IDEA Part B

LEA Maintenance of Effort (MOE) Manual

NEW MEXICO

Public Education Department

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Overview

The Individuals with Disabilities Education Act (IDEA) regulations under 34 CFR §300.203 for local educational agency maintenance of effort (LEA MOE) require all LEAs to budget and spend at least the same amount of state, local — or combined state and local — funds for the education of children with disabilities on a year-to-year basis. The required LEA MOE levels for budgeting and spending are referred to, respectively, as the *eligibility standard* and the *compliance standard*. States are responsible for determining whether LEAs meet the LEA MOE eligibility and compliance standards.

Purpose and Authority

The purpose of these state-level procedures is to define expectations and activities for monitoring the LEA MOE requirements. Although LEAs are responsible for budgeting and spending the same amount of local—or state and local—funds, the state education agency (SEA) has an obligation to monitor whether LEAs are meeting those requirements and to track and report that information to the federal government. This document outlines SEA procedures for implementing the LEA MOE requirements.

IDEA federal regulations 34 CFR §§ 300.203, 300.204, and 300.205 establish authority for the LEA MOE requirements.

In order to establish the LEA's eligibility for an IDEA Part B subgrant, the New Mexico Public Education Department (NMPED) must determine that the LEA has met the eligibility standard of MOE. If the LEA does not meet the eligibility standard, the LEA is not eligible for an IDEA Part B subgrant. The state laws and regulations related to MOE eligibility can be found under the New Mexico Administrative Code (NMAC) 6.31.2.9.

Applicability of Procedures to Eligible LEAs, Including Eligible Charter School LEAs

Under 34 CFR Part 300 Subpart C and 6.31.2.7 NMAC, LEAs that are responsible for providing free and appropriate public education (FAPE) to children with disabilities under IDEA may be eligible to receive IDEA subgrants and must comply with LEA MOE requirements. The LEA MOE eligibility and compliance standards apply to all eligible LEAs in the state, including charter school LEAs. Under IDEA, charter schools that are not LEAs under state law are not eligible for an IDEA subgrant (34 CFR § 300.209).

The NMPED allocates subgrants to charter school LEAs in the same manner that it allocates subgrants to other LEAs in the state. Each eligible LEA that receives an IDEA Part B subgrant is responsible for complying with the LEA MOE eligibility and compliance standards.

In New Mexico, an LEA is defined as a "local educational agency as defined in 34 CFR § 300.28. The LEA may be a public school district, a state-chartered charter school, or a state educational institution," (6.29.1.7 NMAC). The term LEA is defined as including the following:

- traditional school districts
- educational service agencies (ESAs) that serve as LEAs and are responsible for providing FAPE to children with disabilities
- charter school LEAs operating as independent LEAs, also known as state charters

Four Methods for Calculating LEA MOE

There are four calculation methods by which an LEA can meet the LEA MOE requirements (34 CFR § 300.203 [a]-[b]):

- local funds only
- a combination of state and local funds
- local funds only on a per capita basis
- a combination of state and local funds on a per capita basis

Each LEA has the opportunity to meet the LEA MOE requirements by any of the four calculation methods.

LEA MOE Standards

Eligibility Standard

On an annual basis, the NMPED reviews LEA subgrant applications for IDEA Part B funds to determine whether each LEA met the LEA MOE eligibility standard.

- LEAs meet MOE eligibility by budgeting at least the same amount of funds for special education as the LEA expended in the most recent year for which information is available.
- The comparison year for the eligibility standard is the most recent fiscal year for which there is information demonstrating that the LEA met the LEA MOE compliance standard (expenditures) for a specific calculation method.
- LEAs submit their projected budgets through the SharePoint platform as part of their Part B application.

- Projected budgets are reviewed by the Fiscal Supervisor in comparison to the most recent year data.

The NMPED uses historical expenditure data and LEA MOE compliance decisions to determine the most recent year(s) for which the LEA met LEA MOE by each calculation method. These years are used as the comparison year for the eligibility standard. Because the LEA may meet LEA MOE in different years with different methods, there may be different comparison years for each method.

When reviewing the LEA applications, the NMPED:

- Compares budget amounts to determine whether LEAs are eligible to receive an IDEA subgrant.
- Determines whether an LEA met the eligibility standard by comparing each LEA's projected budget amount with the amount spent in the last state fiscal year that the LEA met the LEA MOE compliance standard for each method.
- Follows up with LEAs that submitted incomplete documentation, or budget amounts that do not meet the eligibility standard.

See Table 4 for more information regarding timelines and responsibilities for the eligibility standard.

Compliance Standard

On an annual basis, the NMPED determines whether each LEA met the LEA MOE compliance standard by comparing the LEA's final audited expenditures for the current state fiscal year to the amount in the last year that the LEA met LEA MOE (i.e., the comparison year) for each calculation method.

- Because an LEA may meet LEA MOE in different years with different methods, there may be different comparisons years for each method.
- The comparison year for the compliance standard is the last fiscal year in which the LEA met the LEA MOE compliance standard for a specific method.

The NMPED uses historical expenditure data and LEA MOE compliance determinations to identify the most recent year(s) for which the LEA met LEA MOE by each method.

See Table 5 for more information regarding timelines and responsibilities for the compliance standard.

Historical LEA MOE Data

The NMPED maintains historical data on LEA MOE compliance standard status, expenditures, exceptions, adjustments, and counts of children with disabilities from 2010 to the present. This data is stored within the LEA MOE Calculator, which NMPED uses to determine LEA MOE.

NMPED Local and State Funding Sources

Most LEAs use state funds to meet LEA MOE requirements; however, LEAs are also allowed to meet LEA MOE using local funds only. LEAs that have used and tracked local funds for the purpose of meeting LEA MOE must inform the NMPED Deputy Director of Data and Finance and the Assistant Deputy Director of Data and Finance and submit the MOE report with local funds through SharePoint. There is a box in SharePoint to add any additional local funds expenditures.

Subsequent Years Rule

The NMPED applies the subsequent years rule (34 CFR § 300.203[c]) to determine the LEA MOE amount for the eligibility and compliance standard that must be met by the LEA for each calculation method. This rule states that the level of expenditures required of the LEA for the fiscal year subsequent to the year of a failure is the amount that would have been required in the absence of that failure, not the LEA's reduced level of expenditures. The comparison year for eligibility and compliance standards is the most recent fiscal year for which there is information demonstrating that the LEA met the LEA MOE compliance standard (i.e., expenditures) for a specific method.

The NMPED uses historical expenditures data and LEA MOE compliance decisions to determine the most recent year(s) for which the LEA met LEA MOE by each calculation method. These years are used as the comparison years for the eligibility standard. Because the LEA may meet LEA MOE in different years with different methods, there may be more than one comparison year.

