

ESSA LEA
MAINTENANCE OF EFFORT
(MOE)
GUIDANCE HANDBOOK

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Introduction

As a condition for receiving its full allocation in any fiscal year, for covered programs under the Elementary and Secondary Education Act of 1965 (ESEA), as reauthorized and amended by the [Every Student Succeeds Act \(ESSA\) of 2015](#), a local educational agency (LEA) must maintain its own state and local fiscal effort in accordance with Section 8521, ESEA. This requirement is known as maintenance of effort (MOE). This handbook provides Texas LEAs with guidance on how to interpret and determine compliance with the ESSA LEA MOE requirement.

Definition of Maintenance of Effort

Section 8521, ESEA, provides that

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.

In other words, an LEA must maintain a minimum of 90% of its expenditures for public education from state and local funds from one year to the next, to receive funds under a covered program. If the percentage of state and local funds expended in the year under determination is less than 90% of what was expended in the prior fiscal year, the LEA's ESSA allocations for the upcoming fiscal year will be reduced in the exact proportion by which the LEA did not meet the MOE requirement.

Covered Programs

As used in Section 8101(11), ESEA, the term "covered program" means each of the following:

- Title I, Part A, Improving Basic Programs Operated by Local Educational Agencies
- Title I, Part D, Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk
- Title II, Part A, Improving Teacher Quality State Grants
- Title III, Part A, English Language Acquisition State Grants
- Title IV, Part B, 21st Century Community Learning Centers
- Title V, Part B, Subpart 2, Rural Education

Purpose of the Provision

In awarding grant funds for education purposes, the federal government does not intend that LEAs should use those dollars as the primary means of providing services. The LEA agrees when it accepts ESSA funds that it will expend non-federal (that is, state and local) funds in accordance with a minimum of two federal fiscal accountability requirements: supplement, not supplant (at the student level), and MOE (at the LEA level). In addition, when the LEA accepts Title I, Part A funds, it also agrees it will meet the comparability of services fiscal requirement (at the campus level).

Supplement, not supplant mandates that state and local funds may not be diverted to other purposes simply because federal funds are available. The MOE requirement ensures that the LEA continues to expend its state and local funds at the same level from fiscal year to fiscal year, instead of limiting services to what can be provided using federal dollars. The Title I, Part A comparability of services provision further requires that each campus receives its fair share of state and local resources, regardless of whether the campus is also federally funded.

Methods of Determining Compliance

To meet the ESSA LEA MOE requirement in any fiscal year, an LEA is required to expend state and local funds at a minimum of 90% of the level at which it expended funds in the preceding fiscal year. There are four calculations for determining whether an LEA has met the ESSA LEA MOE requirement.

An LEA needs to meet at least **one** of the following four tests to be compliant:

1. Total state and local expenditures: The LEA's total state and local expenditures must equal or exceed 90% of expenditures during the previous fiscal year.
2. Total state and local expenditures per-pupil for refined average daily attendance (RADA): The RADA per-pupil amount the LEA expended must equal or exceed 90% of the amount it expended during the previous fiscal year.
3. Total state and local expenditures per-pupil for membership: The membership per-pupil amount the LEA expended must equal or exceed 90% of what it expended during the previous fiscal year.
4. Total state and local expenditures per-pupil for enrollment: The enrollment per-pupil amount the LEA expended must equal or exceed 90% of what it expended during the previous fiscal year.

For example, if the LEA expended \$500,000 in state and local funds in FY 2016, it is required to expend at least \$450,000 in state and local funds in FY 2017 (90% of its prior-year expenditures). If the LEA expends only \$400,000 in FY 2017, it has failed to maintain effort by \$50,000; because the LEA failed to maintain effort, its allocation for FY 2018 will be reduced by 11.111% (\$50,000 is 11.111% of \$450,000).

