOE COMPLIANCE STANDARD

Fiscal year	Actual level of effort	Required level of effort	Notes
2012–2013	\$100	\$100	LEA met MOE.
2013–2014	90	100	LEA did not meet MOE.
2014–2015	90	100	LEA did not meet MOE. Required level of effort is \$100 despite LEA's failure in 2013–2014.
2015–2016 .....	.....	100	Required level of effort is \$100 despite LEA's failure in 2013–2014 and 2014–2015.

Table 3 shows how to calculate the required level of effort in a fiscal year after the year in which an LEA spent more than the required amount on the education of children with disabilities. This LEA spent \$1.1 million in FY 2015–2016 though only \$1 million was required. The required level of effort in FY 2016–2017, therefore, is 90.

TABLE 3—EXAMPLE OF LEVEL OF EFFORT REQUIRED TO MEET MOE COMPLIANCE STANDARD IN YEAR FOLLOWING YEAR IN WHICH LEA MET MOE COMPLIANCE STANDARD

Fiscal year	Actual level of effort	Required level of effort	Notes
2012–2013	\$100	\$100	LEA met MOE.
2013–2014	90	100	LEA did not meet MOE. 90

TABLE 5—EXAMPLE OF HOW AN LEA MAY MEET THE COMPLIANCE STANDARD USING ALTERNATE METHODS FROM YEAR TO YEAR—Continued

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
2017–2018	* 500	900	* 50	90	10

* LEA met compliance standard using this method.

Table 6 provides an example of how an LEA may meet the compliance standard using alternate methods from year to year in years in which the LEA used the exceptions or adjustment in §§ 300.204 and 300.205, including using the per capita methods.

TABLE 6—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

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
2015–2016	\$500 *	\$950 *	\$50 *	\$95 *	10
2016–2017	400	950 *	40	95 *	10
2017–2018	450 *	1,000 *	45 *	100 *	10
	<p>In 2017–2018, the LEA was required to spend at least the same amount in local funds only that it spent in the preceding fiscal year, subject to the Subsequent Years rule. Therefore, prior to taking any exceptions or adjustment in §§ 300.204 and 300.205, the LEA was required to spend at least \$500 in local funds only.</p> <p>In 2017–2018, the LEA properly reduced its expenditures, per an exception in § 300.204, by \$50, and therefore, was required to spend at least \$450 in local funds only (\$500) from 2015–2016 per Subsequent Years rule ∇ \$50 allowable reduction per an exception under § 300.204).</p>				
	<p>In 2017–2018, the LEA was required to spend at least the same amount in local funds only on a per capita basis that it spent in the preceding fiscal year, subject to the Subsequent Years rule. Therefore, prior to taking any exceptions or adjustment in §§ 300.204 and 300.205, the LEA was required to spend at least \$50 in local funds only on a per capita basis.</p> <p>In 2017–2018, the LEA properly reduced its aggregate expenditures, per an exception in § 300.204, by \$50.</p> <p>\$50/10 children with disabilities in the comparison year (2015–2016) = \$5 per capita allowable reduction per an exception under § 300.204.</p> <p>\$50 local funds only on a per capita basis (from 2015–2016 per Subsequent Years rule) ∇ \$5 allowable reduction per an exception under § 300.204 = \$45 local funds only on a per capita basis to meet MOE.</p>				
2018–2019	405	1,000 *	45 *	111.11 *	9
	<p>In 2018–2019, the LEA was required to spend at least the same amount in local funds only that it spent in the preceding fiscal year, subject to the Subsequent Years rule. Therefore, prior to taking any exceptions or adjustment in §§ 300.204 and 300.205, the LEA was required to spend at least \$450 in local funds only.</p> <p>In 2018–2019, the LEA properly reduced its expenditures, per an exception in § 300.204 by \$10 and the adjustment in § 300.205 by \$10.</p> <p>Therefore, the LEA was required to spend at least \$430 in local funds only. (\$450 from 2017–2018 ∇ \$20 allowable reduction per an exception and the adjustment under §§ 300.204 and 300.205).</p>				
	<p>Because the LEA did not reduce its expenditures from the comparison year (2017–2018) using a combination of State and local funds, the LEA met MOE.</p>				
	<p>In 2018–2019, the LEA was required to spend at least the same amount in local funds only on a per capita basis that it spent in the preceding fiscal year, subject to the Subsequent Years rule. Therefore, prior to taking any exceptions or adjustment in §§ 300.204 and 300.205, the LEA was required to spend at least \$45 in local funds only on a per capita basis.</p> <p>In 2018–2019, the LEA properly reduced its aggregate expenditures, per an exception in § 300.204 by \$10 and the adjustment in § 300.205 by \$10.</p> <p>\$20/10 children with disabilities in the comparison year (2017–2018) = \$2 per capita allowable reduction per an exception and the adjustment under §§ 300.204 and 300.205.</p> <p>\$45 local funds only on a per capita basis (from 2017–2018) ∇ \$2 allowable reduction per an exception and the adjustment under §§ 300.204 and 300.205 = \$43 local funds only on a per capita basis required to meet MOE. Actual level of effort is \$405/9 (the current year child count).</p>				
	<p>Because the LEA did not reduce its expenditures from the comparison year (2017–2018) using a combination of State and local funds on a per capita basis (\$1,000/9 = \$111.11 and \$111.11 > \$100), the LEA met MOE.</p>				

