

## Memorandum Regarding Maintenance of Effort and Support Requirements Under the Individuals with Disabilities Education Improvement Act (IDEA) of 2004

### INTRODUCTION

In 2004, the U.S. Congress passed the Individuals with Disabilities Education Improvement Act, which was a reauthorization of the 1975 Individuals with Disabilities Education Act. Title I of the reauthorization contains the amendments passed in 2004. For the purposes of this paper, the acronym IDEA will apply to Title I of the 2004 reauthorization.

There are three primary financial principles that frame the requirements states and districts must follow under IDEA. These are known as “supplement not supplant,” “maintenance of support,” and “maintenance of effort.”<sup>1</sup> Although these three principles are distinct, they are also interrelated. This memorandum will define these terms and describe how they interact to define how states allocate funding for special education. A description of Connecticut’s practices in maintaining adherence to federal guidelines will also be discussed.

### SUPPLEMENT NOT SUPPLANT

IDEA states funds paid to a state must be used to supplement the current level of federal, state, and local funds, and in no way supplant them, unless a waiver is granted by the U.S. Secretary of Education<sup>2</sup> (“the Secretary”). The supplement not supplant language applies to both State Education Agencies (SEAs) and Local Education Agencies (LEAs) and indicates a fundamental assumption of IDEA that SEAs and LEAs have a responsibility to provide a core instructional program for all students, as well as basic programming for students with disabilities.<sup>3</sup> Federal funds are not to be used to maintain these core costs, and instead must be used to assist in providing specialized programs and financing excess costs.<sup>4</sup> When ensuring that funding provided under IDEA is supplementing current expenditures, LEAs and SEAs must take into account the combined, current level of federal, state and local funds, regardless of whether they are in direct control of said funds.<sup>5</sup>

In addition, LEAs are limited by the excess cost requirement, which further discourages the supplanting of funds by prohibiting an LEA from using IDEA funds to pay for all of the costs directly attributable to the education of a child with a disability, unless the student is 3-5 or 18-21 years old and there are no state or local funds appropriated to fund his/her education.<sup>6</sup>

## MAINTENANCE OF FINANCIAL SUPPORT

Maintenance of support (MOS) is the primary fiscal measure by which states are judged to be eligible for federal funding under IDEA. In short, to be eligible a state cannot provide less state financial support for special education than it did in the preceding fiscal year.<sup>7,8</sup> If a state has been found to have failed to maintain support, the Secretary may reduce federal funds to that state.<sup>9</sup> Only state-level support for special education can be applied to prove MOS under IDEA. States must include all financial support from any state agencies that provide or pay for special education and related services, not just those funds expended by the SEA.<sup>10</sup> In complying with MOS rules, states may not use IDEA funds to meet mandatory funding obligations to LEAs that are required by state law, including increases in funding due to inflation, enrollment, or attendance.<sup>11</sup> Also disallowed from MOS calculations are any funds expended on special education that have been recouped via Medicaid.<sup>12</sup>

## MAINTENANCE OF EFFORT

Maintenance of Effort (MOE) is the fiscal threshold LEAs must meet under IDEA. Funds provided to an LEA under IDEA, Part B must not be used to reduce the level of expenditures for children with disabilities made by the LEA from local funds in the previous fiscal year.<sup>13</sup> LEAs are automatically considered in accordance with the supplement not supplant condition of IDEA if they have met their MOE from year to year.<sup>14</sup> SEAs are required to oversee compliance with MOE requirements. LEAs may choose to report on the previous year's expenditures in per-capita or total expenditure amounts. There are four "tests" by which an LEA can prove its MOE, based on the previous fiscal year's expenditures:

