

TO: Local School Divisions

SUBJECT: LEA MOE Final Regulations

The U.S Department of Education (USED), Office of Special Education and Rehabilitative Services (OSERS) published the final regulations relating to Local Education Agency (LEA) Maintenance of Effort (MOE) in the Federal Register on April 28, 2015. The USED identified a need for revisions to the LEA MOE requirements based upon fiscal monitoring, audits and questions from States. Most of the changes clarify the way in which the Department has previously interpreted LEA MOE regulations and consolidate requirements from GEPA, EDGAR and appropriations language. These regulations became effective on July 1, 2015 and can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2015-04-28/pdf/2015-09755.pdf>

The intent of this Superintendent's email is to ensure that LEAs are aware of this final regulations for Part B of the *Individuals with Disabilities Education Act* (IDEA) which mandates that an LEA maintain the level of effort of local, or State and local financial support necessary to make a free appropriate public education (FAPE) available to eligible children with disabilities. Generally, an LEA may not reduce the amount of local, or State and local, funds that it spends on the education of children with disabilities below the amount it spent for the preceding fiscal year.

Please note the following provisions were made to clarify the existing regulations:

- Clarification of the eligibility standard;
  - The eligibility standard describes the LEA MOE requirement that is a condition for an LEA to receive an IDEA Part B subgrant. In order to be eligible for an IDEA Part B grant for the upcoming year, the LEA must develop a budget that demonstrates it *intends* to maintain (or increase) the amount of local, or State and local funds, it spends for the education of children with disabilities when compared to the amount it *actually* expended in the most recent fiscal year for which information is available. This change represents a clearer presentation of the current regulation.
  
- Clarification of the compliance standard;
  - The compliance standard prohibits LEAs from reducing the level of expenditures from local, or State and local, funds for the education of children with disabilities below the level of expenditures for that same purpose in the preceding fiscal year. In other words, an LEA must maintain (or increase) the amount of local, or State and local funds, it spends for the education of children with disabilities when compared to

the preceding fiscal year. This change represents a clearer presentation of the current regulation.

- Explanation of the Subsequent Years rule; and
  - The Subsequent Years rule governs what level of effort an LEA must maintain in the year after the LEA fails to maintain effort. Under this rule, if during a fiscal year an LEA fails to maintain effort, in the subsequent year, the LEA must restore its level of effort to the level that would have been required had the LEA not failed LEA MOE. The Subsequent Years rule prevents an LEA that failed to maintain effort in one year from permanently reducing its required level of effort due to an LEA MOE failure. This provision was clarified in a 2012 policy letter and has been included in appropriations language in 2014 and 2015.
- Specifying the consequences for an LEA's failure to maintain
  - When an LEA fails to maintain effort, the SEA is liable in a recovery action under section 452 of GEPA (20 U.S.C. 1234a) to return to the Department, using non-Federal funds, an amount equal to the amount by which the LEA failed to maintain its level of expenditures in that fiscal year, or the amount of the LEA's IDEA Part B subgrant in that fiscal year, whichever is lower. This is consistent with GEPA and long-standing practice.
- Appendix E has been added to the regulations and provides detailed tables that provide examples of calculating LEA MOE.

The guidance document will be updated to include additional information concerning the regulatory changes. Also, a question and answer (Q&A) document to further clarify these revised regulations can be found at:

<http://www2.ed.gov/about/offices/list/osers/osep/policy.html>

All questions or comments should be directed to Tracie Coleman, special education budget and finance manager, at 804-225-2704 or [Tracie.Coleman@doe.virginia.gov](mailto:Tracie.Coleman@doe.virginia.gov).