

**MODIFICATIONS TO QUESTIONS IN THE
APRIL 2009 GUIDANCE ON THE
INDIVIDUALS WITH DISABILITIES EDUCATION ACT, PART B**

**U.S. DEPARTMENT OF EDUCATION
JULY 1, 2009**

INTRODUCTORY NOTE

On April 1, 2009, the U.S. Department of Education (Department) released detailed guidance on the program. As a preface to the guidance, the Department indicated that it would provide additional or updated guidance as necessary and invited interested parties to provide comments on the document.

In response to comments received, we are adding Section H dealing with the use of Stabilization funds to meet IDEA, Part B maintenance of effort (MOE) requirements. The complete Section H is provided below and is incorporated into the April 1 guidance document. The Department intends to periodically incorporate new questions and answers into a revised version of the complete guidance document.

H. Treating Stabilization Funds as State or Local Funds for Purposes of Meeting the IDEA, Part B MOE Requirements (Section H added July 1, 2009)

State-level MOE

H-1. What is the IDEA, Part B state-level MOE requirement?

The IDEA, Part B state-level MOE requirement (Section 612(a)(18) of the IDEA and 34 CFR §300.163) provides that a state is eligible to receive Part B funds as long as “[t]he State does not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.”

Under the IDEA, Part B state-level MOE requirement, states identify the amount of state funds that are expended by the state, including the SEA and other state agencies for the education of children with disabilities, including for special education and related services, and state funds that are made available to local educational agencies (LEAs) for the education of children with disabilities. For state funds that are made available to LEAs, states identify the amount of state funding, if any, that is distributed through formulae to LEAs for the education of children with disabilities.

H-2. What Stabilization funds may be treated as state funds for the purpose of meeting the IDEA, Part B state-level MOE requirement?

Stabilization funds are provided to states as Education Stabilization funds and Government Services Stabilization funds.

With respect to funds that are provided to states as Education Stabilization funds, with prior approval, a state may treat as state support for purposes of meeting the IDEA state-level MOE requirement, those Education Stabilization funds that are being used to replace state support for special education provided through primary funding formulae. The proportion of Education Stabilization funds that the state distributes through the state's primary funding formulae for elementary and secondary education must be the same as the proportion of the state's primary funding formulae for elementary and secondary education it generally treats as state support for special education for purposes of the IDEA state-level MOE requirement. Similarly, with prior approval, Education Stabilization funds that are being used to replace state support for special education provided through a special education funding formula could be treated as state support for the IDEA MOE requirement. States may not consider Education Stabilization funds that are distributed to LEAs on the basis of their proportionate share of funding under Title 1, Part A, Subpart 2 of the ESEA to be state support for the education of children with disabilities, because those funds do not replace state support for the education of children with disabilities.

With respect to funds that are provided to states as Government Service Stabilization funds, for purposes of the IDEA, Part B state-level MOE requirement, a state, with prior approval, may treat as state support for the education of children with disabilities any Government Services Stabilization funds that it uses for the education of children with disabilities, whether provided to LEAs or to other agencies.

H-3. What criteria will the Department apply in determining whether to give prior approval to a state's request to treat Stabilization funds as state funds for purposes of the IDEA, Part B state-level MOE requirement?

Section 14012(d) of the ARRA provides that, “[u]pon prior approval from the Secretary,” a state or LEA may treat Stabilization funds that are used for elementary, secondary, or postsecondary education as non-Federal funds for the purpose of any requirement to maintain fiscal effort under any other program that the Department administers. (See H-4 below for information related to “prior approval.”)

The Secretary will permit a state to treat Stabilization funds, in the amounts described in question H-2, as state funds for meeting the IDEA, Part B state-level MOE requirement only if the following criteria are met:

1. The state maintains auditable data to demonstrate that it is complying with the Stabilization program MOE requirements, unless the Secretary has granted a waiver of those requirements pursuant to the criterion in section 14012(c) of the ARRA;

2. The state maintains auditable data to demonstrate that it needs Education Stabilization funds to restore support for elementary and secondary education, or that it is using only Government Services Stabilization funds to meet state-level MOE;

3. The state maintains auditable data to demonstrate that the percentage of total state revenues available to the state that is used to support education for children with disabilities does not decrease from one year to the next;

4. The state maintains auditable data to demonstrate that the percentage of total state revenues available to the state that is used to support elementary, secondary and higher education combined does not decrease from one year to the next; and

5. To provide for proper accounting of Stabilization funds, the state identifies to each LEA the amount of Stabilization funds that it distributes to that LEA that the state is treating as state funds for the purposes of meeting the state-level MOE requirement.

