

Figure: 19 TAC §109.3001(c)(2)

**NCLB 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 amended by the No Child Left Behind Act of 2001 (NCLB), a local educational agency (LEA) must maintain its own state and local fiscal effort in accordance with [Section 9521](#), 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 NCLB LEA MOE requirement.

Definition of Maintenance of Effort

[Section 9521](#), ESEA, provides that “a local educational agency may receive funds under a 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 LEA 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 90% of its expenditures for public education from state and local funds from one year to the next. 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 NCLB allocations for the upcoming fiscal year will be reduced in the exact proportion by which the LEA did not meet the MOE requirement. See the Methods of Determining Compliance section for details on the four calculations used to determine compliance.

For example, if the LEA expended \$500,000 in fiscal year 2013, it is required to expend at least \$450,000 in fiscal year 2013 (90% of its prior year expenditures). If the LEA expends only \$400,000, it has failed to maintain effort, and its allocation for the next fiscal year will be reduced by 11.1%. (The LEA expended \$50,000 less than the \$450,000 that was required to maintain effort; \$50,000 is 11.1% of \$450,000, and the allocation for the next fiscal year will be reduced by that same amount.)

Covered Programs

As used in [Section 9521](#), 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 B, Subpart 3, Even Start
- 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 Acquisition State Grants
- Title IV, Part B, 21st Century Learning Centers
- Title VI, 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 NCLB 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/or local

funds at the same level from year to 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 NCLB LEA MOE requirement in any fiscal year, an LEA is required to expend state and/or local funds at 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 NCLB LEA MOE requirement.

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

- 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.
- 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.
- 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.
- 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.

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 NCLB 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 the NCLB LEA MOE Calculation Methodology in Appendix 1.

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

In addition to the comparison of total state and local expenditures, the LEA may meet NCLB LEA MOE requirements if its fiscal effort per student is maintained at 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, by school year, posted on the [School Finance Average Daily Attendance \(ADA\) Reports](#) page of the TEA website. (The column headed "ADA" actually reflects the RADA figure.)
- **Membership:** The total number of public school students who were reported in membership as of the October snapshot date (defined by the Public Education Information Management System [PEIMS] as the last Friday in October) at any grade, from early childhood education through grade 12. Membership is a slightly different number from enrollment because it does not include those students who are served in the LEA for fewer than two hours per day. LEAs may find their membership figure through the District Detail Search link on the [Snapshot School District Profiles](#) page of the TEA website. On the detail report, membership is listed as "Total Students."
- **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 PEIMS Edit + Report View - PRFD002 Summary by Sex and Ethnicity. The [Public](#)

[Education Information Management System \(PEIMS\)](#) page of the TEA website includes an EDIT+ link, for more information on EDIT+ reports.

Consequences for Failure to Meet NCLB LEA MOE

Under ESEA, P.L. 107-110, Section 9521(b), if the LEA fails to meet all four tests listed in the Methods of Determining Compliance section, 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 that is most favorable to the LEA.

Fiscal Years Used in Comparison

USDE's 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 9521, 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 9521(b)(2), 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 NCLB LEA MOE in the year prior to the year under determination, then NCLB LEA MOE determinations are calculated based on expenditure data from the year under determination and expenditure data from the year prior to the year under determination. For example, NCLB LEA MOE determinations for fiscal year 2012 (school year 2011-2012) would be calculated based on expenditure data from fiscal year 2012 and fiscal year 2011 (school year 2010-2011). For compliance, the required level of expenditures for fiscal year 2012 must be at least 90% of what was expended in fiscal year 2011, either in the aggregate or on a per pupil basis.

If the LEA was not compliant with NCLB LEA MOE in the year prior to the year under determination, then NCLB LEA MOE determinations are calculated based on expenditure data from the year under determination and expenditure data from two years prior to the year under determination. For example, NCLB LEA MOE determinations for fiscal year 2012 (school year 2011-2012) would be calculated based on expenditure data from fiscal year 2012 and fiscal year 2010 (school year 2009-2010). For compliance, the required level of expenditures for fiscal year 2012 must be at least 90% of 90% of what was expended in fiscal year 2010, either in the aggregate or on a per pupil basis.

The following chart demonstrates the applicable calculations and fiscal years under comparison for a three-year period where the LEA is assumed to have been in compliance the year prior to FY 2012, failed to comply in FY 2012, then returned to compliance in FY 2013 and FY 2014. 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.

