south dakota
DEPARTMENT OF EDUCATION
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SPED Maintenance of Effort and COVID-19: Frequently Asked Questions
Updated: May 5, 2020

This document is a list of frequently asked questions (FAQs) regarding Special Education Maintenance of Effort (MOE) and COVID-19. The information in this document includes existing statutes, regulations, and program guidance available to the South Dakota Department of Education (SDDOE).

1. **Will the requirements for IDEA MOE be waived?**

   IDEA does not permit for any type of waiver regarding a Local Education Agency's (LEA) obligation to meet Maintenance of Effort compliance. It is not within the authority of the United States Department of Education (USDE's) Office of Special Education Programs (OSEP) to expand upon the exceptions listed in Section 1413 (a)(2)(B). Any change to the existing IDEA regulations regarding LEA MOE would require an act of Congress. At this time, no message has been relayed to the states that this will occur. If this does come up at the national level, SDDOE will relay it to LEAs immediately.

2. **If an LEA reduces staff payments (i.e. special education paraprofessionals) or stops payments (if staff file for unemployment) and this reduces the local special education spending, would the pandemic be considered an exception under IDEA MOE compliance?**

   No. At this point, SDDOE does not have any additional guidance from OSEP, so under IDEA MOE, the non-voluntary reduction of staff is <u>not</u> considered an exception. There is no waiver for LEA MOE compliance. We will closely monitor any fiscal guidance coming from the USDE. However, the response from OSEP for the past 15 years has been that they do not have the authority to alter anything with LEA MOE and that any changes must be an act of Congress. SDDOE's advice is to not count on a waiver for LEA MOE and to plan accordingly.

3. **We have non-food service employees assisting with the provision and delivery of meals for students. Should their pay and benefits for that work be coded to the Food Service Fund?**

   No. Employees that are now assisting in COVID-19 related food service work, in lieu of being on leave, should continue to have their pay and benefits coded the same way they were normally paid for. Do <u>not</u> change the fund they are paid out of. This could result in MOE non-compliance.

4. **Do we need to use all our IDEA Part B funds during the current FY?**
   Districts are not required to use all their annual IDEA Part B allocation in the fiscal year it was allocated. Each fiscal year's allocation is available for two years so unspent IDEA Part B funds may carry over into a second fiscal year. Districts need to ensure they spend enough state and/or local funds to meet the MOE requirement. If you think you might be short on state

and/or local expenditures, you should consider backing off your planned IDEA Part B expenditures and carryover the freed-up IDEA Part B funds into the second fiscal year.

5. **We are concerned we may not meet our MOE threshold. What should we consider?**
The district should look to see if it can recode previously planned federal expenditures to state and/or local expenditures, or the district needs to look for other special education expenditures that could be made in the current fiscal year. The only exceptions available are the exceptions that have been in place. You will need to check if any of the following exceptions might apply:
• voluntary or for-cause departure of special education staff;
• decrease in enrollment of IDEA eligible children; and
• termination of an exceptionally costly program for a particular child, under certain circumstances.

6. **Will we increase our MOE obligation for future years if we use CARES Act funding to provide special education services?**
No. Only state and local funds are included when calculating LEA MOE. Because CARES Act funds are federal funds, LEAs may use them to provide special education and related services without increasing their MOE threshold. LEAs must still use sufficient state and/or local funds to meet the IDEA MOE threshold.