Allowable LEA MOE Exceptions

LEA MOE Exceptions

According to 34 CFR § 300.204, an LEA may reduce its level of expenditures of state only or state and local funds below the level of those expenditures for the preceding fiscal year for any of the following reasons:

- the voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel
- a decrease in the enrollment of children with disabilities

- 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 (program that costs two times the average per pupil cost), as determined by the NMPED, because the child
    - has left the jurisdiction of the agency,
    - has reached the age at which the obligation of the agency to provide FAPE to the child has terminated, or
    - no longer needs the program of special education
- the termination of costly expenditures for long-term purchases (greater than $20,000 and paid out over a period of one year[1]), such as the acquisition of equipment or the construction of school facilities
- the assumption of cost by the high-cost fund (Puente para los Niños) operated by the NMPED under 34 CFR §300.704(c)

Allowable exceptions may be applied in calculating both the eligibility and compliance standards, but requests must be made for each standard separately. The NMPED approves or denies requested exceptions based on the documentation provided by the LEA (detailed below). The NMPED notifies the LEA of these decisions before a final determination is calculated.

MOE Exception Calculations and Documentation

Eligibility Standard

If an LEA applies allowable exceptions to its LEA MOE eligibility standard calculation, the LEA is expected to provide documentation of exceptions that have occurred since the comparison year and (if the LEA desires) projected data for exceptions that the LEA anticipates occurring during the school year for which it is budgeting. The LEA must provide this documentation at the same time it submits its MOE budget to the NMPED by June 15.

Compliance Standard

When an LEA submits its final expenditure reports and documentation that it has met the LEA MOE compliance standard into the operating budget management system (OBMS) by December 31, it must ensure there is an auditable paper trail to support each allowable exception to its required LEA MOE levels. An approved exception for the LEA MOE eligibility standard does not eliminate the need to submit justification for the LEA MOE compliance

[1] "Costly expenditures for long-term purchases" amount is not defined under IDEA. The NMPED has established that expenditures greater than $20,000 are considered "costly expenditures for long-term purchases."

standard. An exception may be requested even if the request was not made for the LEA MOE eligibility standard for that year.

Reconciliation

The NMPED reviews the documentation and submits inquiries or requests additional documentation from the LEA within 30 days of receiving the LEA's initial request for an exception for both the eligibility and compliance standards.

MOE Exception per Capita Methods

The following sections describe how to calculate the exception amounts for the two total methods (i.e., state-only total or local-and-state total). To derive the exception amounts for the per capita methods for each year, sum the amounts across all exceptions and divide the total by the 40-day child count from the last year in which the LEA MOE compliance standard was met using the same per capita method (i.e., state per capita or local and state per capita). If there are intervening years, sum together the per capita exception amounts for current and intervening years. This formula is programmed in the LEA MOE Calculator.

MOE Exception Examples

Exception A: Voluntary Departure (34 CFR §300.204(a))

How to calculate the total methods' exception amount:

- Subtract the replacement personnel's salary and benefits from the salary and benefits of the departed personnel.
- If no replacement personnel exists, the LEA may include the full salary and benefits of the departed personnel.

Documentation required:

- The LEA must have an auditable paper trail that proves the departing special education staff's employment for the previous year including final year salary and benefits.

Documentation must include the following:

- the reason for the voluntary or for-cause departure,
- the staff identification number for the departing and replacement staff members (if any), and
- the starting year salary and benefits for the replacement staff.

Documentation required for anticipated exceptions:

- The LEA must have an auditable paper trail that proves projected numbers for departing special education and related services personnel, including reasons for the anticipated voluntary or for-cause departure.
- The LEA should submit an estimate of the difference between the departing staff's salary and benefits and those for a replacement (if any) based on district new recruit hiring policy.

Exception B: Decrease in Enrollment (34 CFR §300.204(b))

How to calculate the total methods' exception amount:

- This exception is programmed in the LEA MOE Calculator.
- Determine the percentage change in enrollment by subtracting the 40-day child count of IDEA Part B-eligible children ages 3 through 21 for the current year from the prior year 40-day count, then dividing by the prior year 40-day child count.
- To obtain the exception amount, apply that percentage to the total expenditures reported for LEA MOE (i.e., the state total or local and state total) in the prior fiscal year.
- For example:

	SWD Child Count	MOE Expenditures
2019–20	150	$1,230,000.00
2020–21	130	$900,000.00
change	-20	
% change	-13.33%	-$164,000.00

Documentation required:

- NMPED pulls the 40-day child count data for each LEA and loads into each LEA MOE Calculator.
- LEAs enter the current school year 40-day child count data for eligibility.
- No additional documentation is needed

Exception C: Exceptionally Costly Program (34 CFR § 300.204(c))

Definition:

- An exceptionally costly program is a program for a student with high needs whose cost to provide a free and appropriate public education (FAPE) is greater than two times the average per pupil cost.
- This amount is re-calculated annually. Please note that an exceptionally costly program is not the high cost fund (which is exception E).

How to calculate the total methods' exception amount:

- The amount expended for the exceptionally costly program in the prior fiscal year is the exception amount.

Documentation required:

- For each child, the LEA must maintain the final audited cost of the exceptionally costly program for the prior year, the student ID, and the student's IEP that prescribed the program, as well as rationale for why the program was terminated (e.g., the child left the agency's jurisdiction, the child aged out, or the program is no longer needed).
- If the program is no longer needed for the child, the LEA must provide the current completed IEP to demonstrate that the program ended with agreement from the IEP team (including the child's parents/guardians) and that the child is continuing to receive FAPE if still eligible for special education and related services.

Documentation required for anticipated exceptions:

- The LEA must provide documentation (as described above) of the exceptionally costly program for the prior year, as well as rationale for why the program will be terminated for the upcoming year.

Exception D: Termination of Costly Expenditures for Long-Term Purchases (34 CFR §300.204(d))

Definition:

- A costly expenditure is an expenditure equal to or greater than $20,000 and paid out over a period of more than one year.
- Examples of a costly expenditure include acquisition of special education equipment, construction and/or renovation of designated special education spaces, as well as other costly expenditures subject to approval by the NMPED.

How to calculate the total methods' exception amount:

- The amount expended for the long-term costly expenditure in the last fiscal year is the exception amount.
- Note that if payments are made over a period of years, the exception amount is not the full amount of the purchase; rather, it is the payment made in the last fiscal year.
- For example:

Fiscal Year	Period of Costly Expenditure	Costly Expenditures	Exceptions
2018–19	No costly expenditure	$0	$0
2019–20	1st year of costly expenditure	$70,000	$0
2020–21	2nd and final year of costly expenditure	$100,000	$0
2021–22	No costly expenditure	$0	$100,000

Documentation required:

- The LEA must provide a description of the costly expenditure and the rationale for counting the expenditure as a part of LEA MOE (e.g., describe how the expenditure supports the education of children with disabilities and include accounting reports showing how it was paid from state or local funds).
- Documentation must include all applicable expenditures (invoices), by year, and any pre-approval letter required (procurement).

Documentation required for anticipated exceptions:

- As noted above, the LEA must provide a description, a rationale for counting the expenditure as a part of LEA MOE, and the cost estimate and projected date for the termination of the expenditure.

