

# Maintenance of Effort

## Georgia Department of Education

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Georgia Department of Education

# Maintenance of Effort

- ESEA (Elementary and Secondary Education Act) and Maintenance of Effort
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- IDEA (Individuals with Disabilities Education Act) and Maintenance of Effort
  - Requirements
  - Testing of Compliance
- ESSER and Maintenance of Effort
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# Elementary and Secondary Education Act (ESEA) of 1965

Section 1118, 6118, and 8521

# U.S. ED FAQ May 26, 2021- ESEA MOE

Page 52, E-14. *How does the use of ESSER and GEER funds to make up for State and/or local revenue losses impact the LEA MOE requirement in section 8521 of the ESEA?*

Section 8521 of the ESEA contains an LEA MOE requirement applicable to covered ESEA programs in addition to the State MOE requirements in the CARES Act, CRRSA Act, and ARP Act, and the State and LEA maintenance of equity requirements in the ARP Act. Under section 8521 and 34 CFR § 299.5, an LEA's expenditures for the provision of free public education in the preceding fiscal year may not be less than 90 percent of its expenditures in the second preceding fiscal year, determined either by the LEA's 53 combined fiscal effort per student or its aggregate expenditures of State and local funds. **CARES Act, CRRSA Act, and ARP Act funds are Federal funds and may not replace State and local funds in LEA MOE calculations.** As a result, if an LEA uses CARES Act, CRRSA Act, and ARP Act funds to replace State or local funding to provide free public education, **the LEA may fail to meet MOE under section 8521. Absent a waiver of the MOE requirement, an SEA must reduce an LEA's allocation for each covered program by the amount the LEA failed to meet MOE.** The Department may waive the MOE requirement in section 8521 of the ESEA if it determines a waiver would be equitable due to exceptional or uncontrollable circumstances or a precipitous decline in the financial resources of an LEA. If an LEA experienced a precipitous decline in State and local resources caused by the COVID-19 pandemic, that could warrant the Department's granting an MOE waiver. With respect to exceptional or uncontrollable circumstances, the statute includes the example of a natural disaster or a change in the organizational structure of the LEA. In addition to these two examples, there may be other instances of exceptional or uncontrollable circumstances that might warrant when a waiver would be granted, such as a significant reduction in expenditures of State and local funds due to temporary closures or changes in onsite operations caused by the COVID-19 pandemic.

# ESEA Section 1118 - Fiscal Requirements

- Sec 1118 (a) Maintenance of Effort – A local educational agency may receive funds under this part for any fiscal year only if the State education agency involved finds that the local educational agency has maintained the agency's fiscal effort in accordance with section 8521.

# ESEA Section 6118 – Reduction of Payment

- Sec 6118(c ) – Reduction of Payment For Failure to Maintain Fiscal Effort – Each local educational agency shall maintain fiscal effort in accordance with section 8521 of be subject to reduced payments under this subpart in accordance with such section 8521.

## ESEA Section 8521 – Maintenance of Effort

- Sec 8521(a) – Maintenance of Effort – A local educational agency may receive funds under a covered program for any fiscal year only if the State educational agency finds that either the combined fiscal effort per student or the aggregate expenditures of the agency and the State with respect to the provision of free public education by the agency for the preceding fiscal year was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

## ESEA Section 8521 – Maintenance of Effort

- Sec 8521(b) – The state educational agency shall reduce the amount of the allocation of funds under a covered program in any fiscal year in the exact proportion by which a local educational agency fails to meet the requirement of subsection (a) of this section by falling below 90 percent of both the combined fiscal effort per student and the aggregate expenditures (using the measure most favorable to the local agency), if such local educational agency has also failed to meet such requirement (as determined using the measure most favorable to the local agency) for 1 or more of the 5 immediately preceding fiscal years.



## ESEA Section 8521 – Maintenance of Effort

- Sec 8521(c) – Waiver – The Secretary may waive the requirements of this section if the Secretary determines that a waiver would be equitable due to –
  - (1) Exceptional or uncontrollable circumstances, such as a natural disaster or a change in the organizational structure of the local educational agency; or
  - (2) A precipitous decline in the financial resources of the local educational agency.