Total State and Local Expenditures

Per Title 34 of the Code of Federal Regulations (34 CFR) 299.5(d)(1), in determining an LEA's compliance with ESSA LEA MOE, the

SEA shall consider only the LEA's total expenditures from State and local funds for free public education. These include expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities.

For more detailed information, see Appendix 1: ESSA LEA MOE Calculation Methodology.

Total State and Local Expenditures per Pupil (RADA, Membership, or Enrollment)

The LEA may meet ESSA LEA MOE requirements if its fiscal effort per student is maintained at a minimum of 90% of what it expended during the previous fiscal year. Fiscal effort per student is calculated by dividing total state and local expenditures by the LEA's student count. Student count may be calculated on the basis of RADA, membership, or enrollment, as follows:

- RADA: The aggregate eligible days of student attendance is divided by the number of days of instruction to compute RADA. LEAs may find RADA in the reports posted by school year on the Average Daily Attendance and Wealth per Average Daily Attendance page of the TEA website. (Note: House Bill 2442's provision for "minutes of operation" will not change the MOE calculation as TEA will convert minutes into the traditional ADA format for each LEA in the posted reports.)
- Membership: The number of students actually receiving instruction by attendance in a public school, as opposed to being registered but not yet receiving instruction, minus the number of students who are served for fewer than two hours per day. This count is derived by taking the LEA's "Total" enrollment figure (found on the TSDS PEIMS Report PDM1-230-003 Student Summary by Sex and Ethnicity) and subtracting the student count on row "0" (eligibility code).
- Enrollment (In Enrollment): The number of students actually receiving instruction by attendance in a public school, as opposed to being registered but not yet receiving instruction. The LEA's enrollment figure is

included on the TSDS PEIMS Report PDM1-230-003 Student Summary by Sex and Ethnicity. In this report, the "Total" student count indicated is the enrollment count.

Consequences for Failure to Meet ESSA LEA MOE

Per section 8521(b)(1), ESEA, if the LEA fails to meet any of the four tests listed in the Methods of Determining Compliance section, and if the LEA failed to meet the requirement in one or more of the five immediately preceding fiscal years, TEA must reduce the amount of funds allocated under ESEA-covered programs in exact proportion to the LEA's failure to meet the requirement, using the test most favorable to the LEA.

Details on the requirement as applicable to the five immediately preceding fiscal years are provide in the "Five-Year Flexibility Rule" section, below.

Fiscal Years Used in Comparison

The United States Department of Education (USDE) Non-Regulatory Guidance on Title I Fiscal Issues dictates the fiscal years TEA is required to use in determining whether the LEA maintained fiscal effort in accordance with Section 8521, ESEA. Under this guidance, TEA is required to compare the LEA's state and local fiscal effort for the "preceding fiscal year" to the "second preceding fiscal year":

The "preceding fiscal year" is defined as the federal fiscal year, or the 12-month fiscal period most commonly used in a state for official reporting purposes, prior to the beginning of the Federal fiscal year in which funds are available. [34 CFR 299.5(c)].

Furthermore, Section 8521(b)(1), ESEA, provides that **for a year in which an LEA failed to maintain effort, the expenditure amount TEA uses for computing maintenance of effort in subsequent years will be 90 percent of the prior year amount rather than the actual expenditure amount.**

If the LEA was compliant with ESSA LEA MOE in the year prior to the year under determination, then ESSA LEA MOE is calculated based on expenditure data from the year under determination and expenditure data from the prior year. For example, ESSA LEA MOE compliance for fiscal year 2018 (school year 2017-2018) would be calculated based on comparing expenditure data from fiscal year 2018 and fiscal year 2017 (school year 2016-2017). For compliance, the required level of expenditures for fiscal year 2018 must be not less than 90% of what was expended in fiscal year 2017, either in the aggregate or on a per-pupil basis.

