



New Hampshire | LIVE FREE AND LEARN
Department of Education

New Hampshire Department of Education Local Educational Agency ESSA Maintenance of Effort Guidance

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Purpose

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), a local educational agency (LEA) must maintain its own State and local fiscal effort in accordance with [Section 8521, ESSA](#). This requirement is known as maintenance of effort (MOE). This purpose of this document is to provide New Hampshire LEAs with guidance on how to interpret and determine compliance with the ESSA LEA MOE requirement.

Guidance

Per [ESSA, Section 8521 \[20 U.S.C. 7901\] Maintenance of Effort](#), an LEA may receive funds under a ESSA covered program for any fiscal year only if the State educational agency (SEA) 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.

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Overview

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 school 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 school receives its fair share of State and local resources, regardless of whether the school is also federally funded.

ESSA Covered Programs

In addition to Title I, Part A, the [MOE requirement of section 8521](#) applies to the following ESSA programs:

- Title I, Part D, Prevention and Intervention Programs for Children and Youth who are Neglected, Delinquent, or At-Risk;
- Title II, Part A, Preparing, Training, and Recruiting High-Quality Teachers, Principals, and Other School Leaders;
- Title III, Part A, Language Instruction for English Learners and Immigrant Students;
- Title IV, Part A, Student Support and Academic Enrichment
- Title IV, Part B, Nita M. Lowey 21st Century Community Learning Centers; and
- Title V, Part B, Subpart I, Rural Education Initiative, Subpart 2, Rural and Low-Income School Program

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 two 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 average daily membership (ADM): The ADM 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 2022, it is required to expend at least \$450,000 in State and local funds in FY 2023 (90% of its prior-year expenditures). If the LEA expends only \$405,000 in FY 2023, it has failed to maintain effort by \$45,000. Because the LEA failed to maintain effort, its allocations for FY 2025 will be reduced by 10% (\$45,000 is 10% of \$450,000).

Total State and Local Expenditures

Per 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.

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

Total State and Local Expenditures per Pupil for ADM

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, based on the ADM-A reported annually within the District Financial Reporting System (DFRS) via the district DOE-25 workbook, pursuant to RSA 198:4-d and RSA 194-B:10.

Consequences for Failure to Meet ESSA LEA MOE

Per [section 8521\(b\)\(1\), ESSA](#), if the LEA fails to meet the two 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, NHED must reduce the amount of funds allocated under ESSA covered programs in exact proportion to the LEA’s failure to meet the requirement, using the test that is most favorable to the LEA. Details on the requirement as applicable to the five immediately preceding fiscal years are provided in the Five-Year Flexibility Rule section, below.

Fiscal Years Used in Comparison

The United States Department of Education (USED) [non-regulatory guidance on Title I, Part A fiscal issues](#) dictates the fiscal years NHED must use to determine whether an LEA maintained fiscal effort in accordance with Section 8521, ESSA. Under this guidance, NHED must compare the LEA’s State and local fiscal effort for the “preceding fiscal year” to the “second preceding fiscal year.” To be compliant with federal maintenance of effort requirements, an LEA’s State and local expenditure amount in the preceding fiscal year cannot be less than 90 percent of its State and local expenditure amount in the second preceding fiscal year.

The “preceding fiscal year” is simply the fiscal year before the fiscal year in which Title I, Part A funds are available to the LEA and the fiscal year for which NHED will determine the LEA’s compliance. The “second preceding fiscal year” is the fiscal year before the preceding fiscal year. Therefore, to determine MOE compliance for fiscal year 2023, for example, NHED will compare the LEA’s State and local expenditure amount for fiscal year 2023 to the LEA’s State and local expenditure amount for fiscal year 2022.

The following table shows examples of the comparisons NHED would use to make MOE determinations for three LEAs for FY 2023:

	State and local actual expenditure amounts		C	D	E
	A	B			
	FY 2022 (the second preceding fiscal year)	FY 2023 (the preceding fiscal year)	90% of FY22 (amount the LEA must spend in FY23 to be compliant)	Comparison (Column B to Column C)	MOE Determination for FY23
LEA 1	\$1,000	\$1,200	\$900	\$1,200 > \$900	LEA is compliant
LEA 2	\$1,000	\$1,000	\$900	\$1,000 > \$900	LEA is compliant
LEA 3	\$1,000	\$800	\$900	\$800 < \$900	LEA is not compliant

NHED will use this comparison to determine an LEA’s MOE compliance each year, *as long as the LEA remains compliant*.

Comparison after an LEA Fails MOE

To determine MOE compliance after an LEA fails to maintain fiscal effort, NHED compares the LEA’s State and local expenditure in the preceding fiscal year to a reduced amount. Specifically, NHED compares the LEA’s State and local expenditure in the preceding fiscal year to only *90 percent* of the amount the LEA *needed to spend* to be compliant in the second preceding year, which is already 90 percent of the LEA’s actual expenditure in the fiscal year before the second preceding year.