# ESEA – Maintenance of Effort Calculation

- GaDOE calculates Met/Did Not Meet for Compliance
- FY 2023 calculation = compares FY 2021 to 90% FY 2020
- Waiver request was submitted to the U.S. Department of Education for 23 Georgia LEAs that did not meet MOE for the FY 2023 eligibility period
- Reasons provided by the LEAs for not meeting MOE:
  - FY 2021 QBE revenue was reduced by \$382M
  - Utilizing the Elementary and Secondary Supplemental Emergency Relief (ESSER) funds awarded for COVID relief
  - Decrease of regular operation expenditures in FY 2021 compared to FY 2020, related to more digital learning days and school closings

# ESEA – Maintenance of Effort

The Georgia Department of Audits and Accounts (DOAA) annually audits 140 LEAs, and are required to review the audits conducted by other CPA firms.

The following clarifying questions were submitted to U.S. Department of Education regarding the FY 2023 single audit testing:

- 1. Should the MOE requirement be tested for the fiscal year under review without regard to the MOE status that was achieved in any previous fiscal year, or*
- 2. Should the MOE requirement be tested for the fiscal year under review and a finding only be given if the LEA has also failed MOE in one of the previous five fiscal years?*

# ESEA – Maintenance of Effort

## U.S. Department of Education responded on October 21, 2022:

- the ESEA’s MOE requirement is tested regardless of whether an LEA met this requirement in the previous fiscal year’s MOE determination.
- You also mentioned the “1 in 5” provision in ESEA section 8521(b)(1). This provision is not a waiver of the ESEA MOE requirements. Rather, it requires a State educational agency (SEA) to reduce an LEA’s allocation under a covered program only if the LEA fails to maintain effort for a given fiscal year’s MOE determination and also failed to maintain effort in one or more of the five immediately preceding fiscal years’ MOE determinations.
- The receipt of an MOE waiver under ESEA section 8521(c) does intersect with the “1 in 5” provision in ESEA section 8521(b)(1). If an LEA receives an MOE waiver from ED for a given fiscal year’s MOE determination, the LEA has effectively maintained effort for that fiscal year. Accordingly, in determining whether the LEA had failed to maintain effort for one or more of the five immediately preceding fiscal years, the SEA counts the year in which the LEA received a waiver as a year of maintaining effort.

# ESEA MOE – How Georgia Calculates

- Utilize an unaudited annual financial report submitted each fiscal year by each LEA
- Includes the following Governmental Funds:
  - General Fund
  - Local Charter School General Fund
  - Consolidated Schoolwide Program Fund
- Includes the following functional categories:
  - Instruction
  - Pupil Services
  - Improvement of Instructional Service
  - Instructional Professional Development
  - Media Services
  - Federal Grant Administration
  - General Administration
  - School Administration
  - Maintenance of Operations
  - Pupil Transportation

# ESEA MOE – How Georgia Calculates

- Excludes the following object codes:
  - Capitalizable equipment costs
  - Transfer of funds to local authorized charter school
- Excludes the following function codes:
  - Business Administration
  - Central Support Services
  - Other Support Services
  - Nutrition
  - Enterprise Operations
  - Community Support Services
  - Facilities Acquisition and Construction Services
  - Other Financing Uses
  - Debt Service

# ESEA – Maintenance of Effort Calculation

## **Two Ways to Meet MOE**

**Test 1:** The current fiscal year expenditures must equal or be greater than 90% of the previous fiscal year's expenditures. **OR**

**Test 2:** Divide the current fiscal year expenditures by the enrollment count (omit Pre-K FTEs). The current fiscal year per pupil expenditures must be equal to or greater than 90% of the previous fiscal year's per pupil expenditures.

# Comparison of FY 2020 and FY 2021

Comparing	FY 2020	FY 2021	%age of Change
State Funds	\$10,679,431,687	\$10,165,668,851	-5%
Federal Funds	\$1,137,246,904	\$2,264,594,426	99%
Local Funds	\$8,017,367,255	\$8,600,957,775	7%
M&O Expenses	\$1,562,985,174	\$1,558,307,173	-.3%
Transportation Expenses	\$969,664,851	\$916,216,243	-6%
Overall Expenses	\$27,462,267,500	\$27,979,370,055	2%
General Fund Expenses	\$18,418,371,913	\$17,603,999,901	-4%
ESSER and other COVID Expenses	\$23,904,029	1,161,314,918	4,758%



# ESSER Spending Trends

Amount of ESSER and other COVID Expenses Reported:

FY 2020 - \$23,904,029.31

FY 2021 - \$1,161,314,917

FY 2022 - \$1,944,382,802.26

Expected to increase in FY 2023, declining in FY 2024 and FY 2025

# ESEA MOE Waiver Request

- Requests include specific explanations for the reduced effort noted in the calculation
- U.S. Ed did request additional information from GaDOE in order to verify the explanations
  - Decreased enrollment
  - Use of ESSER funds for continuity of services
  - Decreased number of employees
  - Decreased expenditures for M&O, transportation, professional development

# Individuals with Disabilities Education Act, reauthorized 2004

Purpose to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services

# IDEA Maintenance of Effort Eligibility and Compliance

- LEAs must use/expend (using state and local funds) at least as much as they did in the comparison year on the education of children with disabilities.
- ***Two standards:***
  - Eligibility: Must budget and project at least as much as expended in the comparison year.
  - Compliance: Must actually expend at least as much as they expended in previous comparison year

# IDEA Maintenance of Effort Eligibility and Compliance

## The Methods of MOE Calculation

An LEA must maintain state and local expenditures for students with disabilities in **one** of four ways:

- local funds only;
- the combination of State and local funds;
- local funds only on a per capita basis; or
- the combination of State and local funds on a per capita basis.

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# IDEA Maintenance of Effort Eligibility and Compliance

## Maintenance of Effort

### §300.203 – Maintenance of Effort

- (b) Compliance Standard
- MOE can only be met with local and state funds
- Any expenditures for special education costs that are funded with federal funds cannot be considered
- Any expenditures for special education costs that are funded with state/local funds must be considered

# IDEA Maintenance of Effort Eligibility and Compliance

Supplement,  
Not Supplant

34 CFR §300.202 Use of amounts explains the appropriate use of IDEA, Part B funds for students with disabilities.

(a) General. Amounts provided to the LEA under Part B of the Act—

- (1) Must be expended in accordance with the applicable provisions of this part;
- (2) Must be used only to pay the **excess costs** of providing special education and related services to children with disabilities, consistent with paragraph (b) of this section; and
- (3) Must be used to **supplement** State, local, and other Federal funds **and not to supplant** those funds.

# U.S. ED FAQ May 26, 2021- IDEA MOE

Page 51, E-12. *How does the use of ESSER and GEER funds to make up for State and/or local revenue losses impact IDEA's LEA Maintenance of Effort (MOE) requirement?*

For the purposes of the IDEA, CARES Act, CRRSA Act, and ARP Act funds are considered Federal funds and may not replace State and local funds in LEA MOE calculations. As a result, if an LEA uses CARES Act, CRRSA Act, or ARP Act funds to replace State or local funding for the education of children with disabilities, this may result in a failure of the LEA to meet the budget and/or expenditure requirements for LEA MOE under IDEA. If an LEA fails to meet the MOE budget requirement, the LEA is not eligible for an IDEA Part B subgrant. If the LEA fails to meet the MOE expenditure requirement, then the SEA is liable in a recovery action to return non-Federal funds to the Department in an amount equal to the amount of the LEA's MOE shortfall or the amount of the LEA's IDEA Part B subgrant in that fiscal year, whichever is lower. SEAs may, but are not required to, seek reimbursement from the LEA that failed to meet MOE.



# IDEA – Maintenance of Effort Calculation

- LEAs calculate for Eligibility and must budget to meet the standard.
- LEAs may contact IDEA Budget Liaison to use allowable exceptions throughout out the year.
- GaDOE calculates Met or Did Not Meet for Compliance.
- IDEA MOE Eligibility and Compliance will include program code 2081.
- All reconciliations (allowable exceptions and adjustments) must be completed by March 1<sup>st</sup> after Compliance test.
- Any errors on the Annual Financial reporting are not considered an allowable exception for not meeting.
- **The IDEA MOE Effort is not waivable. (Exceptions and Adjustments allowed.)**

# IDEA Maintenance of Effort Eligibility Test

Worksheet to Meet the IDEA MOE Calculations			
<i>The Calculation should NOT be altered.</i>			
MOE eligibility for FY20 grant.		FY 2019 State/Local Expenditures	Projected Budget for FY 2020 State/Local Projections
LEA Function Codes for MOE	QBE Categories		
		Variations	
<b>Total State Expenditures:</b>			
<b>Fund 100 and 599</b>	Description (when including local charters in Fund 599 exclude object 594)		
2011	Students w/Disabilities		
2021	Category I		
2031	Category II		
2041	Category III		
2051	Category IV		
2061	Category V		
2081	Non-Instructional Special Education Expenditures		
2310	Tuition for Multi-Handicapped Children		
2620	Preschool Handicapped State Grant		
2810	Rule 10 - Special Education (Support Costs)		
<b>Total State Expenditures Reported</b>		0.00	0.00
<b>Total State Revenues</b>		<i>As reported on the Annual Financial Report (DE 46)</i>	