Exception E: SEA High Cost Fund (34 CFR §300.204(e))

Definition:

- For details on the costs allowed under the high cost fund, please refer to the state's high cost fund procedure.

How to calculate the total methods' exception amount:

- The exception amount is the amount of state funds reimbursed by the NMPED's high cost fund, Puente para los Niños (fund 24120), in the year the cost was first assumed by the high cost fund.

Documentation required:

- Under the high cost fund procedures, an LEA must apply and be approved for use of funds from the high cost fund prior to requesting this as an exception for LEA MOE.
- The LEA must submit documentation that the expenditure was approved, paid with state funds, and that the LEA received funds from the PED's Puente para los Niños fund.

Documentation required for anticipated exceptions:

- LEA must submit the LEA's high cost fund award letter from the NMPED.

Adjustment to LEA MOE

Notification to LEAs of IDEA Part B Section 611 Subgrant Amounts

Annually in the spring, the NMPED provides each LEA with a notification of the amount of its IDEA Part B Section 611 subgrant for the following year with the updated instructions for the annual LEA application for IDEA Part B funds.

The NMPED's Special Education Fiscal Supervisor receives the statewide IDEA Part B grant award from the US Department of Education. The Special Education Fiscal Supervisor calculates Part B subgrant amounts for Section 611 and Section 619 for each LEA. The Section 611 and 619 calculations are submitted for approval by the Fiscal Supervisor and the Fiscal Grants Management bureau chief. Once approval is obtained, the Director of the Office of Special Education notifies LEAs of their subgrant amounts. Subgrant amounts can also be found in the NMPED's Special Education IDEA Part B application and in the fiscal section of the state's special education webpage.

Eligibility for an Adjustment to LEA MOE (34 CFR §300.205)

If an LEA received an increase in their IDEA B 611 grant, they may be eligible to take an LEA MOE adjustment exception. The LEA may be able to take up to 50 percent of the grant increase amount.

An LEA must receive a "Meets Requirements" on its annual determination in order to use an LEA MOE adjustment to reduce its required level of expenditures. The Special Education Assistant Deputy Director of Data and Finance is responsible for making annual determinations by May 31 of each year for each LEA.

The Special Education Assistant Deputy Director of Data and Finance obtains the annual determination(s) from the Special Education Data Manager in December (in order for the LEA to use the adjustment exception in April).

An LEA identified as having significant disproportionality based on race and ethnicity may not reduce its required level of expenditures with an LEA MOE adjustment because it must reserve 15 percent of its IDEA Part B Section 611 and Section 619 subgrant amounts for comprehensive Coordinated Early Intervening Services (CCEIS). The Special Education Data Manager is responsible for determining, by April 30 of the prior year, whether each LEA has significant disproportionality.

The Special Education Fiscal Supervisor obtains a list of LEAs identified with significant disproportionality from the Special Education Data Manager.

Informing an LEA about Eligibility for an LEA MOE Adjustment

The LEA MOE Calculator, housed in the NMPED's online SharePoint system, is used to determine whether an LEA is eligible to use the LEA MOE adjustment to decrease its required level of expenditures. If an LEA is eligible, the LEA MOE Calculator also includes the maximum amount available for the adjustment.

An LEA submits documentation on whether it intends to use IDEA funds for voluntary CEIS. Under 34 CFR § 300.226, LEAs have the option to use IDEA funds for CEIS to provide services that help children who need additional academic and behavioral support. Should an LEA decide to use IDEA funds for CEIS, it must submit appropriate documentation as further outlined in the NMPED CEIS/CCEIS Manual. If the LEA intends to use both the LEA MOE adjustment and voluntary CEIS, the NMPED will validate and calculate the maximum amount available for each and notify the LEA of those amounts.

Use of Funds Freed Up by the LEA MOE Adjustment

Each LEA that intends to use the LEA MOE adjustment to reduce its required level of expenditures must proceed as follows:

- Use an amount of local, or state and local, funds equal to the amount of the LEA MOE adjustment to carry out activities that could be supported with funds under the Elementary and Secondary Education Act (ESEA), regardless of whether the LEA is using funds under ESEA for those activities.
- Use the funds made available by the LEA MOE adjustment to supplement ESEA funds and not to supplant those funds.
- Submit an assurance in its annual LEA application for IDEA Part B funds that the funds will be used for the aforementioned purposes.
- When an LEA has used the LEA MOE adjustment, it must upload documentation in the MOE Calculator indicating whether it used IDEA funds for voluntary CEIS.

MOE Adjustment Calculation and Documentation

Funding amounts available for LEA MOE adjustment	Dollar amount
FFY 2021 IDEA Part B Section 611 allocation	$800,000
FFY 2022 IDEA Part B Section 611 allocation	$1,400,000
Increase in IDEA Part B Section 611 allocation (FFY 2022 amount - FFY 2021 amount)	$600,000
Pre-capped amount by which the LEA may reduce its level of effort using the LEA MOE adjustment ($600,000 x 50%)	$300,000

Funding amounts available for LEA MOE adjustment AND voluntary CEIS	Dollar amount
FFY 2021 IDEA Part B Section 611 allocation	$800,000
FFY 2022 IDEA Part B Section 611 allocation	$1,400,000
Increase in IDEA Part B Section 611 allocation (FFY 2022 amount - FFY 2021 amount)	$600,000
Pre-capped amount by which the LEA may reduce its level of effort using the LEA MOE adjustment ($600,000 x 50%)	$300,000
FFY 2022 IDEA Part B 619 allocation	$500,000
Pre-capped amount the LEA may reserve for voluntary CEIS ([$1,400,000 + $500,000] x 15%)	$285,000
Amount available in total for LEA MOE adjustment and voluntary CEIS	$285,000
	(lesser of the two amounts)

Intervening Years

When there are years between the comparison year (i.e., the last time an LEA met MOE using a specific method) and the current year, the NMPED must allow the LEA to take allowable exceptions and adjustments from the intervening years.

NMPED LEA MOE Tests

MOE Eligibility Test and Data Collection

The IDEA B subgrant application is due annually in June. To be eligible to receive IDEA Part B funds, LEAs report their projected budget and projected count of children with disabilities in the IDEA B subgrant application within SharePoint, which is then reviewed by NMPED fiscal staff to ensure the eligibility standard is met. In order to meet eligibility, the LEA must budget the same amount or greater than the amount the LEA expended in the last year for which data is available that the LEA met MOE.

MOE Compliance Test and Data Collection

For the compliance standard, the NMPED obtains data for each LEA from the OBMS. Final, audited operational special education expenditures are obtained on the 40th day of the school year and after the fiscal year has closed. The eligible, allowable accounting codes are detailed in the state's uniform chart of accounts used by all LEAs and are listed in the table below. Using these codes, the NMPED populates the compliance standard calculation on behalf of LEAs for each of the four calculation methods annually.

