

Part B IDEA MOE Guidance for States

on the

Education Jobs Fund Program



U.S. Department of Education

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Introduction

The Education Jobs Fund program (Ed Jobs) provides \$10 billion to States to save or create education jobs for school year (SY) 2010-2011, in particular, by supporting positions that State or local funds would have ordinarily funded.¹ This U.S. Department of Education (Department) guidance describes how States and local educational agencies (LEAs) may treat Ed Jobs funds for the purpose of meeting the requirements in Part B of the Individuals with Disabilities Education Act (IDEA) to maintain fiscal effort. Part B of the IDEA includes two maintenance of effort (MOE) requirements – one applicable to States (section 612(a)(18) of the IDEA, and 34 CFR § 300.163), and one applicable to LEAs (section 613(a)(2)(A)(iii) of the IDEA, and 34 CFR § 300.203). States should note, however, that all Ed Jobs funds – including those used to meet the IDEA, Part B MOE requirements – must be used consistent with the requirements in the Ed Jobs program. (See [Initial Guidance on the Education Jobs Fund Program](http://www2.ed.gov/programs/educationjobsfund/governors-ed-jobs-guidance-final-8-13-10.doc), (August 13, 2010) for a detailed discussion of restrictions on the uses of Ed Job funds available at: <http://www2.ed.gov/programs/educationjobsfund/governors-ed-jobs-guidance-final-8-13-10.doc>.)

In addition, regardless of whether a State elects to use Ed Jobs funds for the purpose of meeting the Part B, IDEA State-level MOE requirements, a State that receives Part B funds must make available a free appropriate public education to each eligible child with a disability residing in that State.

This guidance provides the Department's interpretation of various statutory provisions and does not impose any requirements beyond those included in the IDEA and other applicable laws and regulations. In addition, it does not create or confer any rights for or on any person.

If you are interested in commenting on this guidance, please e-mail your comments to OSERSguidancecomments@ed.gov and include Education Jobs Fund in the subject of your e-mail or write us at the following address:

Ruth Ryder
U.S. Department of Education
Potomac Center Plaza
550 12th Street, S.W., Room 4108
Washington, DC 20202

¹ Ed Jobs funds are available for obligations that occur as of August 10, 2010. A local educational agency that has Ed Jobs funds remaining after SY 2010-2011 may use those remaining funds through September 30, 2012.

A. State-Level Maintenance of Effort

A-1. May a State use Ed Jobs funds to meet its IDEA, Part B State-level MOE requirement?

Yes, with prior approval² (see A-3 and A-4).³ See A-2 through A-6 for further explanation regarding using Ed Jobs funds to meet the IDEA, Part B State-level MOE requirement, and A-7 for the IDEA, Part C MOE requirement.

A-2. What Ed Jobs funds may be treated as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement?

With prior approval from the Secretary (see A-3 and A-4), a State may treat as State support, for the purpose of meeting the IDEA, Part B State-level MOE requirement, those Ed Jobs funds that are being used to replace State support for special education and related services. The proportion of Ed Jobs funds that the State distributes through the State's primary funding formulae for elementary and secondary education, and treats as State support for special education and related services, must be the same as the proportion of the State's primary funding formulae for elementary and secondary education that it treats as State support for special education and related services for the purpose of meeting the IDEA, Part B State-level MOE requirement. However, States may not treat as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement, Ed Jobs funds that the LEA is treating as local funds for the purpose of meeting the Part B, IDEA local-level MOE requirement.

Example: A State has elected to distribute Ed Jobs funds to its LEAs using its primary funding formulae for elementary and secondary education. Under this State's primary funding formulae for elementary and secondary education, 5% of State funds distributed to LEAs for elementary and secondary education are made available for special education and related services. This State may treat 5% of the Ed Jobs funds that it distributes to LEAs as State funds for the purpose of meeting its IDEA, Part B State-level MOE requirement.

A-3. Must a State apply to the Secretary for prior approval to treat Ed Jobs funds as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement?