- 1) the total amount the LEA expended in state and local funds equals or exceeds the amount it expended from those sources on special education,
- 2) the total amount the LEA expended in local funds equals or exceeds the amount expended from that source for special education,
- 3) the per-capita amount the LEA expended in state and local funds equals or exceeds the amount expended per-capita from those sources for special education, or
- 4) the per-capita amount the LEA expended in local funds equals or exceeds the amount expended per-capita from that source for special education.<sup>15,16</sup>

As with MOS, LEAs cannot include other federal reimbursements, including Medicaid<sup>17</sup> and Title I funds, when calculating their MOE.<sup>18</sup>

However, unlike in MOS reporting, LEAs can reduce their level of expenditures in the following cases: 1) the voluntary departure of special education teachers or related personnel, 2) a decrease in enrollment of students with disabilities, or 3) the removal of a child whose special education program is of exceptionally high costs due to the child leaving the district, aging out of the program, no longer needing the program, the ending of payments for high-cost equipment, or the assumption of costs by a high-cost fund operated by the SEA.<sup>19</sup> Nothing in IDEA allows for a reduction in MOS due to negotiated reductions in staff salaries and benefits.<sup>20</sup>

There are other, very limited conditions in which an LEA can adjust its MOE amount. If an LEA is granted more IDEA funding from the SEA in a given year than in the previous one, the LEA may reduce, for a single year, its level of expenditures by 50 percent of the increase in the LEA's sub-grant allocation. However, the LEA must use the reserved amount to carry out activities under the Elementary and Secondary Education Act (ESEA).<sup>21</sup> The best example of the application of this exception was when additional funds were distributed in support of special education under the American Recovery and Reinvestment Act (ARRA) of 2009 and LEAs were granted flexibility to use up to 50 percent of their excess IDEA funds in support of other educational activities under ESEA.<sup>22</sup> If an LEA makes a reduction in its MOE under this exception, the reduction only applies to that fiscal year. The following fiscal year, the required MOE threshold returns to the level of the previous fiscal year.<sup>23</sup> LEAs are prohibited from taking this flexibility if they are unable to establish and maintain a free, adequate, public education for students with disabilities,<sup>24</sup> and SEAs are responsible for prohibiting LEAs from reducing their MOE if they are out of compliance with the State Performance Plan targets.<sup>25</sup>

## CONNECTICUT'S CURRENT FISCAL REPORTING PRACTICES

In federal fiscal year 2016, the Connecticut State Department of Education (CSDE) reported a total of \$760,868,656 in statewide funding for special education toward their MOS under IDEA Part B.<sup>26</sup> Of this total amount, \$442,747,823 was attributed to the "Special Education Portion" of the Education Cost Sharing (ECS) grant,<sup>27</sup> which is the primary means by which state funding is distributed to local public school districts in Connecticut. Connecticut currently ascribes 22 percent of total ECS funding to special education.<sup>28</sup> Also included in Connecticut's MOS for 2016 was \$139,805,731 in excess cost payments, \$784,214 in excess cost payments for students aged 18-21 who receive services from other state agencies,<sup>29</sup> and \$179,099,316 from state agencies other than the CSDE.

Both formula and competitive grants are monitored by the CSDE's Bureau of Grants Management (BGM). BGM is responsible for the annual distribution of approximately \$3 billion to districts and programs. BGM monitors both state and local education expenditures to maintain compliance with state and federal statutory requirements.<sup>30</sup> BGM is divided into two units: Calculations and Pupil Data and Process and Quality Control. Calculations and Pupil Data designs all formula grant calculations for both state and federal funding, and then Process and Quality Control reviews the calculations for accuracy.<sup>31</sup> Process and Quality Control also maintains the CSDE's grant payment system and is responsible for administering cash management processes.<sup>32</sup> The CSDE's Bureau of Special Education (BSE) coordinates with the Bureau of Fiscal Services (BFS) and the BGM to provide oversight in the distribution and use of IDEA funds through the monitoring of interest remittance, procurement mechanisms, property purchases, record maintenance, and state-level MOS.<sup>33</sup>