To make this comparison, NHED uses a two-step process:

Step 1 - is to calculate the amount that the LEA *needed to spend* to be compliant in the second preceding year. This calculation uses expenditure data from the fiscal year *before* the second preceding year. Table 1 below shows examples of Step 1 for determining FY 2023 compliance for three LEAs that were *not* compliant in FY 2022.

Step 2 - NHED calculates 90 percent of the amount in Table 1, Column C (the amount the LEA *needed to spend* to be compliant the fiscal year *before* the second preceding year). NHED then compares that amount to the LEA’s FY 23 expenditure amount to determine MOE compliance for FY 23. Table 2 below shows Step 2 using the same three LEAs shown in Step 1.

Table 1

State and Local Expenditure Amounts					
	A	B	C	D	E
	FY 2021	FY 2022 (the second preceding fiscal year)	90% of FY21 (amount the LEA must have spent in FY22 to be compliant)	Comparison (Column B to Column C)	MOE Determination for FY22
LEA 1	\$1,200 (LEA was compliant)	\$1,000	\$1,080	\$1,000 < \$1,080	LEA is not compliant
LEA 2	\$1,000 (LEA was compliant)	\$850	\$900	\$850 < \$900	LEA is not compliant
LEA 3	\$800 (LEA was compliant)	\$675	\$720	\$675 < \$720	LEA is not compliant

Table 2

	A	B	C	D	E
	90% of FY21 (amount the LEA must have spent in FY22 to be compliant)	FY 2023 Expenditure Amount	90% of Table 1 Column C	Comparison (Column B to Column C)	MOE Determination for FY23
LEA 1	\$1,080	\$1,010	\$972	\$1,010 > \$972	LEA is compliant
LEA 2	\$900	\$825	\$810	\$825 > \$810	LEA is compliant
LEA 3	\$720	\$625	\$648	\$675 < \$648	LEA is not compliant

Five-Year Flexibility Rule

[ESSA, 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:

The State educational agency shall reduce the amount of the allocation of funds under a ESSA covered program in any fiscal year in the exact proportion by which a LEA fails to meet the (MOE) requirement... if such LEA has also failed to meet such requirement... for (any) of the 5 immediately preceding fiscal years.

For example, if an LEA is found noncompliant **for FY 2023**, NHED will look back to FYs 2018, 2019, 2020, 2021, and 2022 (the five preceding fiscal years) to determine if the LEA failed in any of those five years.

- If the LEA is **noncompliant** in **any** of those five preceding years, then the LEA's next allocations for the ESSA covered programs **will be reduced**.
- If the LEA is **compliant** in **all** those five preceding years, then the LEA's next allocations for the ESSA covered programs **will not be reduced**. An LEA that is newer than five years must have been compliant for all those years to be eligible for this flexibility.

If an LEA received a waiver of the MOE requirement from USED 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, NHED 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 2019 and the five years prior, noncompliant in FY 2020**, returned to compliance in FY 2021 and FY 2022, and was again noncompliant in FY 2023. In the example, the calculation most favorable to the LEA has already been determined, and the results are reflected in Table 3 below.

Table 3

A	B	C	D	E	F
Determination Year	State and Local Expenditures During Applicable Compaision 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 is Non-Compliant
FY 2020	\$1,000,000 (FY 2019)	\$900,000 ¹	\$850,000 (FY 2020)	(\$50,000)	FY 2022 Reduction of Allocation <i>could be</i> 5.556% (\$50,000/\$900,000) - but LEA uses 5-year flexibility, No Reduction
FY 2021	\$900,000 ² (FY 2020)	\$810,000	\$810,000 (FY 2021)	n/a	FY 2023 No Reduction
FY 2022	\$810,000 ³ (FY 2021)	\$729,000	\$800,000 (FY 2022)	n/a	FY 2024 No Reduction
FY 2023	\$800,000 (FY 2022)	\$720,000	\$700,000 (FY 2023)	(\$20,000)	FY 2025 Reduction of Allocation would be 2.778% (\$20,000/\$720,000) - no flexibility ⁴

1 Assuming LEA was compliant in FY 2019.

2 The State and local expenditures used for MOE purposes in FY 2021 is \$900,000, which is 90% of FY 2019 expenditures (*last fiscal year in which effort was maintained*), rather than the actual FY 2020 expenditures of \$50,000 (because the LEA failed to maintain effort in FY 2020).

3 The State and local expenditures used for MOE purposes in FY 2022 is the actual FY 2021 expenditures of \$810,000 (because the LEA met the MOE requirement in FY 2021).