If the LEA was not compliant with ESSA LEA MOE in the year prior to the year under determination, then ESSA LEA MOE is calculated based on expenditure data from the year under determination and expenditure data from two years prior. For example, ESSA LEA MOE compliance for fiscal year 2018 (school year 2017-2018) would be calculated based on comparing expenditure data from fiscal year 2018 and fiscal year 2016 (school year 2015-2016). For compliance, the required level of expenditures for fiscal year 2018 must be not less than 90% of what was expended in fiscal year 2016, either in the aggregate or on a per-pupil basis.

Five-Year Flexibility Rule

ESEA Section 8521(b)(1) establishes new flexibility regarding the reduction of an LEA's allocation for failing to maintain ESSA LEA MOE. Specifically, the law states:

An SEA must reduce an LEA's allocation under a covered program if the LEA fails to maintain effort in a given fiscal year and also failed to maintain effort in one or more of the five immediately preceding fiscal years.

For example, if an LEA is found **noncompliant for FY17**, TEA will look back to FYs 2012, 2013, 2014, 2015, and 2016 (the **five preceding** fiscal years) to determine if the LEA failed in any of those five years.

- If **noncompliant in any** of those five preceding years, then the LEA's next Title allocation **will** be reduced.
- If **compliant in all** of those five preceding years, then the LEA's next Title allocation **will not** be reduced.

If an LEA receives a waiver of the maintenance of effort requirement from USDE for a given fiscal year, 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 would count the year in which the LEA received a waiver as a year of maintaining effort.

Fiscal Years Affected by Determination

The following chart demonstrates the applicable calculations and fiscal years under comparison for a four-year period where the LEA is assumed to have been compliant in FY 2016 and the five years prior, non-compliant in FY 2017, returned to compliance in FYs 2018 and 2019, and was again non-compliant in FY 2020. In the example, the calculation to use the test that is most favorable to the LEA has already been determined, and the results are reflected below.

A	B	C	D	E	F
Determination Year	State and Local Expenditures During Applicable Compliant Comparison Year	Level required to meet the requirement (90% of column B)	State and Local Expenditures During Determination Year	Amount by which LEA failed to maintain effort	Fiscal Year in Which Allocation is Potentially Reduced if LEA Non-Compliant
FY 2017	\$1,000,000 (FY 2016)	\$900,000 ¹	\$850,000 (FY 2017)	(\$50,000)	FY 2019 Reduction of allocation could be 5.556% (\$50,000/\$900,000) – but LEA uses 5-year flexibility, so no reduction
FY 2018	\$900,000 ² (FY 2017)	\$810,000	\$810,000 (FY 2018)	n/a	FY 2020 No reduction
FY 2019	\$810,000 ³ (FY 2018)	\$729,000	\$800,000 (FY 2019)	n/a	FY 2021 No Reduction
FY 2020	\$800,000 (FY 2019)	\$720,000	\$700,000 (FY 2020)	(\$20,000)	FY 2022 Reduction of allocation would be 2.778% (\$20,000/\$720,000) – no flexibility ⁴

¹ Assuming LEA was compliant in 2016

² The state and local expenditures used for MOE purposes in FY 2018 is \$900,000, which is 90% of FY 2016 expenditures (*last fiscal year in which effort was maintained*), rather than the actual FY 2017 expenditures of \$850,000 (because the LEA failed to maintain effort in FY 2017).

³ The state and local expenditures used for MOE purposes in FY 2019 is the actual FY 2018 expenditures of \$810,000 (because the LEA met the MOE requirement in FY 2018).

⁴ The five-year flexibility of no reduction of allocation would not be an option, since the LEA was also noncompliant in FY 2017.

Due to the timing of when LEA expenditure data are reported to TEA and subsequently become available in TSDS PEIMS, the fiscal year to which any reduction in allocation based on an LEA's failure to comply with ESSA LEA MOE will apply is the second year after the year of determination. For example, ESSA LEA MOE determinations are calculated for FY 2017 in late spring of 2018 (when the data become available). Any reduction in allocation for LEAs determined to be noncompliant are applied to FY 2019 (school year 2018-2019), as those allocations are calculated in the summer of 2018.

