

VIRGINIA DEPARTMENT OF EDUCATION Individuals with Disabilities Education Act (IDEA) Maintenance of Effort (MOE)

The Virginia Department of Education (VDOE) is required by federal regulation to ensure all school divisions in Virginia comply with §300.203 of the **Individuals with Disabilities Education Act (IDEA)**, which mandates that school divisions meet a maintenance of effort (MOE) obligation. This regulation requires school divisions to spend at least the same amount of local or local plus state dollars for a current school year on the delivery of special education and related services, as were spent the previous year.

Beginning with fiscal year 2010, the VDOE used Schedule A from the Annual School Report Financial Section (ASRFIN) as part of its State Educational Agency (SEA) monitoring of federal Local Educational Agency (LEA) maintenance of effort (MOE) requirements for special education under the federal IDEA. Starting with fiscal year 2012, the ASRFIN is no longer being used to collect the data used for IDEA maintenance of effort monitoring. The Office of Financial Services, within the Division of Special Education and Student Services of the Virginia Department of Education, has developed a separate application to capture this data and perform the MOE tests.

The VDOE is utilizing a Web-based application for divisions to use to report expenditures. This application must include all costs associated with providing special education and related services to serve children and youth with disabilities that are above and beyond the costs of providing regular education programs to nondisabled students. Costs associated with capital outlay or regular education programs and services should be excluded from this expenditure calculation.

Expenditures for special education and related services must be reported by source of funds (state and local). Federal expenditures are not used to determine whether the division has met its MOE requirement. Each entry must represent actual expenditures and be consistent with federal and state definitions of special education and related services. “Related services” are defined in §22.1-213, *Code of Virginia*:

“Related services” means transportation and such developmental, corrective, and other supportive services as are required to assist a disabled child to benefit from special education, including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identified and assessment of disabilities in children, counseling services and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

The VDOE has populated the application with final FY 2011 division expenditures for the year to year comparison of local and local plus state expenditures for the provision of special education and related services. Once expenditure information is entered by the school division into the application,

preliminary tests designed within the automated IDEA MOE application will indicate if a division **meets** or **does not meet** its IDEA MOE requirement. If not met, the automated system can then be used to identify possible allowable exceptions, which if approved, could result in the division meeting its MOE requirement.

The primary requisite for reporting expenditures for purposes of determining compliance with IDEA's MOE requirements for FY 2012 is that divisions will only report those expenditures made for students with disabilities for whom the division is **legally responsible**. For FY 2012 in the ASR, divisions only reported expenditures for students with disabilities **served** by the division. As such, expenditures entered in the IDEA MOE application will likely differ from special education expenditures reflected on Schedule A of the ASRFIN since they reflect a different student type.

NOTE: The VDOE realizes this change in expenditure reporting requirements may cause a division to fail to meet its FY 2012 MOE requirement. If this is the case, VDOE staff will work with divisions, on an individual, case-by-case basis, to make adjustments to reported expenditures from FY 2011. Any such adjustments will not affect FY 2011 MOE – FY 2011 MOE will not be recomputed.

As noted above, divisions should report only those expenditures that are related to the provision of special education and related services for students with disabilities for whom the division is legally responsible. These expenditures should include any local or state dollars expended for:

- direct instruction/provision of special education service through an Individualized Education Program (IEP);
- costs such as salaries and benefits (full and prorated costs) of staff who provide special education and related services;
- costs associated with special transportation as called for in an IEP;
- prorated proportionate costs of certain equipment purchases or certain construction costs;
- costs associated with the provision of special education and related services where a division is responsible for the education program in a regional or local jail;
- costs for providing special education and related services through a homebound or homebased model; and
- tuition paid to another division.

The following costs should not be included in the division's reported expenditures:

- tuition received from another LEA
- general capital outlay
- general transportation costs
- Comprehensive Services Act (CSA) local match
- any expenditures that apply to all students (such costs apply to students with disabilities as well)

NOTE: Tuition received by the serving school division for a student the serving division is not legally responsible for should be used to reduce the serving divisions expenditures by the amount of the tuition received.

The following information is provided to help divisions understand the process through which VDOE determines whether a division has met its IDEA MOE requirement. The MOE tests and a review of any possible allowable exceptions will be conducted using the new IDEA MOE Web-based application:

IDEA MOE Tests:

As specified in §300.203 of the IDEA regulations, there are four ways (four “tests”) a school division can meet its maintenance of effort requirement:

1. Spend the same total amount of local funds only as were spent for the previous year;

- the first test compares the reported local expenditures for the current year compared to the prior year;

2. Spend the same amount of local plus state funds as were spent for the previous year;

- the second test compares the reported local plus state expenditures for the current year compared to the prior year;

MOE TEST 1		MOE TEST 2	
Current Year Local Expenditures:	42,020,000.00	Current Year Local + State Expenditures:	61,220,000.00
Prior Year Local Expenditures:	43,087,116.31	Prior Year Local + State Expenditures:	61,275,943.63
Year to Year Comparison of Expenditures:	(1,067,116.31)	Year to Year Comparison of Expenditures:	(55,943.63)
Pass?	No	Pass?	No

3. Spend the same per capita amount of local funds as were spent for the previous year;

- the third test produces a per capita amount (a per pupil dollar amount) derived by taking the reported local expenditures and dividing this amount by the number of students with disabilities the division is legally responsible for, excluding students whose placements are paid for by Comprehensive Services Act (CSA) dollars, as reported on the division’s December 1st special education child count. This per capita amount for the current year is compared to the per capita amount for the prior year.

