

## MAINTENANCE OF EFFORT

**PURPOSE:** Each year OSPI performs preliminary and final maintenance of effort (MOE) tests on selected federal programs to ensure that each district is maintaining effort and not supplanting. The first set of preliminary tests are completed during the F-196 process ending in November, and the final tests are performed using F-196 and final year-end enrollment data the following March.

There are four Maintenance of Effort tests that are performed: Federal Cross-Cutting, Vocational Education, Indian Education, and Special Education. In addition, there is a Federal Excess Cost Verification test for Special Education.

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## **1. Federal Cross-Cutting**

The federal cross-cutting MOE test compares a calculated expenditure amount in the tested year with a calculated expenditure amount in a base year. This test performs two different calculations: an aggregate expenditure test and a per pupil expenditure test. Usually, the base year is the previous year. If the tested year's calculated expenditures are less than 90 percent of the base year's calculated expenditures, the school district is considered non-compliant. As an example, the MOE test comparing FY 14–15 versus FY 13–14 will determine if a deduction is required for FY 15–16. A district is considered non-compliant when both the aggregate and per pupil test are below 90 percent.

The following federal programs are covered by the federal cross-cutting method as described:

- Title I Part A.
- Title I, Part B, Subpart 3, Even Start.
- Title I, Part D, Prevention and Intervention Programs for Children and Youth who are Neglected, Delinquent, or At-Risk.
- Title I, Part F, Comprehensive School Reform.
- Title II, Part A, Improving Teacher Quality State Grants.
- Title II, Part D, Educational Technology State Grants.
- Title III, Part A, English Acquisition State Grants.
- Title IV, Part A, Safe and Drug-Free Schools and Communities.
- Title IV, Part B, 21<sup>st</sup> Century Learning Centers.
- Title VI, Part B, Subpart 2, Rural Education.

### **Failure to Meet the Requirement**

If a district does not maintain effort, the allocation under the above mentioned programs will be reduced in proportion by which the districts failed to maintain effort. For example, if a district does not maintain effort by 3 percent (both tests are 87 percent); the allocation for these programs for the current year will be reduced by 3 percent.

In addition, in the following year, the district's comparison level for effort is tested against the amount the district would have needed to spend to maintain effort, not the actual spending level. For example, in 2013–14 a district had \$1,000,000 in expenditures. In 2014–15, the district only spent \$850,000, which means it failed to maintain effort (85 percent). In 2015–16, the district's expenditures are compared against \$900,000 – the amount the district would have needed to maintain effort in 2014–15.

### **Waiver**

The Department of Education may waive the MOE requirement if it is determined that such a waiver would be equitable due to:

- Exceptional or uncontrollable circumstances such as a natural disaster; or
- A precipitous decline in the financial resources of the district.

The preliminary calculation and methodology is displayed in the F-196 chapter of this handbook.

<u>Effective Date</u>	<u>Supersedes</u>	<u>Form</u>	<u>Chapter</u>	<u>Section</u>	<u>Page</u>
9/1/10	9/1/09		MOE	1	1

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Effective Date  
9/1/10

Supersedes  
9/1/09

Form

Chapter  
MOE

Section  
1

Page  
2

## **2. Vocational Education**

The vocational MOE test is performed each spring and compares a calculated expenditure amount in the tested year with a calculated expenditure amount in a base year. The state level test is performed in accordance with 34 CFR 403.182 which provides for both aggregate and per pupil tests. The state must maintain a 100 percent effort level. For school districts, if the aggregate and per pupil tests are less than 90 percent of the base year's calculated expenditures, the school district is considered to have not maintained effort.

The preliminary calculation and methodology is displayed in the F-196 chapter of this handbook.

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### **3. Indian Education**

For those districts that receive funding under Title VII, Indian Education Formula Grant Program, the MOE test is required to be performed annually at both the state and district levels. The amount spent in the year under review should be at least 90 percent of the total spent in the year prior to the review according to the per student basis or the aggregate basis to meet the MOE requirements.

In comparing the funds, all funds generated at the state and district levels are considered, including expenditures for administration, instruction, attendance, health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student activities. Items excluded from the comparison include expenditures for community services, capital outlay, and debt service. In addition, aggregate expenditures for the purposes of this program do not include any expenditure from funds generated from any federal program of assistance.

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#### **4. Special Education WAC 392-172A-06015**

The purpose of the maintenance of effort (MOE) requirement is to ensure that local education agencies (LEAs) provide the financial support necessary to make a free appropriate public education (FAPE) available to eligible children with disabilities.

The MOE requirement was first added to the Individuals with Disabilities Education Act (IDEA) in 1997 with implementing regulations released in 1999. On April 28, 2015, the U.S. Department of Education published clarifying regulations on LEA MOE. These regulations became effective on July 1, 2015. The major changes in the revised regulations include:

- Clarification of the eligibility standard;
- Clarification of the compliance standard;
- Explanation of the Subsequent Years rule; and
- Specification of the consequences for an LEA's failure to maintain effort.

Generally, an LEA may not reduce the amount of local, or state and local, funds that it spends for the education of children with disabilities below the amount it spent in the preceding fiscal year. There are two components to the LEA MOE requirement – the eligibility standard and the compliance standard.

#### **Eligibility Standard**

The eligibility standard (§300.203(a)) requires that in order to find an LEA eligible for the IDEA Part B grant, OSPI must determine that the LEA has budgeted for the education of children with disabilities at least the same amount of local, or state and local, funds, as it actually spent for the education of children with disabilities during the most recent fiscal year for which information is available.