* LEA met MOE using this method.

Note: When calculating any exception(s) and/or adjustment on a per capita basis for the purpose of determining the required level of effort, the LEA must use the child count from the comparison year, and not the child count of the year in which the LEA took the exception(s) and/or adjustment. When determining the actual level of effort on a per capita basis, the LEA must use the child count for the current year. For example, in 2018–2019, the LEA uses a child count of 9, not the child count of 10 in the comparison year, to determine the actual level of effort.

Tables 7 and 8 demonstrate how an LEA could meet the eligibility standard over a period of years using different methods from year to year. These tables assume that the LEA did not take any of the exceptions or adjustment in §§ 300.204 and 300.205. Numbers are in \$10,000s budgeted and spent for the education of children with disabilities.

TABLE 7—EXAMPLE OF HOW AN LEA MAY MEET THE ELIGIBILITY STANDARD IN 2016–2017 USING DIFFERENT METHODS

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
2014–2015	* \$500	* \$1,000	* \$50	* \$100	10	The LEA met the compliance standard using all 4 methods.*
2015–2016 .....	.....	.....	.....	.....	.....	Final information not available at time of budgeting for 2016–2017.
How much must the LEA budget for 2016–2017 to meet the eligibility standard in 2016–2017?	500	1,000	50	100	.....	When the LEA submits a budget for 2016–2017, the mo 0 0 0 1 n.....eNotf queNo

TABLE 9—EXAMPLE OF HOW AN LEA MAY MEET THE ELIGIBILITY STANDARD USING EXCEPTIONS AND ADJUSTMENT IN §§ 300.204 AND 300.205, 2016–2017

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
Actual 2014–2015 expenditures.	* \$500	* \$1,000	* \$50	* \$100	10	The LEA met the compliance standard using all 4 methods.*
Exceptions and adjustment taken in 2015–2016.	¥ 50	¥ 50	¥ 5	¥ 5	.....	LEA uses the child count number from the comparison year (2014–2015).
Exceptions and adjustment the LEA reasonably expects to take in 2016–2017.	¥ 25	¥ 25	¥ 2.50	¥ 2.50	.....	LEA uses the child count number from the comparison year (2014–2015).
How much must the LEA budget to meet the eligibility standard in 2016–2017?.	425	925	42.50	92.50	.....	When the LEA submits a budget for 2016–2017, the most recent fiscal year for which the LEA has information is 2014–2015. However, if the LEA has information on exceptions and adjustment taken in 2015–2016, the LEA may use that information when budgeting for 2016–2017. The LEA may also use information that it has on any exceptions and adjustment it reasonably expects to take in 2016–2017 when budgeting for that year.

Table 10 provides examples both of how to calculate the amount by which an LEA failed to maintain its level of expenditures and of the amount of non-Federal funds that an SEA must return to the Department on account of that failure.

TABLE 10—EXAMPLE OF HOW TO CALCULATE THE AMOUNT OF AN LEA’S FAILURE TO MEET THE COMPLIANCE STANDARD IN 2016–2017 AND THE AMOUNT THAT AN SEA MUST RETURN TO THE DEPARTMENT

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
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