The OBMS does not identify all the required or allowable expenditures in the MOE calculations. Those expenditures include, but are not limited to, the special education guidance counselor/social worker (job class 1214) and special education staff benefits (all object codes 52000).

The LEA must enter those expenditures in the calculator in order for those expenditures to be included. Please see Table 2 for all account codes for which the LEA must enter their own data. To calculate the per capita amount for the LEA MOE compliance standard, the steps are as follows:

The NMPED pulls data from STARS, an online student records platform used by the NMPED.

- The NMPED pulls the annual child count of children with disabilities as reported on the 40th day STARS submission (e.g., October 2016 child count for the 2016–17 expenditures).
- The per capita amount is programmed in the MOE Calculator: total expenditures divided by the 40-day child count of children with disabilities.

Table 1. Account codes included in LEA MOE calculations (NMPED pulls prior year data on 40th day)

Fund	Description	Object	Description	Job Class	Description
11000	Operational	51100	Salary	1311	Diagnostician
13000	Pupil Transportation	51200	Overtime	1312	Speech Therapist
		51300	Additional Compensation	1313	Occupational Therapist
				1314	Physical/Recreational Therapist
				1315	Psychologist/Counselor
				1316	Audiologist
				1317	Interpreter
				1318	Specialist
				1319	Special Education Assistant (Non-Instructional)
				1412	Special Education Teacher
				1712	Special Education Instructional Assistant
		53211	Diagnostician—contracted	0000	Contracted staff job class
		53212	Speech Therapist—contracted	0000	Contracted staff job class
		53213	Occupational Therapist—contracted	0000	Contracted staff job class
		53214	Physical/Recreational Therapist—contracted	0000	Contracted staff job class
		53215	Psychologist/Counselor—contracted	0000	Contracted staff job class
		53216	Audiologist—contracted	0000	Contracted staff job class
		53217	Interpreter—contracted	0000	Contracted staff job class

Fund	Description	Object	Description	Job Class	Description
		53218	Specialist—contracted	0000	Contracted staff job class
		53219	Special Education Assistant (Non-Instructional)—contracted	0000	Contracted staff job class

Table 2: Account codes required in LEA MOE calculations (LEA must enter in the calculator)

Fund	Description	Object	Description	Job Class	Description
11000	Operational	51100	Salary	1211	Coordinator/Subject Matter Specialist
13000	Pupil Transportation	51200	Overtime	1214	Guidance Counselor/Social Worker (as pertains to special education)
		51300	Additional Compensation		
		52111	Educational Retirement	1211	Coordinator/Subject Matter Specialist
		52112	ERA Retiree Health	1214	Guidance Counselor/Social Worker (as pertains to special education)
		52210	FICA Payments	1311	Diagnostician
		52220	Medicare Payments	1312	Speech Therapist
		52311	Health and Medical Premiums	1313	Occupational Therapist
		52312	Life	1314	Physical/Recreational Therapist
		52313	Dental	1315	Psychologist/Counselor
		52314	Vision	1316	Audiologist
		52315	Disability	1317	Interpreter
		52316	Other Insurance	1318	Specialist
		52500	Unemployment Compensation	1319	Special Education Assistant (Non-Instructional)
		52710	Workers Compensation Premium	1412	Special Education Teacher

Fund	Description	Object	Description	Job Class	Description
		52720	Workers Compensation Employer's Fee	1712	Special Education Instructional Assistant
		52730	Workers Compensation (Self Insured)		
		52911	Cafeteria Plan Fees		
		52912	Employee Assistance Programs		
		52913	Workers Compensation Employee Fee		
		52914	Deferred Sick Leave Reserve		

For expenditure examples, please see the Special Education Maintenance of Effort FAQ on the Special Education website: NMPED Special Education.

Funds Excluded from the LEA MOE Calculation

Federal funds that the LEA receives are excluded when calculating the level of effort for both the eligibility and compliance standards. This includes Title I funds and the federal matching percentage of Medicaid reimbursements.

LEA MOE Failure

Determination of Whether Each LEA Met the Eligibility Standard

The NMPED completes reviews of the annual applications for IDEA Part B funds by June 30 and notifies LEAs on July 1 as to whether they met the eligibility standard. The NMPED reviews historical data to determine the most recent year for which the LEA met the LEA MOE eligibility standard by each method submitted.

For example, from fiscal year 2023, the LEAs will enter their projected budget amount in the assigned space in the 2023 IDEA Part B application and submit it with the signed assurances. The NMPED will compare the projected budget amount to the most recent fiscal year in which the LEA met MOE by total expenditures. If the LEA met the MOE eligibility standard, the LEA can receive their FY23 IDEA Part B grant.

Notification of MOE Eligibility Failure

The NMPED provides written notification (see Appendix B) to the Superintendent and Special Education Director for each LEA regarding whether the LEA did or did not meet the eligibility standard, including information about the calculation method(s) used, if any, by which the LEA met the eligibility standard. The NMPED also follows up with a phone call to all LEAs that did not meet the eligibility standard.

LEAs that are determined to not have met the eligibility standard may submit a revised budget or corrected documentation by July 15. The NMPED shall review all revised and corrected submissions by July 31.

If the NMPED determines that an LEA remains ineligible after revisions and corrections, the NMPED may withhold approval of an LEA's application for IDEA Part-B funds until the NMPED is satisfied that the federal requirements will be met. Prior to withholding approval, however, the NMPED shall provide an opportunity for a hearing before an impartial hearing officer to determine whether there has been a substantial failure to comply with any of the eligibility requirements.

Eligibility Hearing Procedures

If the NMPED determines that an LEA is ineligible, the Secretary of Education shall appoint an impartial hearing officer to the matter who will hold a hearing to review the NMPED's eligibility determination in accordance with 6.21.2.10 NMAC.

As part of these proceedings, the NMPED shall ensure that

1. a written notice of the hearing is provided to the LEA;

2. the LEA has an opportunity to participate in the hearing;
3. there are no contacts between one party and the impartial hearing officer;
4. the impartial hearing officer did not participate in the initial eligibility review and determination and is not under the supervision of an NMPED employee that did;
5. the impartial hearing officer does not have personal, economic, or professional interest in the outcome of the hearing other than the proper application of federal laws, regulations, and policies; and
6. the parties have the right to appear with counsel.

All hearings shall be held by August 31, with final decisions rendered by September 30. If the final decision is that the LEA is ineligible, the NMPED shall use the IDEA Part B funds that would otherwise have been available to the LEA to provide special education and related services directly to children with disabilities residing in the area served by that LEA (see 34 CFR §300.227).

Determination of Whether Each LEA Met the Compliance Standard

The NMPED reviews the submitted expenditure data and then follows up with LEAs regarding incomplete documentation, and/or total expenditures that do not meet the threshold for the compliance standard. As needed, the NMPED compares expenditure line items to identify a large decrease or increase from year to year.

The NMPED completes its reviews of expenditure data by January 31.