#### **Compliance Standard**

The compliance standard (§300.203 (b)) prohibits an LEA from reducing the level of expenditures for the education of children with disabilities made by the LEA from local, or state and local, funds below the level of those expenditures from the same source for the preceding fiscal year. An LEA must maintain (or increase) the amount of local, or state and local, funds it spends for the education of children with disabilities when compared to the preceding fiscal year.

There are four methods/tests an LEA may use to determine if the eligibility (WAC 392-172A-06015 (1) (a)) and compliance standards (WAC 392-172A-06015 (2) (b)) are met. The compliance tests are displayed in the F-196 Preliminary Special Education Maintenance of Effort. The four tests are:

- (i) Local funds only;
- (ii) Combination of state and local funds;
- (iii) Local funds only on a per capita basis; or
- (iv) The combination of state and local funds or a per capita basis.

An LEA need pass only one of the four tests to meet the maintenance of effort requirement.

Under §300.204, there are five instances where an LEA may reduce the level of expenditures for the education of children with disabilities made by the LEA below the level of those expenditures for the preceding fiscal year (for the compliance standard), and below the level of those expenditures for the most recent fiscal year for which information is available (for the eligibility standard). They are:

- (a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel (e.g., special education teachers, speech pathologists, paraprofessionals assigned to work with children with disabilities);
- (b) A decrease in the enrollment of children with disabilities;
- (c) The termination of the obligation of the agency, consistent with IDEA Part B, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child—
  - (1) Has left the jurisdiction of the agency;
  - (2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or
  - (3) No longer needs the program of special education;
- (d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities; and
- (e) The assumption of cost by the high cost fund operated by the SEA under §300.704(c).

In addition to the exemptions listed above, under 34 CFR Sec. 300.205 *Adjustment to local fiscal efforts in certain fiscal years*, for any fiscal year for which the allocation received by a district under IDEA Part B exceeds the amount the district received for the previous fiscal year,

- (a) The district may reduce the level of expenditures otherwise required by 300.203(b) by not more than 50% of the increase, provided
- (b) OSPI has not determined the district is unable to establish and maintain programs of FAPE and OSPI has prohibited the district from reducing the level of expenditures under paragraph (a) of this section, and
- (c) The amount of funds expended by the district for Early Intervening Services (EIS) does not exceed the maximum amount allowable under paragraph (a) of this section (50% of the increase in IDEA Part B funds).

### **Subsequent Years Rule**

The subsequent years rule is applied to identify the level of effort an LEA must meet in order to maintain effort in the year after MOE failure. The LEA must maintain the level of effort that would have been required absent an MOE failure, not the LEA's reduced level of expenditures. The impact of this rule is that to determine the required level of effort, an LEA must look back to last year in which it maintained effort using the same method by which it is establishing compliance.

### **Consequences of LEA's Failure to Meet MOE**

If an LEA fails to maintain its level of expenditures for the education of students eligible for special education, OSPI must repay the federal government out of non-federal funds and will require the LEA to make repayment. OSPI is liable in a recovery action under 20 U.S.C. 1234a to return to the United States Department of Education funds equal to the amount the LEA failed to maintain or the amount of the LEA's Part B allocation for the fiscal year in which it failed to maintain effort, whichever is lower.

## FEDERAL SPECIAL EDUCATION EXCESS COST VERIFICATION

**PURPOSE:** Amounts that districts receive under the Individuals with Disabilities Education Act (IDEA) are only allowed to be spent on the excess costs of providing special education and related services to children with disabilities.

Federally, “excess costs” are defined as those costs that are above the average annual per-pupil expenditure amounts, calculated separately for elementary and secondary students. The calculation of the average per-pupil expenditure amounts is outlined in 34 CFR 300.16, and includes all district expenditures, less the following amounts:

- Amounts that are received under IDEA (Program 21 expenditures).
- Amounts that are received under Title I Part A (Program 51 expenditures).
- Amounts that are received under Title III (Program 53 expenditures).
- Any state or local funds expended that would qualify for assistance under any of the above programs, excluding any amounts for capital outlay or debt service.

A template is available on the School Apportionment and Financial Services website under “Tools” at <http://www.k12.wa.us/safs/TT/tools.asp>.

The Federal Excess Cost Verification is performed prior to the start of the next fiscal year. Accordingly, the 2015–16 verification is performed in 2014–15. The data that the template uses is from the district’s most recent F-196. For the 2015–16 verification, this means data from the district’s 2013–14 F-196.

The template will pre-populate, using the district’s F-196 financial information. Districts must enter their estimated Special Education enrollment for the coming year, as well as their estimated expenditures in Program 21 for the coming year.

To determine if the district has met the Excess Cost requirement, the template compares the amount that is budgeted to be spent on Special Education students against the amount that is budgeted to be spent on a similar number of non-Special Education students. If the amount that is budgeted to be spent on Special Education students is greater, the district has passed the Federal Excess Cost Verification.

For purposes of computing the costs for this test, each Special Education student is credited for a portion of basic education funding for the time they spend in regular classrooms (as reported on the district’s Least Restrictive Environment reporting), plus Program 21 expenditures (which represent the remainder of the day).

This test is separate from the State Excess Cost calculation that determines revenue to be received under Revenue Code 3121. This test is also separate from the Special Education Maintenance of Effort test.