H-4. Must a state apply to the Secretary for prior approval to treat Stabilization funds as state funds for meeting the IDEA, Part B state-level MOE requirement?

No. The Secretary grants prior approval to a state to treat Stabilization funds as state funds for purposes of IDEA, Part B state-level MOE so long as a state meets the criteria in H-3. In other words, if a state meets the criteria in H-3, it has prior approval from the Department to treat Stabilization funds as state funds for purposes of meeting IDEA, Part B state-level MOE. If a state does not meet the criteria in H-3, and has not received specific prior approval from the Department under the circumstances described in H-5, it does not have prior approval and may not treat Stabilization funds as state funds for purposes of meeting the IDEA, Part B state-level MOE requirement.

H-5. If the percentage of total state revenues used to support education has decreased from one year to the next, is it still possible for a state to treat Stabilization funds as state funds for the purpose of meeting the IDEA, Part B state-level MOE requirement?

Because the state would not meet criterion #4 described in the response to question H-3, it would not have prior approval from the Department by virtue of meeting those criteria. However, in this circumstance, a state, by letter to the Department, could specifically request prior approval to treat Stabilization funds as state funds for the purpose of meeting IDEA, Part B state-level MOE. The request must address whether there were any exceptional or uncontrollable circumstances contributing to the year-to-year decreases, the extent of the decline in available financial resources, and any changes in demand for educational services.

Only if the Department grants specific prior approval based on the state's request, would a state in this circumstance be able to treat Stabilization funds as state funds for the purpose of meeting the IDEA, Part B state-level MOE requirement.

Local-level MOE

H-6. What is the IDEA, Part B local-level MOE requirement?

The IDEA, Part B local-level MOE requirement (Section 613(a)(2)(A)(iii) of the IDEA and 34 CFR §300.203) is that the LEA must budget, for the education of children with disabilities, at least the same total or per capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which the information is available:

- local funds only or
- state and local funds.

Reductions in local-level MOE may be taken for voluntary departures and departures for just cause of special education or related services personnel; decreases in the enrollment of children with disabilities; termination of the obligation of the agency to provide an exceptionally costly special education program to a particular child under specific circumstances; termination of costly expenditures for long-term purchases such as costly equipment or construction of school facilities; and assumption of cost by a state's high cost fund. (See 34 CFR §300.204.) Reductions in local-level MOE may also be possible as described in D-6 through D-10.

H-7. What Stabilization funds may be treated as local funds for the purpose of meeting IDEA, Part B local-level MOE?

An LEA may treat as local funds for the purpose of meeting local-level MOE any Education Stabilization funds, including Stabilization funds distributed under the Title I, Part A formula, that are provided to it and that it uses for the education of children with disabilities, except for Education Stabilization funds that the state has identified as funds that it is treating as state funds for meeting the state-level MOE requirement. (As specified above, a state is required to identify to each LEA any Stabilization funds the LEA receives that the state is treating as state funds for purposes of state-level MOE.) An LEA may also treat as local funds Government Services Stabilization funds that it receives and uses for the education of children with disabilities, unless those funds have been identified by the state as Stabilization funds that the state is treating as state funds for state-level MOE purposes.

An LEA may not treat as local funds for local-level MOE purposes Stabilization funds that the state is treating as state funds for state-level MOE purposes. However, an LEA may include these funds in its calculation of local-level MOE, to the extent that the calculation is based on state and local funds.

H-8. Must an LEA maintain documentation demonstrating that any Stabilization funds that it is treating as local funds for purposes of the IDEA, Part B local-level MOE requirement are, in fact, spent on the education of children with disabilities?

Yes. An LEA must maintain documentation that the Stabilization funds that it is treating as local funds for purposes of local-level MOE in fact were spent on the education of children with disabilities. If the LEA is basing local-level MOE on the combination of state funds and local funds, the LEA must maintain documentation that the Stabilization funds that it is treating as local funds for purposes of local-level MOE as well as any Stabilization funds that the state has identified to it as funds that the state is treating as state funds for purposes of state-level MOE were, in fact, spent on the education of children with disabilities.

H-9. Under what circumstances will the Department give prior approval to an LEA's treating Stabilization funds as local funds for purposes of the IDEA, Part B local-level MOE requirement?