	1	2	3	4
Determination Year	State and Local Expenditures During Determination Year	State and Local Expenditures During Applicable Comparison Year	Level required to meet the requirement (90% of column 2)	Amount by which LEA did not maintain effort
FY 2012 (SY 2011-2012)	FY 2012 (SY 2011-2012) \$850,000	FY 2011 (SY 2010-2011) \$1,000,000	\$900,000 (assuming LEA was compliant in FY 2011)	(\$50,000)
FY 2013 (SY 2012-2013)	FY 2013 (SY 2012-2013) \$810,000	FY 2012 (SY 2011-2012) \$900,000¹	\$810,000	n/a
FY 2014 (SY 2013-2014)	FY 2014 (SY 2013-2014) \$800,000	FY 2013 (SY 2012-2013) \$810,000 ²	\$729,000	n/a

¹The state and local expenditures used for MOE purposes in FY 2013 is \$900,000, which is 90% of FY 2011 expenditures (*fiscal year in which effort was not maintained*) rather than the actual FY 2012 expenditures of \$850,000 because the LEA failed to maintain effort in FY 2012.

²The state and local expenditures used for MOE purposes in FY 2014 is the actual FY 2013 expenditures of \$810,000 because the LEA met the MOE requirement in FY 2013.

Fiscal Years Affected By Determination

Due to the timing of when LEA expenditure data are reported to TEA and become available in PEIMS, the fiscal year to which any reduction in allocation will apply based on an LEA’s failure to comply with NCLB LEA MOE will be the second year after the year of determination. For example, NCLB LEA MOE determinations are calculated for FY 2012 in late spring of 2013 (when the data are available). Any reduction in allocation for LEAs determined to be noncompliant are applied to FY 2014 (school year 2013-2014) as those allocations are calculated in the summer of 2013.

The example used in the previous chart is expanded below by the addition of an extra column to demonstrate the fiscal year affected by the NCLB LEA MOE determination. Note that only in years where an LEA is determined to be noncompliant will there be a reduction to the applicable allocations:

	1	2	3	4	5
Determination Year	State and Local Expenditures During Determination Year	State and Local Expenditures During Applicable Comparison Year	Level required to meet the requirement (90% of column 2)	Amount by which LEA failed to maintain effort	Fiscal Year in Which Allocation is Reduction if LEA Non-Compliant
FY 2012 (SY 2011-2012)	FY 2012 (SY 2011-2012) \$850,000	FY 2011 (SY 2010-2011) \$1,000,000	\$900,000 (assuming LEA was compliant in FY 2011)	(\$50,000)	FY 2014 (SY 2013-2014) Reduction of allocation by 5.6% (\$50,000/\$900,000)
FY 2013 (SY 2012-2013)	FY 2013 (SY 2012-2013) \$810,000	FY 2012 (SY 2011-2012) \$900,000	\$810,000	n/a	FY 2015 (SY 2014-2015) No reduction
FY 2014 (SY 2013-2014)	FY 2014 (SY 2013-2014) \$800,000	FY 2013 (SY 2012-2013) \$810,000	\$729,000	n/a	FY 2016 (SY 2015-2016) No reduction

Federal Funds That *May* be Considered as State or Local Funds

In future years if the federal government provides special and/or additional federal funds that TEA designates as state or local funds (such as ARRA SFSF, fund code 266 was previously), those specific funds will be automatically included in the total aggregated expenditures by function code for each respective compliance year in the MOE calculation.

However, federal funds that TEA does not specifically designate as state or local funds will not be automatically included in the MOE calculation. For example, the federal Ed Jobs funds (fund code 287) *may* at the LEA's discretion have been considered as state or local funds. In other words, the LEA was the entity that decided whether to consider the specially allocated federal funds as state or local funds.

In a determination year when applicable, the LEA may request a state reconsideration for inclusion of federal funds that the LEA used as state or local funds in the determination of compliance with NCLB LEA MOE. The following requirements would apply:

- The LEA will be required to submit supporting documentation identifying the federal funds expended as state or local funds.
- The LEA must have available for inspection auditable documentation demonstrating that the federal funds treated as non-federal funds were spent in accordance with the requirements for use in determining compliance with NCLB LEA MOE.

Significant PEIMS Errors in an LEA's Reported Expenditures

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

If the results of the TEA NCLB 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 NCLB MOE determination calculation tool is an estimate only and does not duplicate the exact calculation process. The results of TEA's recalculation will be the basis of the final MOE determination.**

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 NCLB MOE determination 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 PEIMS data, along with the supporting documentation for such claims.
- A detailed schedule with the corrected PEIMS data in the appropriate PEIMS format provided by TEA to be used in lieu of the original 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 PEIMS data errors do not reoccur.

Any decision to use revised data in the calculation of NCLB MOE determinations will not change the official PEIMS data, which is the agency's official system of record. The official 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 PEIMS Errors

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

- Division of Financial Compliance: Possible increased risk for audit, investigation and/or review
- Division of State Funding: Possible effect on state funding
- Division of Federal Fiscal Monitoring: 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
- Division of Enforcement Coordination and Governance: LEA possibly recommended for district-level interventions or sanctions based on investigation findings

US Department of Education Waiver

Section 9521(c), ESEA, allows the US Department of Education (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
- 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 on an LEA's MOE waiver request, USDE will review revenue and expenditure data provided by TEA.

TEA has no authority to waive the 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 then receives its full allocation for Title I, Part A and other covered ESEA programs for the following fiscal year.