4 The five-year flexibility of no reduction of allocation would not be an option since the LEA was also non-compliant in FY 2020.

LEA expenditure data is collected via the DOE-25. Once certified, typically in November of each year, the data becomes unchanged. NHED then calculates MOE for Districts and then Charter Schools. As this timeline does not account for MOE, any reduction in allocation resulting from an LEA’s failure to comply with ESSA LEA MOE will be applied to the second fiscal year after the year of determination. For example, ESSA LEA MOE compliance is calculated for FY 2023 in late spring of 2024 (when the data are available). Any reduction in allocation for LEAs determined to be non-compliant are applied to FY 2025 (school year 2024-2025), as those allocations are calculated in the late spring of 2024.

USED Waiver

[ESSA, Section 8521\(c\)](#) allows USED 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 local educational agency; or
- A precipitous decline in the financial resources of the local educational agency.

An LEA that fails to meet the MOE requirement may request a waiver from USED, as described in the following section. To make decisions on an LEA’s MOE waiver request, USED will review revenue and expenditure data provided by NHED. NHED has no authority to waive the ESSA LEA MOE requirement and has no input into USED’s decision regarding LEA waiver requests.

Upon notification from USED that they have granted the LEA’s request for a waiver, the LEA may then receive its full allocation for Title I, Part A and other ESSA covered programs for the applicable fiscal year.

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

Requesting USED 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.TitleI-A@ed.gov. A copy of the letter must also be emailed to NHED’s Bureau of Instructional Support Administrator at Jessica.L.Lescarbeau@doe.nh.gov.

ESSA LEA MOE Timeline

- April: Actual audited financial data from DOE 25 for the applicable fiscal years is extracted to determine LEAs’ compliance with the ESSA LEA MOE requirement.
- May/June: NHED posts ESSA LEA MOE Compliance Reports on NHED website.
- May/June: Information regarding availability of ESSA LEA MOE Compliance Reports is transmitted via email.
- May/June: Using ESEA@doe.nh.gov email address information, NHED e-mails Superintendents a notification if their LEA’s status is non-compliant with the ESSA LEA MOE requirement.
- May/June: As applicable, LEAs may submit waiver requests directly to USED and provide a copy of the letter to NHED at: Jessica.L.Lescarbeau@doe.nh.gov. USED will reach out to NHED for additional information (executing OMB Number: 1810-0693)
- July: As applicable, NHED reduces the amount of funds allocated under ESSA 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: NHED reinstates any reductions taken from an LEA’s allocations, upon notification by the USED of ESSA LEA MOE waivers granted.

Appendix 1: ESSA LEA MOE Calculation Methodology

The information required to calculate MOE is obtained from the DOE-25. LEA expenditure data from this record is used to determine compliance with the ESSA LEA MOE requirement.

Included Expenditures

Per 34 C.F.R. 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, the State and local expenditures expended for the functions listed below are included in the ESSA LEA MOE calculation:

Description	Code
<i>Instruction</i>	
REGULAR PROGRAMS	1100
SPECIAL PROGRAMS	1200
VOCATIONAL PROGRAMS	1300
OTHER INSTRUCTIONAL PROGRAMS	1400
<i>Support Services</i>	
STUDENT	2100
INSTRUCTIONAL STAFF	2200
GENERAL ADMINISTRATION	2300
SCHOOL ADMINISTRATION	2400
BUSINESS	2500
OPERATION/MAINTENANCE OF PLANT	2600
STUDENT TRANSPORTATION	2700
CENTRAL	2800
DISTRICT WIDE EXPENDITURES	
PRIVATE PROGRAMS	1500
ADULT/CONTINUING ED PROGRAMS	1600
COMMUNITY/JR. COLLEGE ED. PROGRAMS	1700
COMMUNITY SERVICE PROGRAMS	1800
NON-STUDENT TRANSPORTATION	2750
FACILITIES ACQUISITION & CONSTRUCTION	4000
OTHER FINANCING USES	
<i>Debt Service</i>	5100
PRINCIPAL	5110
INTEREST	5120
<i>Fund Transfers</i>	5200
FOOD SERVICE SPECIAL REV. FUND	5221
ALL OTHER SPECIAL REV. FUNDS	5222
CAPITAL PROJECT FUNDS	5230
TRUST/AGENCY FUNDS	5250
<i>Intergovernmental Agency Allocations</i>	5300
TO CHARTER SCHOOLS	5310
TO OTHER AGENCIES	5390
OTHER	2900

Excluded Expenditures

Per 34 C.F.R. 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.

Therefore, State and local expenditures expended for the function and object codes for community services, capital outlay, debt service or supplemental expenses made as a result of a Presidentially declared disaster are not considered.