Section 14012(d) of the ARRA provides that, "[u]pon prior approval from the Secretary," a state or LEA may treat Stabilization funds that are used for elementary, secondary, or postsecondary education as non-Federal funds for the purpose of any requirement to maintain fiscal effort under any other program that the Department administers.

The Department gives LEAs prior approval to treat Stabilization funds that are provided to the LEA and that the LEA uses for the education of children with disabilities (except for Stabilization funds that the state is treating as state funds for meeting the IDEA, Part B state-level MOE requirement) as local funds for purposes of local-level MOE if:

1. The state demonstrates to the Department, on the basis of auditable data, that it is complying with the Stabilization program MOE requirements, unless the Secretary has granted a waiver of those requirements pursuant to the criterion in section 14012(c) of the ARRA; and
2. The LEA maintains auditable data to demonstrate that it separately accounts for Stabilization funds that the state treats as state funds for meeting state-level MOE, if any, and Stabilization funds that the LEA treats as local funds for meeting local-level MOE, including that those funds were spent on the education of children with disabilities. A state may request additional information from an LEA to ensure that it properly maintains auditable data.

H-10. Must an LEA apply to the Secretary for prior approval to treat Stabilization funds as local funds for meeting the IDEA, Part B local-level MOE requirement?

No. The Secretary grants prior approval to an LEA to treat Stabilization funds as local funds for purposes of the IDEA, Part B local-level MOE requirement so long as the

state and LEA meets the criteria in H-9, including any additional information that the state may require to ensure that the LEA properly maintains auditable data concerning the use of its Stabilization funds. LEAs should contact their SEAs to determine whether they meet the criteria for prior approval. If the criteria in H-9 are met, an LEA has prior approval from the Department, and may treat Stabilization funds as local funds for purposes of meeting the IDEA, Part B local-level MOE requirement. If the criteria are not met, the LEA does not have prior approval and may not treat Stabilization funds as local funds for purposes of meeting the IDEA, Part B local-level MOE requirement.

States may choose to advise LEAs that choose to treat Stabilization funds as local funds for purposes of meeting local-level MOE to submit any necessary information with any amendments to the LEA's application for IDEA, Part B funds.

H-11. Must an LEA obtain prior approval if the only Stabilization funds that it is including in meeting local-level MOE are those that the state has identified as funds the state is treating as state funds for purposes of the IDEA, Part B state-level MOE requirement?

No. If the only Stabilization funds that an LEA includes in its calculation of local-level MOE are funds that the state identified as state funds for purposes of state-level MOE, an LEA does not need any additional prior approval, as the state would already have received prior approval from the Department to treat the Stabilization funds as state funds for IDEA, Part B MOE purposes. Of course, the LEA would still be required to maintain documentation that those Stabilization funds were actually spent on the education of children with disabilities.

H-12. How does treating Stabilization funds as state or local funds for IDEA, Part B MOE purposes affect how an LEA demonstrates that it is meeting local-level MOE?

- If the state is not treating Stabilization funds as state funds for the purpose of state-level MOE, but the LEA is treating Stabilization funds as local funds for the purpose of local-level MOE, the LEA may base local-level MOE on either the local funds only (including those Stabilization funds), or local (including those Stabilization funds) and state funds. The LEA would have to maintain documentation that the Stabilization funds that are being used to meet local-level MOE in fact were spent on the education of children with disabilities.
- If the state is treating some Stabilization funds as state funds for the purpose of state-level MOE, and the LEA is treating other Stabilization funds as local funds for the purpose of local-level MOE, the LEA may base local-level MOE on either the local funds only (including the Stabilization funds the LEA is treating as local funds for MOE purposes), or local (including the Stabilization funds the LEA is treating as local funds for MOE purposes) and state (including the Stabilization funds the state is treating as state funds for the purpose of state-level MOE and has distributed to the LEA) funds. The LEA would have to maintain documentation that the Stabilization funds that are being used to meet local MOE, as local funds

and as state funds, if any, in fact were spent on the education of children with disabilities.

H-13. Does treating Stabilization funds as state or local funds for IDEA, Part B MOE purposes reduce the level of effort that a state or LEA must demonstrate in future years?

No. If a state or LEA treats Stabilization funds as state or local funds for purposes of meeting the state-level or local-level IDEA, Part B MOE requirements, it does not reduce the state's or LEA's MOE in any future year.