4. Spend the same per capita amount of local plus state funds as were spent for the previous year.

- the fourth test produces a per capita amount (a per pupil dollar amount) derived by taking the reported local plus state expenditures and dividing this amount by the number of students with disabilities the division is legally responsible for, excluding students whose placements are paid for by Comprehensive Services Act (CSA) dollars, as reported on the division's December 1st special education child count. This per capita amount for the current year is compared to the per capita amount for the prior year.

MOE TEST 3		MOE TEST 4	
Prior Year Local Expenditures:	43,087,116.31	Prior Year Local + State Expenditures:	61,275,943.63
Prior Year Child Count:	7,276.00	Prior Year Child Count:	7,276.00
Prior Year Per Capita:	5,921.8137	Prior Year Per Capita:	8,421.6525
Current Year Local Expenditures:	42,020,000.00	Current Year Local + State Expenditures:	61,220,000.00
Current Year Child Count:	7,101.00	Current Year Child Count:	7,101.00
Current Year Per Capita:	5,917.4764	Current Year Per Capita:	8,621.3209
Pass?	No	Pass?	No

There is no flexibility in the IDEA for any waiver or variance to a school division's MOE requirement.

Under certain conditions specified in the IDEA regulations, a school division may reduce the expenditures needed to meet its MOE requirement. If a division does not pass at least one of the tests listed above, it will use the new Web-based application to enter information that VDOE will review to make a final determination of compliance with the division's IDEA MOE requirement.

IDEA MOE Possible Allowable Exceptions to Expenditures:

The possible allowable exceptions specified in IDEA §300.204(a), §300.204(b), §300.204(c), §300.204(d) and §300.205 and the criteria VDOE will use in considering them in addressing any school division's failed initial MOE test are listed below.

1. §300.204(a)

“ ... The voluntary departure, by retirement or otherwise, or departure for just cause of special education or related services personnel.”

This possible exception is determined by the school division identifying which personnel, over the course of the previous school year, left school division employment through their own choice. The division then identifies the costs associated with each departure. This may be done in two ways.

1. The departure was for a position that was not filled during the year. The full cost associated with that department can be counted for the exception.
2. The position was filled and the new staff was hired at a lower level on the division's pay scale and the difference between the two costs associated with the position can be counted for the exception.

Any considerations for exceptions under this section apply only to positions that are paid for with local or state funds.

Any departures that were the result of a Reduction in Force (RIF), or through layoffs or through any other division directed decision does not constitute a voluntary departure.

Departure for just cause means employment was terminated following some legitimate disciplinary action taken by the division.

2. §300.204(b)

“ ... A decrease in the enrollment of children with disabilities.”

If the school division experiences a decrease in the enrollment of students with disabilities in comparing their current year December 1 special education child count total to the previous year's December 1 special education child count total, the per capita cost of local expenditures or local plus state expenditures may be multiplied by the decrease in the enrollment to produce a dollar amount that may be an allowable exception under this section.

If this exception is applicable to a division, the IDEA MOE Web application will calculate the exception for the division.

3. §300.204(c)

“ ... The termination of the obligation of the agency, consistent with this part, 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.

An exceptionally costly program means an individual program for an individual child that is at least 20 percent more than the average cost for providing special education and related services in a school division. Any possible exception generated by this section will be considered on an individual, case by case basis, using the information submitted through the IDEA MOE application, and reviewed by the VDOE prior to approval.

4. §300.204(d)

“ ... The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.”

Allowable exceptions under this section may include costs for construction projects that have ended or for equipment previously purchased for which there is no need for an additional purchase. Construction costs related to special education would generally be prorated based on the percentage of special education related costs as a percentage of the cost of the project. These possible exceptions would be considered on an individual, case by case basis.

5. §300.205:

“ ... Adjustment to local fiscal efforts in certain fiscal years.”

The allowable exception under this section specifies that for any fiscal year for which the federal allocation received by a school division exceeds the amount the division received the previous fiscal year, the division may reduce the level of expenditures otherwise required by not more than 50 percent of the amount of that excess. This exception cannot be used by any division that has been identified as having significant disproportionality and therefore is required to reserve 15 percent of their federal Part B award for Coordinated Early Intervening Services (CEIS). Also, if a division voluntarily chooses to set aside up to, but not to exceed, 15 percent of its federal Part B grant award, the amount the division chooses to set aside is reduced by the amount taken for the allowable exception under this section. Any division that may qualify for an allowable exception under this section will be contacted by the VDOE to discuss whether the exception might be utilized.

Final IDEA MOE Decision:

Once the VDOE has reviewed the division information entered into the Web application specific to possible allowable exceptions, the VDOE will determine whether or not a division has met its MOE requirement. Final notification of a division's IDEA MOE status will be produced in the application, including a summary of the initial MOE tests and any approved allowable exceptions. Final determination will also specify the expected level of effort (the MOE "target") for the next fiscal year.

If the final status for a division is failure to meet their MOE requirement, the VDOE will be required to pay the amount of the division shortfall to the U.S. Department of Education. The VDOE will then establish a payment plan for the division to reimburse the VDOE. Federal funds cannot be used to make this payment.