

A BRIEF SUMMARY OF THE ACT RELATED TO IDEA

A. FUNDING UNDER THE RECOVERY ACT

Students with Disabilities - \$12.3 billion. The Recovery Act includes \$12.3 billion for students with disabilities through three funding streams: (1) \$11.3 billion for Part B State Grants; (2) \$400 million for Part B preschool grants; and (3) \$600 million for Part C Infant and Toddlers Grants.

Part 1: IDEA, Part B (\$11.3 billion). Part B funds generally are allocated to the states and sub-allocated by the SEA to LEAs by statutory formula. The Recovery Act includes special provisions regarding the allocations of these funds when certain maximum levels in the IDEA are reached by all states. Under the IDEA, a state may receive a grant only if it submits a state plan with assurances that it has in effect policies to provide a free appropriate public education (FAPE) to children with disabilities in the state between the ages of 3 and 21, and to meet many other requirements related to due process, how these students are served, and how the federal grant funds are used.

Part 2: IDEA Preschool Grants under Part B (\$400 million). Preschool grants under Section 619 of IDEA are allocated to states that are eligible to receive Part B funds and that make a free appropriate public education available to all children with disabilities, aged 3 through 5, residing in the state. At the local level, funds typically are used for salaries of special education teachers and costs associated with related services, including, but not limited to, speech-language pathology services, physical and occupational therapy, psychological services, parent counseling and training, and social work services in schools.

Part 3: Part C, IDEA – Infants and Toddlers (\$600 million). Part C, IDEA provides federal funds to States to maintain and implement statewide, comprehensive, interagency systems to make available early intervention services for all infants and toddlers with disabilities (from birth to age three) and their families in the state, including child find activities for underserved populations of infants and toddlers. "Infant or toddler with a disability" is defined in the law as an individual under 3 years of age who needs early intervention services because the individual is experiencing developmental delays in cognitive, communication, physical, social or emotional, or adaptive development; has been diagnosed with a physical or mental condition that has a high probability of resulting in developmental delay; or, at the state's discretion, may also include at-risk infants and toddlers. The statewide system must comply with detailed requirements in the law, including a written individualized family service plan developed by a multi-disciplinary team for each infant or toddler with a disability.

B. SPECIFIC MAINTENANCE OF EFFORT AND SUPPLEMENT NOT SUPPLANT REQUIREMENTS UNDER EXISTING PROGRAMS

Maintenance of effort and supplement not supplant provisions under current elementary and secondary programs vary somewhat in their applicability, scope, and rigidity:

Maintenance of Effort

IDEA. Part B of IDEA includes similar maintenance of effort provisions applicable separately at the state and local levels. It prohibits a state from reducing state financial support for special education and related services for, or the excess costs of educating, children with disabilities below the amount of that support for the preceding fiscal year. It also authorizes the Secretary to waive this requirement on grounds similar to those in ESEA, including "a precipitous and unforeseen decline in the financial resources of the state." Other Part B provisions prohibit using Part B funds to reduce the level of expenditures for the education

of children with disabilities made by an LEA from local funds below the level of those expenditures for the preceding fiscal year. The law provides for exceptions to this local prohibition related, among other things, to enrollment decreases of children with disabilities, or to cases where the LEA's Part B allocation increases from the prior year and the LEA elects to use these funds to carry out activities under the ESEA. However, there is no provision authorizing waiver of the local maintenance of effort requirement based on economic conditions or loss of local revenue.

Supplement Not Supplant

IDEA. Supplement not supplant provisions under IDEA are generally more restrictive. At the state level, they provide that funds paid to the state under Part B must be used to supplement, and not to supplant, the level of federal, state, and local funds expended for special education and related services for children with disabilities. The only ground for waiver is if the state provides clear and convincing evidence that all children with disabilities in the state have available to them a free appropriate public education. USED has never granted a waiver on this basis. Unlike Title I, the fact that reductions in expenditures for special education may be caused by factors unrelated to the availability of federal funds is not a defense. IDEA-B also includes a separate supplement not supplant clause applicable at the LEA level, which USED generally has interpreted to mean that the local agency must maintain overall fiscal effort for special education and related services for children with disabilities. Similarly, IDEA-C includes a supplement not supplant clause that has been interpreted by USED to require state and local funds budgeted for early intervention services for infants and toddlers with disabilities to be maintained at least at the same level as the prior fiscal year.

Summary

The applicability of maintenance of effort and supplement not supplant provisions to funding under the Recovery Act is somewhat complex. The Recovery Act provides some flexibility and relief regarding maintenance of effort requirements under the Act and under existing programs funded through the Act. That flexibility will need to be promptly implemented by the Secretary. The Act appears to provide no flexibility regarding most supplement not supplant provisions under current law. Those provisions as written in ESEA programs provide appropriate latitude for states and LEAs to make decisions on expenditure levels devoted to program purposes based on budgetary constraints – not based on the availability of federal funds – but that latitude is generally absent for IDEA-B provisions.