Significant TSDS PEIMS Errors in an LEA's Reported Expenditures

USDE has approved TEA's request to reconsider significant errors reported in TSDS PEIMS. To demonstrate that an error is "significant," the LEA must enter its self-reported, corrected data into TEA's ESSA LEA MOE Calculation Tool (available on the [ESSA LEA Maintenance of Effort](#) page of the TEA website) and the results must reflect a change in the LEA's compliance status.

If the results of the ESSA LEA MOE determination calculation tool show a change in compliance status, TEA will recalculate a revised compliance determination using the corrected data. **The calculation performed by the ESSA LEA MOE Calculation Tool is an estimate only and may not duplicate TEA's exact calculation process. The results of TEA's recalculation will be the basis of the final MOE compliance review status.**

The LEA may request a state reconsideration for significant errors in the LEA's reported expenditures by providing the following to TEA:

- The results returned by the ESSA LEA MOE calculation tool, signed by the LEA's external auditor, showing how the corrections change the LEA's compliance status.
- A detailed schedule prepared and signed by the LEA's external auditor containing the erroneous and the correct TSDS PEIMS data, along with the supporting documentation for such claims.
- A detailed schedule with the corrected TSDS PEIMS data in the appropriate TSDS PEIMS format provided by TEA to be used in lieu of the original TSDS PEIMS data. **This schedule will not be modified by TEA. It will be used exactly as provided.**
- A description of how the error occurred and the administrative procedures taken to ensure such TSDS PEIMS data errors do not reoccur.

Any decision to use revised data in the calculation of ESSA LEA MOE determinations will not change the official TSDS PEIMS data, which is the agency's official system of record. The official TSDS PEIMS data is final and will remain unchanged on all TEA products and reports that rely on that information.

Possible Consequences of a State Reconsideration Request Due to Significant TSDS PEIMS Errors

When an LEA notifies TEA of significant TSDS PEIMS errors in the LEA's reported expenditures in the process of requesting the state reconsideration, TEA's Federal Fiscal Compliance and Reporting Division will make the following notifications of the erroneous data submission to at least the following TEA divisions and departments, with the following possible results:

- Financial Compliance Division: Possible increased risk for audit, investigation and/or review
- State Funding Division: Possible effect on state funding
- Federal Fiscal Monitoring Division: LEA's possible identification as a high-risk grantee. High-risk grantees may be subject to a review of all reimbursements across one or more grants or a random sampling of expenditures across one or more grants.
- Office for Statewide Education Data Systems: LEA's possible identification as a high-risk grantee
- Department of Accreditation and School Improvement: Possible increased risk for investigation and/or review

- Enforcement Coordination and Governance Division: LEA possibly recommended for district-level interventions or sanctions based on investigation findings

USDE Waiver

Section 8521(c), ESEA, allows USDE to waive the statutory penalty of the MOE requirement if an LEA's failure to maintain effort resulted from one or both of the following:

- Exceptional or uncontrollable circumstances, such as a natural disaster or a change in the organizational structure of the LEA
- A precipitous decline in the financial resources of the LEA

An LEA that fails to meet the MOE requirement may request a waiver from USDE, as described in the following section. In order to make decisions regarding an LEA's MOE waiver request, USDE will review revenue and expenditure data provided by TEA.

TEA has no authority to waive the ESSA LEA MOE requirement and has no input into USDE's decision regarding LEA waiver requests.

If USDE grants the LEA's request for a waiver, USDE will notify TEA, and TEA staff will notify the LEA. The LEA may then receive its full allocation for Title I, Part A and other covered ESEA programs for the applicable fiscal year.

