



UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, DC 20202

OSEP POLICY SUPPORT 21-01

**PROCESS AND CRITERIA USED TO EVALUATE A REQUEST BY
STATES TO WAIVE MAINTENANCE OF
STATE FINANCIAL SUPPORT
REQUIREMENTS UNDER PART B OF THE
*INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)***

**OFFICE OF SPECIAL EDUCATION PROGRAMS
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
U.S. DEPARTMENT OF EDUCATION**

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The purpose of this document is to provide guidance to State educational agencies (SEAs) by describing the factors the Department considers when reviewing requests for waivers of the maintenance of State financial support (MFS) requirement under Part B of the Individuals with Disabilities Education Act (IDEA). This document replaces the Department's June 2010 guidance entitled *Process and Criteria Used to Evaluate a Request by States to Waive Maintenance of Effort Requirements under Part B of the IDEA*, which was related to the *American Recovery and Reinvestment Act of 2009 (ARRA)*. We have removed the ARRA references from this document and reorganized the document to reflect the criteria relevant to the specific statutory waiver examples.

Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. In addition, it does not create or confer any rights for or on any person.

Process and Criteria

Under the MFS requirement, a State must 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. [20 U.S.C. § 1412\(a\)\(18\)\(A\)](#) and [34 C.F.R. § 300.163\(a\)](#). The

Department is authorized to waive the MFS requirement for a State, for one fiscal year at a time, if the Department determines that doing so would be equitable due to an exceptional or uncontrollable circumstance, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of a State. [20 U.S.C. § 1412\(a\)\(18\)\(C\)](#) and [34 C.F.R. § 300.163\(c\)](#). If a waiver is granted, a State must continue to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities residing in that State. 20 U.S.C. § 1412(a)(1) and 34 C.F.R. § 300.101. Further, if the Department grants a waiver, the amount of financial support required of the State in future years is the same amount that would have been required in the absence of the waiver. [20 U.S.C. § 1412\(a\)\(18\)\(D\)](#) and [34 C.F.R. § 300.163\(d\)](#).

As we have indicated in the preamble to the 2006 IDEA Part B regulations, the decision to grant or deny a waiver is made on a case-by-case basis by the Assistant Secretary of the Office of Special Education and Rehabilitative Services (OSERS); waivers are considered in a thorough process that takes into account the specific facts and circumstances of each situation being reviewed. [71 FR 46540, 46614 \(August 14, 2006\)](#). As noted above, the statute includes two examples of exceptional or uncontrollable circumstances under which States may request an MFS waiver — a natural disaster or a precipitous and unforeseen decline in the financial resources of a State. While this document provides specific information about the two examples included in the statute, it is important to note that these two examples of exceptional or uncontrollable circumstances do not represent an exhaustive list, and that the Department may consider other exceptional or uncontrollable circumstances when considering MFS waiver requests (e.g., a public health emergency).

Precipitous and Unforeseen Decline in Financial Resources

When considering a waiver request from a State asserting a precipitous and unforeseen decline in financial resources, the Department prioritizes, in its analysis, whether the State is treating special education equitably when compared to other programs within the State. In reviewing waiver requests under IDEA Part B, the Department will, on a case-by-case basis, consider factors such as the following:

- The State's revenues for the year for which a waiver is sought compared to the prior year and to what extent the decrease was based on exceptional or uncontrollable circumstances.
- The State's total appropriations, including education and non-education related programs and expenditures, in the year for which a waiver is sought and the prior year.

- The State's level of financial support for special education and related services provided to children with disabilities in the year for which a waiver is sought and the prior year.
- Whether the State had the financial capacity to maintain support for special education and related services and did not do so (e.g., whether the State deposited funds into a Rainy Day or Emergency Fund rather than allocating those funds to special education and related services).

Natural Disaster

The Department has not historically received a large number of requests for waivers of the MFS requirement due to a natural disaster. In addition, the specific scope and impacts of any given natural disaster are highly variable and less conducive to standard criteria and data sources. However, in evaluating these requests on a case-by-case basis, the Department will consider, among other things:¹

- Natural disaster declarations by the State or Federal government.
- The geographic scope of the natural disaster.
- The State's total emergency appropriations in the year for which the waiver is sought.
- The State's total non-emergency appropriations in the year for which a waiver is sought and the prior year.
- The State's level of financial support for special education and related services provided to children with disabilities in the year for which a waiver is sought and the prior year.

Other Exceptional or Uncontrollable Circumstances

When considering an MFS waiver request based on other exceptional or uncontrollable circumstances, such as a public health emergency, the Department will examine, on a case-by-case basis, any of the information above that may be relevant to the circumstances at hand, as well as other information that impacts a State's current level of State financial support for special education and related services. Before applying for a waiver for other exceptional or uncontrollable circumstances, States are encouraged to discuss with their OSEP State leads what information would be most useful to provide to the Department.

¹ Additional information about other ways the Department supports States who have experienced natural disasters is available on the Office of Elementary and Secondary Education's Disaster Recovery Unit's website at: <https://oese.ed.gov/offices/disaster-recovery-unit/>.

In making a decision about a waiver under IDEA Part B, the Department may also consider prior results of OSERS' monitoring of the State; after granting a waiver, the Department may undertake additional monitoring of the State's implementation of Part B to assess such issues as whether a FAPE is being made available to all children with disabilities residing in the State.