BSE coordinates a comprehensive accountability and monitoring system called the General Supervision System (GSS), which is designed to ensure LEA compliance with a variety of IDEA requirements (and Connecticut state statutes), including student performance, the monitoring of Individual Education Plans (IEPs), dispute resolution, significant disproportionality, and fiscal management.<sup>34</sup> Additionally, in conjunction with

an LEA's IDEA grant application as submitted annually to BSE, fiscal data is reported electronically to BGM via the Prepayment ED-114 Grant System, using the CSDE's standard budget codes. In their annual application, LEAs also submit a budget narrative for proposed use of funds they expect to receive in the upcoming year.<sup>35</sup>

Between 2009 and 2013, LEAs also completed an IDEA Program/Fiscal Compliance Review through the CSDE.<sup>36</sup> LEAs were asked to provide "extensive documentation" in the following areas: property/equipment/supplies, supplanting, parentally placed private school special education students, National Instructional Materials Accessibility Standard (NIMAC), Coordinated Early Intervening Services (CEIS), charter schools, excess cost calculations, and statewide and district assessments.<sup>37</sup> All LEAs continue to be required to participate in the Desk Audit and File Review Process.<sup>38</sup> In 2014-15 the desk audit monitoring cycle was shortened from every six years to every three years.<sup>39</sup>