No, if a State meets the criteria in A-2 and A-4, the State does not need to take any further action to obtain prior approval. In other words, the Secretary is granting prior approval to a State to treat Ed Jobs funds as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement so long as the State meets the criteria in A-2 and A-4. If a State does not meet the criteria in A-2 and A-4, and has not received specific written approval from the Secretary under the circumstances described in A-5, it does not have

² For the purpose of this guidance, "prior approval" in Section A. State-level Maintenance of Effort means that the State meets the criteria in A-2 and A-4, or has received "specific written approval" from the Secretary as provided in A-5. However, with respect to IDEA, Part C, see A-7.

³ Section 14012(d) of the ARRA applies to ED Jobs Funds. Thus, with prior approval from the Secretary, a State may treat ED Jobs Funds that are used for elementary or, secondary education as non-Federal funds for the purpose of meeting its IDEA, Part B State-level MOE requirement.

prior approval. (See A-5 for information on how a State that does not meet the criteria in A-4 may request specific written approval from the Secretary.)

A State considering itself to have prior approval must maintain auditable data demonstrating that it meets the criteria in A-2 and A-4. These data may be reviewed by Department staff and others as part of program monitoring, audits, and other oversight activities.

A-4. Under what circumstances does the Secretary grant prior approval to a State to treat Ed Jobs funds as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement?

The Secretary grants prior approval to a State to treat Ed Jobs funds as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement, if the State meets the following criteria:

1. The State maintains auditable data demonstrating that it is complying with the Ed Jobs program's MOE requirements. (See Initial Guidance on the Education Jobs Fund Program, August 13, 2010 for a detailed discussion of the different ways a State may meet the Ed Job's MOE requirements available at: <http://www2.ed.gov/programs/educationjobsfund/governors-ed-jobs-guidance-final-8-13-10.doc>.)⁴;
2. The State maintains auditable data demonstrating that it needs Ed Jobs funds to restore support for special education and related services;
3. The State maintains auditable data demonstrating that the percentage of total State revenues available to the State that was used to support education for children with disabilities does not decrease from one year to the next (for example, if the State treats some Ed Jobs funds as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement in FY 2011, the percentage of total State revenues available to the State that was used to support education for children with disabilities in FY 2010 did not decrease in FY 2011);
4. The State maintains auditable data demonstrating that the percentage of total State revenues available to the State that was 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 Ed Jobs funds, the State identifies to each LEA the amount of Ed Jobs funds that it distributes to that LEA that the State is treating as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement.

These data may be reviewed by Department staff and others as part of program monitoring, audits, and other oversight activities.

⁴ States that have already submitted documentation to the Department demonstrating that they met the ED Jobs MOE requirement do not have to submit separate MOE documentation to demonstrate compliance with this criterion.

A-5. If the percentage of total State revenues available to the State that is used to support education for children with disabilities has decreased from one year to the next, is it possible for Ed Jobs funds to be treated as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement?

Yes, it is possible. Because the State would not meet the criterion #3 described in A-4, the State would not have prior approval from the Department. However, in this circumstance, a State could request, by letter to the Department, specific written approval to treat Ed Jobs funds as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement. The request must address whether there were any exceptional or uncontrollable circumstances contributing to the year-to-year decreases in revenues, the extent of the decline in available financial resources, and any changes in demand for education for children with disabilities. This letter should be sent to Alexa Posny, Ph.D., Assistant Secretary for Special Education and Rehabilitative Services, at the U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202. A State in this circumstance would be able to treat Ed Jobs funds as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement only if the Secretary approves the State's request.

Example: In FY 2009, a State used 1% of its total State revenues to support education for children with disabilities. In FY 2010, the State used 0.75% of its revenues to support education for children with disabilities. Therefore, this State does not meet the prior approval criterion #3 in A-4 above, and it must obtain specific written approval from the Department before treating Ed Jobs funds as State funds for the purpose of meeting its IDEA, Part B State-level MOE requirement for FY 2010. In its letter requesting specific written approval, the State must provide specific information on any exceptional or uncontrollable circumstances that contributed to the year-to-year decreases in revenues, the extent of the decline in available financial resources, and any changes in demand for education for children with disabilities.

A-6. Does treating Ed Jobs funds as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement reduce the level of effort that a State must demonstrate in future years?