Notification of MOE Compliance Failure

The NMPED notifies each LEA of its LEA MOE compliance result by sending a letter by February of each year (see Appendix B). The letter includes the compliance decision for the most recent state fiscal year for which there are final fiscal data (for each calculation method, as applicable) and the amount required to meet the LEA MOE eligibility standard in the next annual application for IDEA Part B funds (for each applicable method) (34 CFR §300.203(a)(1)). If an LEA did not meet the compliance standard for any method in the reference year, the notice includes the repayment amount and the specific process and deadline for remitting payment to the NMPED.

Noncompliance Notification

If the LEA is determined to be noncompliant, the NMPED notifies each LEA superintendent and special education director that the LEA can either accept the noncompliance determination or request a hearing to challenge the determination. If the LEA requests a hearing, it must do so within 30 days (30-day contest period) from the date of the determination letter.

LEAs that are determined to be noncompliant and have need to change the data in their LEA MOE Calculator must communicate with the NMPED. At the LEA's request, and with NMPED approval, the calculator can be unlocked to revise final expenditures with supporting documentation within 10 days of the determination letter. The LEA and the NMPED will work together during the contest period to ensure all allowable changes are included. Making changes will not affect the LEA's contest period.

As a general matter, changes or corrections to prior year calculators are permitted within the 30-day contest period for those determinations or in accordance with a final hearing decision. The NMPED, in its sole discretion, may amend a prior year calculator and/or determination for good cause and with substantial documentation evidencing the good cause and data error or omission. Decisions to amend a prior year determination are not subject to a hearing to challenge the amended determination unless the LEA's MOE liability increases as a result of the amended determination. If an LEA has reimbursed the NMPED for the liability and, after changes, the liability decreases, the LEA will not be reimbursed for the amended decreased liability.

Compliance Hearing Procedures

If the LEA requests a hearing in writing within thirty days of the date of the final determination letter, the Secretary of Education shall appoint an impartial hearing officer who will hold a hearing on the record to review the NMPED's determination in accordance with 6.21.2.9 NMAC. The hearing shall be held within 30 days after the NMPED has received the request unless the LEA and the NMPED agree to an extension of time for the hearing. The LEA's request for a hearing does not prohibit the NMPED and LEA from seeking a resolution to the issues prior to a hearing and decision.

As part of these proceedings, the NMPED shall ensure that

1. a written notice of the hearing is provided to the LEA;
2. all records requested by the LEA pertaining to the compliance review, including records of other LEA reviews, are made available to the LEA;
3. the LEA has an opportunity to participate in the hearing;
4. there are no contacts between one party and the impartial hearing officer;
5. the impartial hearing officer did not participate in the initial compliance review and determination and is not under the supervision of an NMPED employee that did;
6. the parties have the right to appear with counsel;
7. the parties have the right to present oral and written evidence and to conduct cross examinations;
8. the parties have the right to submit proposed findings of fact and conclusions of law; and

9. a record of the hearing is taken and made available to the parties.

The impartial hearing officer shall issue its written ruling, including findings of fact and reasons for the ruling, no later than ten (10) days after the hearing. If the impartial hearing officer determines that the NMPED's determination was contrary to federal or state statutes, regulations, and MOE guidelines, the NMPED shall rescind the determination and reissue a determination in accordance with the impartial hearing officer's decision.

If the NMPED's determination is affirmed and it is not required to rescind its final action or proposed action after a review under this section then the LEA may appeal to the Secretary of Education. The LEA shall file a notice of the appeal with the Secretary within twenty (20) days after the LEA has been notified by the NMPED of the impartial hearing officer's ruling. The Secretary shall review the record and the hearing officers' decision and issue a decision affirming, revising, or reversing the decision of the hearing officer.

Repayment After MOE Compliance Failure

If the LEA remains noncompliant after any revisions and corrections and no hearing is requested, or the NMPED's determination is confirmed after a hearing, the NMPED must submit repayment to the federal government and shall collect that repayment from the LEAs that did not meet the compliance standard. All repayments must be made from a nonfederal source(s) or from federal funds for which no accountability is required to the federal government (e.g., Impact Aid).

If the LEA has not made half payment by June 30 and full repayment by June 30 of the year following the finding, the NMPED will issue a second Repayment of Maintenance of Effort Liability letter (see Appendix C). Failure to make the ordered payment(s) may result in further enforcement action including

1. reporting of the liability to the LEAs designated auditor and
2. the State Secretary of Education ordering the withholding of state funds in the amount of the total liability until paid in full (see Appendix D).

Note: Please see Appendix E, "Related Resources."

Calculation of the LEA MOE Shortfall and Repayment Amount

As detailed in earlier sections, the NMPED determines the amount required to meet the LEA MOE compliance standard for each of the four calculation methods per 34 CFR §300.203(b)(2). For each LEA that fails to meet the LEA MOE compliance standard, the NMPED subtracts the amount the LEA expended from the amount required to meet the LEA MOE compliance standard to determine the LEA MOE shortfall; this is done for each of the four methods for which amounts are available.

To calculate the shortfall for the two per capita methods, the NMPED subtracts the amount the LEA expended per capita from the amount required to meet the LEA MOE compliance standard for that method, and then multiplies the result by the child count for the current year.

The NMPED sums the Section 611 and Section 619 subgrants to arrive at the total IDEA Part B subgrant amount received by the LEA in the state fiscal year in which the failure occurred. The lowest of five amounts—the total IDEA Part B subgrant and the shortfall from each of the four methods—is the amount the NMPED must submit to the U.S. Department of Education for that LEA.

If the NMPED or LEA is unable to separately account for local expenditures, the lowest of three amounts—the total IDEA Part B Section 611 and Section 619 subgrant funds, and the shortfall from the two state and local methods—is the amount the NMPED must submit to the U.S. Department of Education for that LEA.

For example:

Fiscal Year	Child Count	State and Local Total Amount	State and Local Total MOE Result	State and Local Per Capita Amount	State and Local Per Capita MOE Amount	Amount of IDEA Part B, Section 611 Subgrant	Amount of IDEA Part B, Section 619 Subgrant	Total IDEA Part B Subgrant	Repayment Amount
2018-19	488	$3,363,907.11	met	$6,893.25	met	$797,210.95	$23,521.33	$820,732.28	$0.00
2019-20	489	$3,211,023.12	did not meet	$6,566.51	did not meet	$777,462.46	$23,396.22	**$800,858.68**	*$152,883.99*
Difference:		***$152,883.99***		$326.74 x 489 [child count] = **$159,777.24**					

Repayment to the U.S. Department of Education

The NMPED determines the total repayment amounts for all LEAs that failed LEA MOE compliance and makes one payment to the U.S. Department of Education after compliance determinations are made and LEAs have repaid their outstanding MOE liabilities. In the event of LEA repayment, the NMPED will contact their designated OSEP state lead to request repayment instructions. The NMPED sends OSEP a copy of the form along with a cover letter stating that these funds are being sent to pay back the federal government for the failure of an LEA (or LEAs) to meet LEA MOE and that they are nonfederal funds or funds for which accountability to the federal government is not required (see Appendix C).