If an LEA receives an approved USDE waiver of the MOE requirement for a given fiscal year, 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, TEA would count the year in which the LEA received a USDE waiver as a year of maintaining effort. However, an approved USDE waiver does not eliminate the MOE requirement or authorize the LEA to not maintain effort in future years.

Requesting USDE Waiver to ESSA LEA MOE Requirement

To request an MOE waiver from USDE, the LEA must write a letter outlining the reason(s) the LEA did not maintain effort and email it to OESE.Title-A@ed.gov. A copy of the waiver request letter must also be emailed to TEA's Federal Fiscal Compliance and Reporting (FFCR) Division at compliance@tea.texas.gov.

ESSA LEA MOE Timeline

- April – TSDS PEIMS actual audited financial data from TSDS PEIMS Record 032 for the applicable fiscal years is extracted by FFCR to determine LEAs' compliance with the ESSA LEA MOE requirement.
- May/June – TEA posts *Compliance with ESSA LEA MOE Requirement* reports in GFFC Reports and Data Collections.
- May/June – GovDelivery bulletin regarding availability of *Compliance with ESSA LEA MOE Requirement* report is transmitted via the Grants email updates (to subscribe, go to <https://public.govdelivery.com/accounts/TXTEA/subscriber/new>).
- May/June – Using AskTED email address information, FFCR e-mails Superintendents a notification if their LEA's status is one of noncompliance with the ESSA LEA MOE requirement.
- May/June – As applicable, LEAs may submit waiver requests directly to [USDE](https://www.usde.gov) and also provide a copy of the letter to FFCR at: compliance@tea.texas.gov.
- July – As applicable, TEA reduces the amount of funds allocated under ESEA covered programs in exact proportion to which an LEA fails to meet the 90 percent ESSA LEA MOE requirement (if the LEA is not covered by the "Five-Year Flexibility Rule" – see previous section).

- Ongoing – TEA reinstates any reductions taken from an LEA's allocations, upon notification by the USDE of ESSA LEA MOE waivers granted.

ESSA Reports

ESSA LEA MOE compliance reports are currently made available via GFFC Reports and Data Collections, a web-based application available through TEAL that provides reports on ESSA-related programs. Each superintendent and charter school executive director should apply for access. Other authorized LEA officials may also be granted access by the LEA superintendent or charter school director.

Accessing *Compliance with ESSA LEA MOE Requirement Reports*

To access the ESSA LEA MOE compliance reports, do the following:

1. Login through the [Texas Education Agency Login \(TEAL\)](#).
2. Select **GFFC Reports and Data Collections**.
3. For Report Title, select "**ESSA LEA MOE Report**" from the drop-down menu.
4. For School Year, select the applicable school year (for example, select the 2017–2018 school year to obtain the *Compliance with ESSA LEA MOE Requirement* for FY 2018, which compares total expenditures and per-pupil expenditures from 2016–2017 to 2017–2018).

Example of the *Compliance with ESSA LEA MOE Requirement Report*

Below is an example of the *Compliance with ESSA LEA MOE Requirement* report located in GFFC Reports and Data Collections. The report provides the LEA's status of "Compliant" or "Noncompliant" in the upper right-hand corner of the document. The test result status for each of the four tests will be shown in the far right-hand column in Line numbers 15, 17, 19, and 21, which represent the four methods of determining compliance.

In the example below, the LEA is compliant. While this LEA met compliance in all four methods for determining compliance, an LEA needs to only show compliance for at least one test method to be deemed compliant.

If the LEA is noncompliant, TEA calculates the exact proportion by which an LEA did not meet the MOE requirement using the measure most favorable to the LEA (i.e., the test demonstrating that the LEA expended closest to 90% of the amount expended the prior year). The adjustment percentage will display in the upper right-hand corner of the document, to the right of any "Noncompliant" status indication.