## ENDNOTES

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- <sup>1</sup> Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. § 1400 (2004).
- <sup>2</sup> 20 U.S.C. § 1400 Sec. 612(17)(C) (2004).
- <sup>3</sup> Wisconsin Department of Public Instruction, Special Education Team. (2015). *IDEA's Excess Cost Calculation*. Retrieved from <https://dpi.wi.gov/sites/default/files/imce/sped/pdf/excess-cost-calculation-guide.pdf>.
- <sup>4</sup> Ibid.
- <sup>5</sup> 20 U.S.C. § 1400 Sec. 612(17)(C) (2004).
- <sup>6</sup> 34 C.F.R. § 300.201 (2006).
- <sup>7</sup> 34 C.F.R. § 300.162 (2006).
- <sup>8</sup> 20 U.S.C. § 1400 Sec. 612(18)(C) (2004).
- <sup>9</sup> 34 C.F.R. § 300.163 (2006).
- <sup>10</sup> Posney, A. (2009). *Memorandum to Chief State School Officers and State Directors of Special Education RE: Maintenance of State Financial Support under the Individuals with Disabilities Education Act*. Retrieved from <http://www2.ed.gov/policy/speced/guid/idea/monitor/mfs-12-2-2009.pdf>.
- <sup>11</sup> 34 C.F.R. § 300.166 (2006).
- <sup>12</sup> 34 C.F.R. § 300.154 (2006).
- <sup>13</sup> 34 C.F.R. § 300.203 (2006).
- <sup>14</sup> U.S. Department of Education, Office of Special Education and Rehabilitative Services. (2009). *GUIDANCE: Funds for Part B of the Individuals with Disabilities Education Act Made Available Under the American Recovery and Reinvestment Act of 2009*. Retrieved from <http://www2.ed.gov/policy/gen/leg/recovery/guidance/idea-b.pdf>.
- <sup>15</sup> 34 C.F.R. § 300.203 (2006).
- <sup>16</sup> Texas Education Agency. (2013). *IDEA-B LEA Maintenance of Effort (MOE) Guidance Handbook for Fiscal Year 2014 and Beyond*. Retrieved from [http://tea.texas.gov/Finance\\_and\\_Grants/Grants/Federal\\_Fiscal\\_Compliance\\_and\\_Reporting/IDEA\\_Fiscal\\_Compliance/IDEA-B\\_LEA\\_Maintenance\\_of\\_Effort/](http://tea.texas.gov/Finance_and_Grants/Grants/Federal_Fiscal_Compliance_and_Reporting/IDEA_Fiscal_Compliance/IDEA-B_LEA_Maintenance_of_Effort/).
- <sup>17</sup> 34 C.F.R. § 300.154 (2006).
- <sup>18</sup> 34 C.F.R. § 300.203 (2006).
- <sup>19</sup> Ibid.
- <sup>20</sup> 34 C.F.R. § 300.204 (2006). Analysis of comments and changes. Retrieved from [http://idea.ed.gov/explore/view/p/,root,regs,.](http://idea.ed.gov/explore/view/p/,root,regs,)
- <sup>21</sup> 34 C.F.R. § 300.205 (2006).
- <sup>22</sup> U.S. Department of Education, Office of Special Education and Rehabilitative Services. (2009). *GUIDANCE: Funds for Part B of the Individuals with Disabilities Education Act Made Available Under the American Recovery and Reinvestment Act of 2009*. Retrieved from <http://www2.ed.gov/policy/gen/leg/recovery/guidance/idea-b.pdf>.
- <sup>23</sup> 34 C.F.R. § 300.205 (2006).
- <sup>24</sup> Ibid.
- <sup>25</sup> 34 C.F.R. § 300.608 (2006).
- <sup>26</sup> Connecticut State Department of Education. (2016). *Annual State Application Under Part B of the Individuals with Disabilities Education Act as Amended in 2004 for Federal Fiscal Year 2016*. ED Form No. 9055. Retrieved from [http://www.sde.ct.gov/sde/lib/sde/pdf/deps/special/IDEA\\_PartB\\_Application.pdf](http://www.sde.ct.gov/sde/lib/sde/pdf/deps/special/IDEA_PartB_Application.pdf).
- <sup>27</sup> Connecticut State Department of Education, Bureau of Grants Management. (2015). *Individuals with Disabilities Education Act (IDEA) 2015-16 State Maintenance of Effort*. Shared with the author April 2016.
- <sup>28</sup> Conn. Gen. Statutes ch. 172, § 10-262f (2013), as amended by P.A. 95-226.
- <sup>29</sup> Pursuant to Conn. Gen. Statutes ch. 172 § 10-253.
- <sup>30</sup> Connecticut State Department of Education. (2015). *Part B State Systemic Improvement Plan. State Performance Plan/Annual Performance Report Indicator 17*. Retrieved from <https://osep.grads360.org/services/PDCService.svc/GetPDCDocumentFile?fileId=10517>.
- <sup>31</sup> Ibid.
- <sup>32</sup> Ibid.
- <sup>33</sup> Connecticut State Department of Education. (2013). *CT Part B FFY2013 State Performance Plan/Annual Performance Report*. Retrieved from <https://osep.grads360.org/services/PDCService.svc/GetPDCDocumentFile?fileId=10518>.
- <sup>34</sup> Ibid.

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<sup>35</sup> Connecticut State Department of Education. (2016). *Annual State Application Under Part B of the Individuals with Disabilities Education Act as Amended in 2004 for Federal Fiscal Year 2016*. ED Form No. 9055. Retrieved from [http://www.sde.ct.gov/sde/lib/sde/pdf/deps/special/IDEA\\_PartB\\_Application.pdf](http://www.sde.ct.gov/sde/lib/sde/pdf/deps/special/IDEA_PartB_Application.pdf).

<sup>36</sup> Connecticut State Department of Education, Bureau of Special Education. (2012, February). IDEA Program/Fiscal Compliance Review. *The Bureau Bulletin*. Retrieved from <https://ctspecialednews.org/2012/02/29/idea-programfiscal-compliance-review/>.

<sup>37</sup> Ibid.

<sup>38</sup> Connecticut State Department of Education. (2013). *CT Part B FFY2013 State Performance Plan/Annual Performance Report*. Retrieved from <https://osep.grads360.org/services/PDCService.svc/GetPDCDocumentFile?fileId=10518>.

<sup>39</sup> Ibid.