For payments less than $100,000, the SEA submits a check to a "lock box" and is required to contact OSEP for mailing instructions.

The NMPED retains copies of either the Fedwire form or check, and the cover letter.

Recovery of Funds from an LEA for Repayment to the U.S. Department of Education

The NMPED notifies the LEA in writing of the repayment amount. The NMPED requests repayment from the LEA of those funds within 30 days of receipt of the letter to remedy the noncompliance with the MOE requirements. LEAs have two options for liability payment. LEAs may pay all liabilities by the close of the current fiscal year (June 30), or liability payment may be paid in two installments. The first installment will need to be paid by the close of the current fiscal year, and the second payment installment should be sent in by the close of the next fiscal year. The payment amount(s) may not be included in the total maintenance of effort. Failure to make timely reimbursement payments may result in future enforcement actions including the withholding of state funds in the amount of the LEA's total unpaid liability. The LEA must submit a check to the NMPED for the repayment amount and include a cover letter stating that the funds are for repayment of funds due to IDEA LEA MOE failure and that they are either nonfederal funds or nonfederal funds for which accountability is required. The cover letter must identify the state fiscal year in which the LEA did not meet LEA MOE compliance.

Payments shall be sent to the following address:

NM Public Education Department
Audit & Accounting Bureau
Attention: Director of Audit and Accounting
300 Don Gaspar Ave.
Santa Fe, NM 87501

The LEA must maintain documentation of the underlying data provided to the NMPED as part of this MOE review process if the United States Department of Education chooses to conduct a formal review or audit.

Storage

Information pertaining to repayments (including the Fedwire transfer or check number, date sent and amount, and the date LEA recovery funds were received and amount) is entered in the LEA MOE Calculator. The Financial Coordinator's master tracking spreadsheet, along with all accompanying documentation, is stored in the NMPED test district calculator file.

NMPED LEA MOE Data Reporting Procedures

The IDEA Part B Data Manager is responsible for compiling and reporting LEA MOE-related data elements to the ED*Facts* Metadata and Process System (E*MAPS*) IDEA Part B MOE Reduction and CEIS data collection. Table 3 lists each data element, when to obtain, and the responsible staff member. Table 3 is ordered to match the layout of the data elements in the submission file.

Table 3: Data elements required for the E*MAPS* IDEA Part B MOE Reduction and CEIS data collection

Data elements required for each LEA	When to obtain	Staff responsible
IDEA Part B 611 allocation (two years)	March	Special Education Assistant Deputy Director of Data and Finance
IDEA Part B 619 allocation	March	Special Education Assistant Deputy Director of Data and Finance
LEA determination and school year of data used to make annual determination	January (prior year)	Special Education Assistant Deputy Director of Data and Finance
LEA MOE adjustment amount	January	Special Education Assistant Deputy Director of Data and Finance
LEA MOE compliance determination	April	Special Education Assistant Deputy Director of Data and Finance
Repayment amount	April	Special Education Assistant Deputy Director of Data and Finance
SEA (NMPED) repayment date	April	NMPED Administrative Services Division
Significant disproportionality	April (prior year)	Special Education Deputy Director of Data and Finance

Data elements required for each LEA	When to obtain	Staff responsible
Voluntary/comprehensive CEIS amount	April	Special Education Assistant Deputy Director of Data and Finance
Voluntary CEIS student counts	April	Special Education Deputy Director of Data and Finance

Process for Training and Communicating with LEAs

The NMPED Special Education Finance Division is responsible for training and communicating with LEAs regarding special education fiscal issues, including LEA MOE.

- The contact for LEA MOE at the NMPED is the Financial Coordinator.
- Fiscal issues, such as those related to LEA MOE, are included as topics on the NMPED's monthly LEA directors' training calls (when appropriate).
- LEAs are notified of agendas, including fiscal issues when appropriate, at least one week in advance.
- The training calendar can be found on the Special Education intranet.

The NMPED provides LEAs with the LEA MOE Eligibility and Compliance Calculator to complete each year.

- Detailed instructions for completing the LEA MOE Eligibility and Compliance Calculator are sent to each LEA annually.
- Instructions are updated to reflect any new guidance provided on LEA MOE and are posted on the special education website.

Timeline and Due Dates for LEAs and NMPED Staff

Table 4: New Mexico's annual timeline and activities for the LEA MOE eligibility standard

Date(s)	Activity	Responsible office/staff
February	Review and revise (as necessary) materials pertaining to the LEA annual application for IDEA Part B funds, including the notification email.	Special Education – Deputy Director of Data and Finance & Assistant Deputy Director of Data and Finance
February	Receive the final list of LEAs identified with significant disproportionality that will be ineligible for an LEA MOE adjustment in the upcoming fiscal year.	Special Education – Deputy Director of Data and Finance
February	Receive the final list of LEA annual determinations for the upcoming fiscal year.	Special Education – Deputy Director of Data and Finance
February–June	Review and analyze each LEA MOE eligibility amount entered in the IDEA application. Proactively contact LEAs that submitted incomplete budget information or total budgets that do not meet the eligibility standard. Continuously communicate with LEA until LEA has entered sufficient data and a budget that meets the eligibility standard.	Special Education—Finance
By April 15	Continue to review, analyze and finalize MOE eligibility. Update special education website with all LEA IDEA application materials and IDEA subgrant planning allocations for the upcoming fiscal year. Notify the LEA	Special Education—Deputy Director of Data and Finance, Finance and Education Administrators

Date(s)	Activity	Responsible office/staff
	superintendents, special education directors, business managers, and all future IDEA subgrantees that the applications for IDEA Part B funds are available on the website and the deadline for submission is May 1.	
April–June 30	Continue to review, analyze, and finalize MOE eligibility in the IDEA B applications.	Special Education— Finance and Education Administrators
July–August	For eligible LEAs, issue the IDEA Part B subgrants. For any LEA not meeting the eligibility standard, implement the state's process under 34 CFR §300.221 by providing the LEA reasonable notice and the opportunity for a hearing. In these cases, follow the timeline outlined in that appeals procedure and update the LEA MOE status and documentation after a final decision is reached.	Director of Special Education and Special Education Finance

Table 5: New Mexico's annual timeline and activities for the LEA MOE compliance standard

Date(s)	Activity	Responsible office/staff
October	Notify LEAs by email of the LEA MOE Compliance Calculator. The notification should include annual instructions and timelines for LEA MOE submissions.	Special Education —Director, Finance; PED Information Technology

