

Managing the Special Education Maintenance of Effort Requirement During the COVID-19 Pandemic

Background – Calculating Maintenance of Effort and Exemptions

Federal law imposes a maintenance of effort (MOE) requirement on state and local spending, mandating that both states and local education agencies (LEAs) spend at least as much on special education each year as they did in the preceding year in order to receive federal special education funding. Accordingly, LEAs must use one of the following four methods to measure current year spending annually against that of the prior year to demonstrate MOE compliance based on total or per-pupil special education spending:

1. combined state and local expenditures
2. local expenditures only
3. combined state and local expenditures per capita
4. local expenditures only on a per capita basis.

Further, even though any one of the above methods must be used to measure MOE, LEAs are required to report results for all four of the above methods (34 CFR 300.203-300.205).

If an LEA does not meet the special education MOE requirement because it spent less state and/or local money in the current year than in the prior year, there is a dollar-for-dollar penalty. In the case of a multidistrict special education local plan area (SELPA), the California Department of Education (CDE) will invoice the SELPA for the penalty amount and indicate the LEA(s) that failed to meet the LEA MOE requirement and the amount by which each fell short of meeting the MOE requirement. The LEA(s) then must pay the invoice from a non-federal fund source from the current fiscal year. In addition, if a SELPA member LEA fails to meet the LEA MOE eligibility requirement with its adopted budget, the SELPA cannot allocate Individuals with Disabilities Education Act (IDEA) funds to that LEA until the LEA can demonstrate it can meet the eligibility requirement, either via an interim report or by passing the next fiscal year's compliance test.

Limited exemptions from the MOE requirement are available if any of the following occur (34 CFR 300.204):

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- (a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.
- (b) A decrease in the enrollment of children with disabilities.
- (c) The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA [special education agency], because the child
 - (1) Has left the jurisdiction of the agency;
 - (2) Has reached the age at which the obligation of the agency to provide FAPE [free appropriate public education] to the child has terminated; or
 - (3) No longer needs the program of special education.
- (d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.
- (e) The assumption of cost by the high cost fund under 34 CFR 300.704(c).

An LEA's MOE must be reported to the SELPA at unaudited actuals and at budget adoption using Standardized Account Code Structure (SACS) forms SEMA and SEMB. In addition, LEAs may test MOE at interim periods using Form SEMAI. Given the atypical revenue and expenditure patterns produced by the response to the COVID-19 pandemic, LEAs should increase their planning and monitoring of MOE and factors that affect it. This fiscal alert addresses the impact of the ongoing COVID-19 pandemic on this planning and monitoring.

This alert is for all LEAs and SELPAs that serve in a financial oversight role. During these rapidly changing and unprecedented times, it is essential for LEAs to consider their MOE when planning to use federal and state COVID-19 resources, regularly monitor whether they are meeting the special education MOE requirement, and identify possible exemptions.

Federal Special Education Funding

Federal special education funding is distributed based on a three-part formula, with most funding allocated based on overall student attendance, not by the number of students who receive special education or what kinds of services those students receive. The balance of federal special education funding is allocated based on census counts of children living below the poverty level and on a hold harmless basis according to the amount provided to California in 1998-99, which was the last year before the federal funding formula was revised. California reserves a portion of its federal special education funding for state-identified priorities but allocates the majority of federal special education funding to SELPAs (Petek, 2019).

When Congress passed the Individuals with Disabilities Education Act (IDEA) in 1975, it established an aspirational funding level by pledging to cover 40% of the excess cost required to educate students with disabilities (when compared to the cost per student without disabilities). In 1977, federal law established a maximum grant amount for each state equal to 40% of the national average per-student educational spending amount (including special education expenditures) multiplied by the state's population of students with disabilities. Yet the IDEA has never been fully funded and, according to Legislative Analyst Petek (2019), actual federal special education funding to California schools was \$3.2 billion less than the target in 2018-19. Given how inflation-adjusted special education expenditures have increased while both state and federal funding

have decreased (largely because of overall declining student enrollment), the local unrestricted funding contribution to cover the cost of special education has been increasing. School Services of California, Inc. reported that, statewide, local unrestricted funding contributions to special education averaged 65.88% of an LEA's special education budget in 2018-19, up from 49% percent in 2007-08 (Petek, 2019). Hence, LEAs simply cannot afford to further increase their local contribution to special education by failing to meet their MOE requirement and incurring a dollar-for-dollar penalty that must be paid with local unrestricted funds.

Pandemic-Related Factors

During the COVID-19 pandemic, special education expenditures have varied greatly by LEA for at least three reasons. First, the duration of school closures and the return of students with disabilities for in-person instruction in small cohorts or using hybrid instruction varies across the state. Second, even LEAs that serve similar proportions of students with disabilities may differ in their service delivery model, the intensity of their services, and whether services are provided largely through nonpublic agencies or by LEA-employed staff, which accordingly affects the costs of providing distance learning. Third, the existing differences in the cost of administering a special education program because of factors that vary by LEA may have been exacerbated by the COVID-19 pandemic. These varying factors include the percentage of students served in special education, legal costs, transportation, and staffing costs (e.g., nonpublic agency contracts and the cost of substitutes driven by employee leaves).

LEAs should analyze their special education expenditures since the onset of the COVID-19 pandemic to determine areas of cost savings versus increased expenditures, and should calculate their MOE regularly to get a preliminary idea of whether they are meeting their MOE requirement. LEAs should communicate with their SELPA and/or review their prior year's subsequent year tracking worksheet to ensure use of the correct MOE comparison year. If an LEA does not meet the MOE requirement, the LEA should review and determine if it has any allowable exemptions and/or move allowable expenditures into special education to attempt to meet MOE. If an LEA determines that its expenditures were reduced because one or more of the events occurred that qualify it for an exemption from meeting MOE, the LEA may calculate a reduction to the required MOE standard using the exempt reductions to MOE worksheet.

In addition, LEAs that need to control MOE growth and LEAs that are experiencing cost savings because of the COVID-19 pandemic should consider their MOE when planning to use federal and state COVID-19 funds. Certain LEAs may need to code appropriate activities funded with state COVID-19 resources to special education to meet their MOE. Although LEAs should use one-time federal funding to benefit students with disabilities, LEAs that are considering replacing local general fund contributions with one-time federal funds should use caution and ensure they supplement but do not supplant. If use of federal funding decreases an LEA's expenditures of state and local resources, the LEA may not meet the local- and state-based MOE requirement calculation (McKay Underwood, 2020).

Conclusion

Uncharacteristic and extraordinary revenue changes, savings and expenditures have been caused by the COVID-19 pandemic. Special education MOE may be affected and must be known. Given the additional influx of federal and state COVID-19 funding coming through the Coronavirus Response and Relief Supplemental Appropriations Act of 2021 (i.e., ESSER II), the American

Rescue Plan (i.e., ESSER III), and Assembly Bill 86 (In-person Instruction and Expanded Learning Opportunities Grants), time is of the essence. In addition to analyzing areas of special education cost savings versus increased expenditures, LEAs should calculate their MOE regularly to determine whether they are meeting the special education MOE requirement, and should identify possible exemptions. It is also essential for LEAs to consider their MOE when planning to use COVID-19 funding.