No. If a State treats Ed Jobs funds as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement, it does not reduce the amount of the State's IDEA, Part B State-level MOE requirement in any future year.

Example: A State met its requirement to maintain fiscal effort by making available \$10,000,000 for special education and related services in FY 2009. Accordingly, the State was required to make available \$10,000,000 for special education and related services in FY 2010. However, in FY 2010, the State met this requirement by making available \$9,000,000 in State funds for special education and related services and, because it met the criteria for prior approval (or received specific written approval) to use Ed Jobs funds to meet its IDEA, Part B State-level MOE requirement, the State considered \$1,000,000 of Ed Jobs funds as State funds for special education and related services. In FY 2011, the State must make available \$10,000,000 in State funds for special education and related services.

A-7. May a State use Ed Jobs funds to meet its IDEA, Part C MOE requirement?

Yes, in some circumstances a State may treat Ed Jobs funds as State funds for the purpose of meeting the IDEA, Part C State-level MOE requirement (in 34 CFR § 303.124).⁵

However, in order to do so, the State’s definition of “early childhood, elementary, or secondary educational and related services” must include IDEA, Part C services.

Moreover, a State may treat Ed Jobs funds as State funds for the purpose of meeting the IDEA, Part C MOE requirement only if the Secretary grants specific written approval based on the State’s request. The State’s request must provide the amount of Ed Jobs funds that the State will use to meet the IDEA, Part C State-level MOE requirement. Depending on the particular circumstances involved, further information may be needed to support this request. This request should be sent to:

Alexa Posny, Ph.D.

Assistant Secretary for Special Education and Rehabilitative Services

U.S. Department of Education

400 Maryland Avenue, SW

Washington, DC 20202

⁵ Section 101(5) of Pub. L. 111-226 provides that Ed Jobs funds may be used by LEAs only for certain personnel expenses to provide “early childhood, elementary, or secondary educational and related services.”

B. Local-Level Maintenance of Effort

An LEA may meet its IDEA, Part B local-level MOE requirement through local funds only or through a combination of State and local funds. 34 CFR § 300.203(b)(1). This guidance addresses the circumstances under which LEAs may treat Ed Jobs funds as local funds or, if the LEA uses State and local funds to meet its IDEA, Part B local-level MOE requirement, as State funds for that purpose.

B-1. Which Ed Jobs funds may be treated as local funds for the purpose of meeting the IDEA, Part B local-level MOE requirement?

With one exception, and provided that the criteria in B-5 are met, an LEA may treat as local funds for the purpose of meeting the IDEA, Part B local-level MOE requirement any Ed Jobs funds that are provided to it and that it uses for the education of children with disabilities. However, if the State has identified to the LEA the amount of Ed Jobs funds that the State is treating as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement, the LEA may not treat those Ed Jobs funds as local funds for the purpose of meeting the IDEA, Part B local-level MOE requirement. (As specified in criterion #5 in A-4, a State is required to identify to each LEA any Ed Jobs funds the LEA receives that the State is treating as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement.)

Example 1: A State provides \$1,000 in Ed Jobs funds to an LEA. The State notifies the LEA that the State is treating \$1,000 of those funds as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement. That LEA may not treat any of the Ed Jobs funds that it has received as local funds for the purpose of meeting the IDEA, Part B local-level MOE requirement.

Example 2: A State provides \$1,000 in Ed Jobs funds to an LEA. The State does not treat the Ed Jobs funds as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement. Therefore, the State does not notify the LEA that it is treating any of those funds as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement. That LEA may treat up to \$1,000 of the Ed Jobs funds that it has received as local funds for the purpose of meeting the IDEA, Part B local-level MOE requirement if it has spent those funds for the education of children with disabilities.

Example 3: A State provides \$1,000 in Ed Jobs funds to an LEA. The State notifies the LEA that the State is treating \$600 of those funds as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement. That LEA may treat up to \$400 of the Ed Jobs funds that it has received as local funds for the purpose of meeting the IDEA, Part B local-level MOE requirement if it has spent those funds for the education of children with disabilities.

B-2. Which Ed Jobs funds may be treated as State funds for the purpose of meeting the IDEA, Part B local-level MOE requirement?