Date(s)	Activity	Responsible office/staff
October—1st reporting period (40th day)	Confirm accuracy of the list of LEAs (initially created in June of the prior calendar year) eligible/ineligible to use the LEA MOE adjustment in the compliance year. This list includes current information on the maximum amount available for the adjustment (ensure final allocation amount, not planning allocation) LEA annual determination, identification of significant disproportionality, and any known voluntary CEIS amounts.	Special Education - Deputy Director of Data and Finance, Assistant Deputy Director of Data and Finance
November	Provide a webinar on the LEA MOE compliance standard for all LEAs. Ensure the webinar covers the four calculation methods, comparison year/subsequent years rule, exceptions, adjustments, consequences of failure, and LEA MOE Compliance Calculator. Record the webinar and post on the PED website for LEAs to view on demand.	Special Education - Finance and Special Education Professional Education Administrator
November	Update the PED Special Education website with LEA MOE materials, including deadlines and instructions for submitting expenditure information.	Special Education – Finance and Special Education Professional Development Education Administrator
November	Notify all LEA superintendents, special education directors, and business managers that the calculator is available for the LEA MOE compliance standard for the fiscal year that just ended. Inform them that the deadline for submission of LEA MOE compliance standard calculations is mid-December.	Director of Special Education

Date(s)	Activity	Responsible office/staff
November–January	Continue to provide individual technical assistance to LEA staff upon request and review LEA compliance submissions as they are submitted. Information used in the review process should include the calculation method used, comparison year and comparison amount, and any exceptions or adjustments as necessary. Proactively communicate LEAs with incomplete data, information or necessary documents to submit all required information.	Special Education Finance
January 31	Compile final list of LEAs' statuses with the LEA MOE compliance standard. Include the expenditure amount and method used, the last year met by that method, comparison year and comparison amount, any exceptions/adjustments taken, and the repayment amount if the LEA failed MOE.	Special Education Finance and PED IT
January 31	Lock LEA MOE Calculators to ensure no changes can be made.	Special Education Finance and PED IT

Date(s)	Activity	Responsible office/staff
January 31	Notify each LEA of the final LEA MOE compliance decision, and the current year's LEA MOE compliance standard. If an LEA did not meet the compliance standard for any method in the compliance year, include the repayment amount and the specific process and deadline for remitting payment to the PED.	Deputy Director of Data and Finance
January 31	Refer LEAs to calculator for comparison year and next years' amount required to meet the LEA MOE eligibility standard in the next annual application for IDEA Part B funds.	Director of Special Education, Finance
January 31	For any LEA not meeting the compliance standard, implement the state's process under 6.21.2.9 NMAC by providing the LEA reasonable notice and the opportunity for a hearing. In these cases, follow the timeline outlined in that appeals procedure and update the LEA MOE status and documentation after a final decision is reached.	Director of Special Education and Finance
March	If hearing results warrant, unlock MOE Calculators as needed to make changes together with the LEA in accordance with the PED's final decision.	Special Education Finance
30 days from notification letter	Initiate collection all LEA MOE failure repayment amounts from LEAs.	PED Accounting

Date(s)	Activity	Responsible office/staff
30 days from notification letter	Review compliance of repeat non-compliance LEAs to determine if IDEA eligibility should be challenged	Special Education Director and Finance
July	Submit all LEA MOE failure repayment amounts to the U.S. Department of Education, according to the specified process.	PED Accounting
July	Issue repayment enforcement letters to LEAs that did not make timely payments to satisfy the LEA's MOE non-compliance liability. Inform the LEAs of the September deadline and that the consequences of failure to repayment may result in withholding of state funds.	PED Accounting

Note: Should there be unexpected circumstances requiring an adjustment to the time frames outlined above that would result in changes for LEAs, the NMPED will notify LEAs within a reasonable amount of time to inform LEA administration of the changes to the time frame.

Appendices

Appendix A: NMPED Special Education Maintenance of Effort FAQ

https://webnew.ped.state.nm.us/wp-content/uploads/2020/12/Special-Education-Maintenance-of-Effort-FAQ-12.2020.pdf

Appendix B: NMPED MOE Liability Letter Template

DATE

< Administrator Title > <Administrator>
<LEA Name>
<Street Address>
<City>, <State> <Zip>

RE: Maintenance of Effort (MOE) Determination for Federal Fiscal Year (FFY) 20XX

Dear < Administrator Title > <Administrator>:

As part of its duties to oversee the implementation of the Individuals with Disabilities Education Act (IDEA), the New Mexico Public Education Department (PED) is required to determine whether each local educational agency (LEA) complies with the maintenance of effort (MOE) requirements of 34 C.F.R. § 300.203. PED has completed its review of <LEA Possessive> MOE compliance for federal fiscal year 20XX in accordance with 34 C.F.R. § 300.203.

During this review, PED utilized financial data provided by the LEA from the respective school year, including all expenditures of state and local funds related to the education of children with disabilities, in order to calculate the LEA's level of effort and MOE compliance in that fiscal year. If PED determined that, as part of an initial review of the LEA's financial data, the LEA would not meet the MOE requirements for the federal fiscal year under review, the LEA was permitted to provide further information related to any qualifying exceptions or adjustments that would allow the LEA to reduce its required effort for the federal fiscal year. See 34 C.F.R. §§ 300.204 and 300.205. PED made a final determination regarding the LEA's compliance with the MOE requirements only after a final review of the LEA data, including any exceptions or adjustments.

After a thorough review of all expenditures directed at the education of children with disabilities utilizing state and local funds, PED has determined whether the <LEA Name> has maintained sufficient effort in the federal fiscal year under review. The chart below provides the MOE compliance determination for the LEA for the federal fiscal year under review, as well as any liability the LEA may have incurred if it failed to meet MOE in that year:

Did LEA meet the MOE	FFY20XX Liability

requirement in FFY 20XX?	
<<Met/Did Not Meet>>*	

**Please see Special Education SharePoint MOE Calculator for comparison year amount and method(s) of determination.*

If the LEA disagrees with and wishes to contest PED's fiscal findings above, the LEA may request a hearing to review the findings. See 6.21.2.9 NMAC and 6.31.2.9(H). The request for a hearing must be submitted in writing within 30 days of receipt of this letter per 6.21.2.9(B)(1) NMAC. The request must be emailed to <Insert Name>, PED Office of Special Education Deputy Director, at <Insert Email> and <Insert Name>, PED Office of Special Education Deputy Director, at <Insert Email>.

If the fiscal findings are accepted and a hearing is not requested or PED's findings are affirmed after a hearing, the LEA will need to provide funds for this liability, from **nonfederal sources**, in order to remedy the noncompliance with the MOE requirements. LEAs have two options for liability payment. LEAs may pay all liabilities by the close of the current fiscal year (June 30, 20XX), or liability payment may be paid in two installments. The first installment will need to be paid by the close of the current fiscal year, and the second payment installment should be sent in by the close of the next fiscal year (June 30, 20XX). The payment amount(s), if any, may not be included in the total maintenance of effort in the federal fiscal years in which the payment was made. Failure to make timely reimbursement payments may result in future enforcement actions including the withholding of state funds in the amount of the LEA's total unpaid liability.