TEXAS EDUCATION AGENCY
Compliance with ESSA LEA Maintenance of Effort Requirement
FY 20XX

Region	CDN	LEA Name	Status	Adjustment (b)	
			COMPLIANT	0.000 %	
Line Nbr (a)	Function Code	Function Code Description	Comparison Year Prior Fiscal Year	Current Year Fiscal Year XX	Test Result (c)
01	11	Instruction	\$21,228,801	\$22,242,403	
02	12	Instructional Resources and Media Services	\$490,282	\$499,797	
03	13	Curriculum and Instructional Staff Development	\$239,760	\$264,399	
04	21	Instructional Leadership	\$424,849	\$475,151	
05	23	School Leadership	\$2,416,152	\$2,574,837	
06	31	Guidance and Counseling Service	\$1,167,576	\$1,309,410	
07	32	Social Work Services	\$0	\$0	
08	33	Health Services	\$425,538	\$431,768	
09	34	Student (Pupil) Transportation	\$2,077,452	\$2,191,550	
10	35	Food Services (Deficit only)	\$0	\$0	
11	36	Cocurricular/Extracurricular Activities (Deficit only)	\$0	\$0	
12	41	General Administration	\$1,662,510	\$1,742,573	
13	51	Plant Maintenance and Operations	\$4,643,766	\$4,556,315	
14	53	Data Processing Services	\$1,016,495	\$1,002,831	
15		Total Operating Expenditures (Add 01-14)	\$35,793,181	\$37,291,034	Pass
16		Refined Average Daily Attendance	4840.036	5020.902	
17		Total Operating Expend. per Pupil (Refined ADA) (15/16)	\$7,395	\$7,427	Pass
18		Membership	5025	5229	
19		Total Operating Expend. per Pupil (Membership) (15/18)	\$7,123	\$7,132	Pass
20		Enrollment	5037	5249	
21		Total Operating Expend. per Pupil (Enrollment) (15/20)	\$7,106	\$7,104	Pass

ESSA LEA MOE Calculation Template

To estimate preliminary compliance with the ESSA LEA MOE requirement, LEAs may complete the template posted on the [Maintenance of Effort](#) page of the TEA website.

Appendix 1: ESSA LEA MOE Calculation Methodology

The information required to calculate MOE is obtained from the Texas Student Data System (TSDS) of the Public Education Information Management System (PEIMS). TSDS PEIMS Record 032- Financial Actual Data identifies the LEA's financial information as audited by a certified public accountant (CPA). LEA expenditure data from this record is used to determine compliance with the ESSA LEA MOE requirement.

Included Expenditures

Per Title 34 of the Code of Federal Regulations (34 CFR) 299.5(d)(1), in determining an LEA's compliance with ESSA LEA MOE, the

SEA shall consider only the LEA's expenditures from State and local funds for free public education. These include expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities.

Therefore, total state and local expenditures expended for the functions listed below are included in the ESSA LEA MOE calculation:

- 11 Instruction
- 12 Instructional Resources and Media Services
- 13 Curriculum and Instructional Staff Development
- 21 Instructional Leadership
- 23 School Leadership
- 31 Guidance and Counseling Service
- 32 Social Work Services
- 33 Health Services
- 34 Student (Pupil) Transportation
- 35 Food Services (Deficits Only)
- 36 Cocurricular/Extracurricular Activities (Deficits Only)
- 41 General Administration
- 51 Plant Maintenance and Operations
- 53 Data Processing Services

Excluded Expenditures

Per 34 CFR 299.5(d)(2), the SEA may not consider any expenditures for community services, capital outlay, debt service or supplemental expenses made as a result of a Presidentially-declared disaster, or any expenditures made from funds provided by the Federal Government.

Therefore, state and local expenditures expended for the functions and object codes listed below are excluded from the ESSA LEA MOE calculation:

Function Codes Excluded

- 61 Community Service
- 71 Debt Service
- 81 Facilities Acquisition and Construction

Object Codes Excluded

- 6500 Debt Service
- 6600 Capital Outlay

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