An LEA may treat Ed Jobs funds as State funds for the purpose of meeting the IDEA, Part B local-level MOE requirement if the LEA meets its IDEA, Part B local-level MOE requirement through a combination of State and local funds.

Example 1: A State provides \$1,000 in Ed Jobs funds to an LEA. The State notifies the LEA that it is treating \$1,000 of these funds as State funds for the purpose of meeting its IDEA, Part B MOE requirement. This LEA meets its IDEA, Part B local-level MOE requirement through a combination of State and local funds. This LEA may treat \$1,000 of Ed Jobs funds as State funds for the purpose of meeting its IDEA, Part B local-level MOE requirement.

Example 2: A State provides \$1,000 in Ed Jobs funds to an LEA. The State notifies the LEA that the State is treating \$1,000 of these funds as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement. This LEA meets its IDEA, Part B local-level MOE requirement through local funds only. The LEA may not treat any of the Ed Jobs funds that it has received as local funds for the purpose of meeting the IDEA, Part B local-level MOE requirement.

B-3. Must an LEA maintain documentation demonstrating that the Ed Jobs funds that it is treating as State or local funds for the purpose of meeting the IDEA, Part B local-level MOE requirement are, in fact, spent for the education of children with disabilities?

Yes. An LEA must maintain documentation that the Ed Jobs funds that it is treating as State or local funds for the purpose of meeting the IDEA, Part B local-level MOE requirement in fact were spent for the education of children with disabilities.

B-4. Must an LEA apply to the Secretary for prior approval to treat Ed Jobs funds as local funds for the purpose of meeting the IDEA, Part B local-level MOE requirement?

No. The Secretary is granting prior approval⁶ to an LEA to treat Ed Jobs funds as local funds for the purpose of meeting the IDEA, Part B local-level MOE requirement so long as the State and LEA meet the criteria in B-5, including providing any additional information that the State may require to ensure that the LEA properly maintains auditable data concerning the use of its Ed Jobs funds. An LEA should contact its State educational agency to determine whether it meets the criteria for prior approval. If the criteria in B-5 are met, the LEA has prior approval from the Secretary, and may treat Ed Jobs funds as local funds for the purpose of meeting the IDEA, Part B local-level MOE requirement, and does not need to request specific written approval from the Secretary. If the criteria are not met, the LEA does not have prior approval and may not treat Ed Jobs funds as local funds for the purpose of meeting the IDEA, Part B local-level MOE requirement. States may advise LEAs that choose to treat Ed Jobs funds as local funds for the purpose of meeting

⁶ For the purpose of this guidance “prior approval” in Section B. Local-level Maintenance of Effort means that the LEA meets the criteria in B-5.

the IDEA, Part B local-level MOE requirement to submit any necessary information with any amendments to the LEA's application for IDEA, Part B funds.

B-5. Under what circumstances does the Secretary give prior approval to an LEA to treat Ed Jobs funds as local funds for the purpose of meeting the IDEA, Part B local-level MOE requirement?

The Secretary grants prior approval to an LEA to treat Ed Jobs funds that are provided to the LEA and that the LEA uses for the education of children with disabilities (except for Ed Jobs funds that the State is treating as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement) as local funds for the purpose of meeting the IDEA, Part B local-level MOE requirement if:

1. The State demonstrates to the Department, on the basis of auditable data, that it is complying with the Ed Jobs MOE requirements (See Initial Guidance on the Education Jobs Fund Program, August 13, 2010 for a detailed discussion of the different ways a State may meet the Ed Jobs MOE requirements available at: <http://www2.ed.gov/programs/educationjobsfund/governors-ed-jobs-guidance-final-8-13-10.doc>); and
2. The LEA maintains auditable data demonstrating that it separately accounts for Ed Jobs funds that the State treats as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement, if any, and Ed Jobs funds that the LEA treats as local funds for the purpose of meeting the IDEA, Part B local-level MOE requirement, including data that those funds were spent for the education of children with disabilities. A State may request additional information from an LEA to ensure that it properly maintains auditable data.

B-6. If an LEA calculates its local-level MOE on the basis of State and local funds, must the LEA obtain any additional approval to treat Ed Jobs funds as State funds for the purpose of meeting its local-level MOE requirement if the only Ed Jobs funds that it is including in its calculation are those that the State has identified as funds the State is treating as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement?