Payments should be sent to:

NM Public Education Department
Audit & Accounting Bureau
Attention: <Insert Name>
300 Don Gaspar Ave.
Santa Fe, NM 87501

The LEA must maintain documentation of the underlying data provided to PED as part of this MOE review process in the event that the United States Department of Education chooses to conduct a formal review or audit of PED's MOE determinations or the LEA's MOE compliance, specifically. For any questions concerning the MOE calculations, please contact <Insert Name> at <Insert Number> or at <Insert Email>

The PED looks forward to working with you to improve the outcomes for New Mexico students receiving special education services.

Sincerely,

MC/cm

cc: LEA <<Director Name>>, <<Title>>, <<LEA>>

LEA <<Business Manager Name>>, <<Title>>, <<LEA>>

Appendix C: NMPED Repayment Reminder Letter Template

DATE

< Administrator Title > <Administrator>
<LEA Name>
<Street Address>
<City>, <State> <Zip>

RE: Repayment of Maintenance of Effort (MOE) Liability for Federal Fiscal Year (FFY) 2020

Dear < Administrator Title > <Administrator>:

On Month XX, 20XX, PED notified <LEA Name> of its failure to meet the maintenance of effort requirements under the IDEA in federal fiscal year <years of noncompliance> and the resulting financial liability in the amount of <liability amount>. A copy of this letter is enclosed. This letter advised that the LEA had the opportunity to appeal this finding through a formal hearing process within 30 days after receipt of the determination letter. <LEA Name> did not appeal the noncompliance determination.

PED provided two options for payment of the liability if no request for hearing was received. The LEA could pay the total amount by the close of the current fiscal year (June 30, 20XX), or pay the total amount in two installments. If the LEA chose to pay in two installments, the first installment was to be paid by the close of the current fiscal year (June 30, 20XX), and the second payment was to be paid by the close of the next fiscal year (June 30, 20XX).

As of Month XX, 20XX <LEA Name> has not made any payments to resolve the liability amount for noncompliance.

<LEA Name> must make a payment, **from a nonfederal source,** of the remaining balance by June 30, 20XX. Failure to make the ordered payment may result in further enforcement action including but not limited to the reporting of the liability to the LEAs designated auditor and the Secretary ordering the withholding of state funds in the amount of the total liability until the liability is paid in full. *See* 6.21.2.11(C) NMAC; NMSA 1978, § 22-8-13(F).

Payments should be sent to the following address:

NM Public Education Department
Audit & Accounting Bureau
Attention: <Insert Name>

300 Don Gaspar Ave.
Santa Fe, NM 87501

For any questions regarding Maintenance of Effort, please contact <Insert Name>, Financial Coordinator, Special Education Division, at <Insert Number>.

Thank you for your cooperation.

Sincerely,

DDC/tc

cc: LEA <<Director Name>>, <<Title>>, <<LEA>>

LEA <<Business Manager Name>>, <<Title>>, <<LEA>>

Appendix D: NMPED Withholding of Funds Letter Template

DATE

< Administrator Title > <Administrator>
<LEA Name>
<Street Address>
<City>, <State> <Zip>

RE: Notice of Withholding of Funds Due to LEAs Failure to Remit Payment for Maintenance of Effort (MOE) Liability for Federal Fiscal Years (FFY) 20XX-20XX

Dear < Administrator Title > <Administrator>:

On <Insert Date>, PED notified <LEA Name> of its failure to meet the maintenance of effort requirements under the IDEA in federal fiscal year(s) 20XX (through 20XX) and of the resulting financial liability in the amount of <Liability Amount>. This letter advised that the LEA had the opportunity to appeal this finding through a formal hearing process within 30 days of receipt of the determination letter. <LEA Name> did not appeal the noncompliance determination. PED provided two options for payment of the liability if no request for hearing was received. The LEA was permitted to pay the total amount by the close of the current fiscal year (June 30, 20XX) or to pay the total amount in two installments. If the LEA chose to pay in two installments, the first installment was to be paid by the close of the current fiscal year (June 30, 20XX), and the second payment was to be paid by the close of the next fiscal year (June 30, 20XX).

Because the LEA failed to pay at least its first installment by the June 30, 20XX deadline, PED sent a payment reminder and enforcement letter to the LEA on <Insert Date>. This letter stated that <LEA Name> must make a payment, from a non-federal source, of at least half of the total liability amount by <Insert Date> and a payment of the remaining balance by June 30, 20XX. The letter also stated that the LEA's failure to make the ordered payment(s) may result in further enforcement action, including but not limited to the reporting of the liability to the LEA's designated auditor, and the Secretary ordering the withholding of state funds in the amount of the total liability until the liability is paid in full. *See* 6.21.2.11(C) NMAC; NMSA 1978, § 22-8-13(F).

As of July 1, 20XX, <LEA Name> has not made any payments to resolve the liability amount resulting from noncompliance with federal maintenance of effort requirements.

For these reasons, and pursuant to 6.21.2.11(C) NMAC and NMSA 1978, Section 22-8-13(F), the PED Director of School Budget has determined that <LEA Name> has not made adequate progress toward a resolution of this noncompliance. The Secretary of Education has subsequently determined that <LEA Name> has been given ample opportunity to correct the deficiencies, and progress has not been made. Due to the LEA's failure to correct the noted deficiencies, PED will begin withholding funds in the amount of <Liability Amount> until <LEA Name> has corrected the noncompliance by remitting full payment of the outstanding liability to the PED.

The LEA should begin work with the School Budget Director and Chief Financial Officer as soon as possible to remedy this noncompliance and remove the withholding of funds.

Payment from a *nonfederal source* should be sent to the following address:

NM Public Education Department
Audit & Accounting Bureau
Attention: <Insert Name>
300 Don Gaspar Ave.
Santa Fe, NM 87501

For any questions, please contact <Insert Name>, Financial Coordinator, Special Education Division, at <Insert number>.

Thank you for your cooperation.

Sincerely,
<Insert name and position>

cc: Must include the following:

applicable governing council

charter school division, if applicable

LEA-assigned auditing firm

Appendix E: Related Resources

- **IDEA Regulations** (current full text of these regulations can be found at 34 CFR): 34 CFR §300.203; Appendix E to Part 300—Local Educational Agency Maintenance of Effort Calculation Examples
- **Local Educational Agency Maintenance of Effort Calculator**, Center for Idea Fiscal Reporting LEA MOE Calculator
- **Issuance of Guidance on the Final Local Educational Agency Maintenance of Effort Regulations Under Part B of the IDEA (U.S. Department of Education**, Office of Special Education and Rehabilitative Services Non-Regulatory Guidance)—Section D, OSERS Guidance on State General Supervision and Responsibilities July 24, 2023
- **Letter to Boundy (2012)**, OSEP OSEP Letter to Boundy April 4, 2012
- **Letter to Gonzales (2012)**, OSEP OSEP Letter to Gonzales September 7, 2012
- **Letter to Lovato (2015)**, OSEP OSEP Letter to Lovato November 23, 2015