<b>Excess of State Expenditures Over State Revenues</b>		0.00	<i>Expenditures coded to State program codes in excess of the State Revenue received.</i>	0.00
<b>Total Local Expenditures:</b>				
Fund 100	Description			
<b>Excess of State Expenditures Over State Revenues (calculated above)</b>		0.00		0.00
2023	Local - Category I			
2033	Local - Category II			
2043	Local - Category III			
2053	Local - Category IV			
2063	Local - Category V			

# IDEA – Maintenance of Effort Noncompliance

If an LEA fails to meet the MOE standard for the aggregate and per pupil expenditures of state and local special education funds, the LEA may reduce the level of expenditures where such reduction is attributable to one or more of the following MOE exceptions:

- the voluntary departure, by retirement or otherwise, of special education personnel;
- a decrease in the enrollment of children with disabilities;
- the termination of the LEA's obligation to provide a program to a child with a disability that is an exceptionally costly program because the child has left the LEA, reached the maximum age, or no longer needs the program;
- the termination of costly expenditures for equipment; and/or,
- the assumption of the cost by a high-cost fund operated by the state.

**The LEA may also reduce effort through an LEA Adjustment if the LEA had an increase in allocation in the year of the MOE compliance test. The LEA is allowed to take a maximum of 50% of the increase in allocation under certain conditions.**

# IDEA – Maintenance of Effort Calculation Adjustment

- IDEA 2004 allows an LEA to receive an adjustment of 50% of the **increase only** in IDEA funds from the previous year to reduce local MOE expenditures. Since ARP funding is considered an increase in IDEA funds, all eligible districts are strongly encouraged to complete an MOE adjustment form located [here](#) to take this adjustment. Based on further IDEA criteria, not all LEAs are eligible.

# Comparison of FY 2020, FY 2021, and FY 2022

Comparing	FY 2020	FY 2021	FY 2022
General Fund Expenses	\$2,253,665,985	\$2,259,243,673	\$2,368,234,694

Special education state/local expenditures continued to increase in the pandemic. Due to the nature of the calculation, most GA LEAs chose to leave the expenditures for exceptional students in the General Fund and to utilize the ESSER funding for additional services, not for regular operations.

# Considerations for Maintenance of Effort – ESEA and IDEA

- Annual financial report used is reported on the modified accrual basis of accounting for Funds 100, 150, 599.
- Expenditures are adjusted for Prior Year and Current Year Salary/Benefit accruals as well as outstanding Accounts Payables at 6.30.
- Revenues are adjusted for Prior Year and Current Year QBE and Federal Grant Receivables, as well as Property Tax Receivables.
- Eligibility or individual testing should consider the basis of accounting the Compliance Test is based.

# Maintenance of Effort – ESEA and IDEA

## ESEA

- Uses Function and Object Codes Only
- Waiver allowed for certain conditions
- Compares two preceding years to determine compliance and eligibility

## IDEA

- Uses Program Codes Only
- No Waivers allowed (may reduce using allowable exceptions and adjustments)
- Compares most recent fiscal year to the last year of effort met

# Maintenance of Effort - CARES

CARES	CRRSA	ARP
<p>In FYs 2020 and 2021 states must spend at least the same amount of state money on education as they did on average in FYs 2017, 2018 and 2019.</p> <p>For example, if a state spent on average \$10 billion in state money on education in FYs 2017, 2018 and 2019, then it was required to spend at least \$10 billion on education in FY 2021.</p>	<p>In FY 2022 states must spend the same proportion of their state budgets on education as they did on average in FYs 2017, 2018 and 2019.</p> <p>For example, if a state spent on average 30% of its state budget on education in FYs 2017, 2018 and 2019, then it must spend at least 30% of its state budget on education in FY 2022.</p>	<p>In FY 2022 and 2023 states must spend the same proportion of their state budgets on education as they did on average in FYs 2017, 2018 and 2019.</p> <p>For example, if a state spent on average 30% of its state budget on education in FYs 2017, 2018 and 2019, then it must spend at least 30% of its state budget on education in FYs 2022 and 2023.</p>

**Per webinar held by CCSSO on March 17, 2021**



# Contacts

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