No. If the only Ed Jobs funds that an LEA includes in its calculation of IDEA, Part B local-level MOE are funds that the State identified as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement, an LEA does not need any additional approval, as the State would already have received prior approval from the Secretary to treat the Ed Jobs funds as State funds for the purpose of meeting the IDEA, Part B MOE requirement. The LEA must maintain documentation that those Ed Jobs funds were actually spent for the education of children with disabilities.

Example: A State provides \$1,000 in Ed Jobs funds to an LEA. The State notifies the LEA that the State is treating \$600 of those funds as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement. This LEA meets its IDEA, Part B local-level MOE requirement through a combination of State and local funds. This LEA may treat up to \$600 of the Ed Jobs funds as State funds for the purpose of meeting its IDEA, Part B

local-level MOE requirement, and does not need to seek any approval to do so, if it has spent those funds for the education of children with disabilities.

B-7. How does treating Ed Jobs funds as State or local funds for the purpose of meeting the IDEA, Part B local-level MOE requirement affect how an LEA demonstrates that it is meeting the IDEA, Part B local-level MOE requirement?

- If the State is not treating Ed Jobs funds as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement, but the LEA is treating Ed Jobs funds as local funds for the purpose of meeting the IDEA, Part B local-level MOE requirement, the LEA may base its local-level MOE calculation on either local funds only (including those Ed Jobs funds), or both local (including those Ed Jobs funds) and State funds. The LEA must maintain documentation that the Ed Jobs funds that are being used for the purpose of meeting the IDEA, Part B local-level MOE requirement in fact were spent for the education of children with disabilities.

Example: A State provides \$1,000 in Ed Jobs funds to an LEA. The State does not treat the Ed Jobs funds as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement. Therefore, the State does not notify the LEA that it is treating any of those funds as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement. This LEA treats \$1,000 of the Ed Jobs funds as local funds for the purpose of meeting its IDEA, Part B local-level MOE requirement and calculates its local-level MOE in the same manner as if these Ed Jobs funds were, in fact, local funds, if it has spent those funds for the education of children with disabilities.

- If the State is treating some Ed Jobs funds as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement, and the LEA is treating other Ed Jobs funds as local funds for the purpose of meeting the IDEA, Part B local-level MOE requirement, the LEA may base its local-level MOE calculation on either local funds only (including the Ed Jobs funds the LEA is treating as local funds for the purpose of meeting its IDEA, Part B local-level MOE requirement), or local (including the Ed Jobs funds the LEA is treating as local funds for the purpose of meeting the IDEA, Part B local-level MOE requirement) and State (including the Ed Jobs funds the State is treating as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement and has distributed to the LEA) funds. The LEA must maintain documentation that the Ed Jobs funds that are being used to meet the IDEA, Part B local-level MOE requirement, as local funds and as State funds, if any, in fact were spent for the education of children with disabilities.

Example: A State provides \$1,000 in Ed Jobs funds to an LEA. The State notifies the LEA that the State is treating \$600 of these funds as State funds for the purpose of meeting the IDEA, Part B State-level MOE requirement. If the LEA is basing its local-level MOE calculation on local funds only, the LEA may treat up to \$400 of these funds as local funds for the purpose of meeting its IDEA, Part B local-level MOE requirement if it has spent those funds for the education of children with disabilities. Alternatively, if the LEA is basing its local-level MOE calculation on a combination of State or local funds, the LEA may treat up to \$600 of the Ed Jobs funds as State funds

and up to \$400 of the Ed jobs funds as local funds for the purpose of meeting the IDEA, Part B local-level MOE requirement if it has spent those funds for the education of children with disabilities.

B-8. Does treating Ed Jobs funds as local funds for the purpose of meeting the IDEA, Part B local-level MOE requirement reduce the level of effort that an LEA must demonstrate in future years?

No. If an LEA treats Ed Jobs funds as local funds for the purpose of meeting the IDEA, Part B local-level MOE requirement, it does not reduce the amount of the LEA's IDEA, Part B local-level MOE requirement in any future year.