An approved USDE waiver only waives the statutory penalty for failing to maintain effort related to the determination year for which it was granted—i.e., the proportionate reduction in the upcoming allocations of programs subject to the NCLB LEA MOE requirements. An approved USDE waiver does not eliminate the MOE requirement or authorize the LEA to not maintain effort in future years.

Regardless of whether USDE grants the waiver, the LEA is still noncompliant with the NCLB LEA MOE requirement for that determination year. Remaining noncompliant will affect how the determination of the LEA's compliance with NCLB LEA MOE will be calculated in future determination years as discussed in the Fiscal Years Used in Determination section above.

Requesting USDE Waiver to NCLB 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 TitleWaivers@ed.gov: A copy of the letter must also be emailed to compliance@tea.state.tx.us (TEA's Division of Federal Fiscal Compliance and Reporting).

NCLB LEA MOE Timeline

- April – PEIMS actual audited financial data from PEIMS Record 032 for the applicable fiscal years is extracted by the Division of Federal Fiscal Compliance and Reporting (FFCR) to determine LEAs' compliance with the NCLB LEA MOE requirement
- May/June – Listserv announcement regarding availability of *Summary of Compliance with NCLB LEA MOE Requirement* in NCLB Reports is transmitted via the Grants Administration and Federal Program Compliance listserv (<http://miller.tea.State.tx.us/list/>)
- May/June – Using the ASK TED email address information, Superintendents are emailed a notification if their LEA's status is one of noncompliance with the NCLB LEA MOE requirement
- May/June – As applicable, LEAs submit waiver requests directly to the [USDE](http://www.usde.gov) and also provides a copy of the letter to TEA's Division of Federal Fiscal Compliance and Reporting at: compliance@tea.State.tx.us
- May/June – TEA posts final *Summary of Compliance with NCLB LEA MOE Requirement* in NCLB Reports
- July – TEA reduces the amount of funds allocated under ESEA covered programs in exact proportion to which an LEA fails to meet the 90 percent requirement
- Ongoing – TEA reinstates any reductions taken from an LEA's allocations, upon notification by the USDE of NCLB LEA MOE waivers granted

NCLB Reports

NCLB LEA MOE determinations are currently made available via NCLB Reports, a web-based application available through TEAL that provides reports on NCLB-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 Summary of Compliance with NCLB LEA MOE Requirement

To access the NCLB LEA MOE Summary of Compliance, do the following:

Login through the Texas Education Agency Login (TEAL) at: <https://pryor.tea.State.tx.us/>

1. Select **NCLB Reports**.
2. For Report Title, select "**NCLB LEA MOE Reports**" from the drop-down menu.
3. For School Year, select the applicable school year. (For example, select the 2011–2012 school year to obtain the Summary of Compliance with NCLB LEA MOE Requirement for FY 2012, which compares total expenditures and per-pupil expenditures from 2010–2011 to 2011–2012.)

Example of the Summary of Compliance with NCLB LEA MOE Requirement

Below is an example of the *Summary of Compliance with NCLB LEA MOE Requirement* located in NCLB Reports. The report provides the LEA's status of "Compliant" or "Noncompliant" in the top right-hand corner of the document. The percent expended for state and local expenditures and per-pupil expenditures in comparison to the prior fiscal year 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 the LEA met compliance in all four methods for determining compliance, it only needs to show compliance for at least **one** test to be compliant.

If the LEA is noncompliant, Line 22 calculates the exact proportion to which an LEA did not meet the MOE requirement using the measure most favorable to the LEA (i.e., the test closest to demonstrating that the LEA expended at least 90% of the amount expended the prior year).

TEXAS EDUCATION AGENCY
Summary of Compliance with NCLB LEA Maintenance of Effort Requirement

Region	CDN	LEA Name			Status:
					COMPLIANT
Line Nbr	Function Code	Function Code Description	Prior Fiscal Year	Fiscal Year XX	
01	11	Instruction	\$2,284,382	\$2,176,034	
02	12	Instructional Resources and Media Services	\$25,504	\$34,792	
03	13	Curriculum and Instructional Staff Development	\$1,249	\$5,725	
04	21	Instructional Leadership	\$0	\$0	
05	23	School Leadership	\$258,794	\$258,845	
06	31	Guidance and Counseling Service	\$22,043	\$16,982	
07	32	Social Work Services	\$0	\$0	
08	33	Health Services	\$48,021	\$45,766	
09	34	Student (Pupil) Transportation	\$148,461	\$133,331	
10	35	Food Services (Deficit only)	\$0	\$0	
11	36	Cocurricular/Extracurricular Activities (Deficit only)	\$0	\$0	
12	41	General Administration	\$266,904	\$261,070	
13	51	Plant Maintenance and Operations	\$531,412	\$513,330	
14	53	Data Processing Services	\$2,800	\$0	
15		Total Operating Expenditures (Add 01-14)	\$3,589,570	\$3,445,875	95.997 %
16		Refined Average Daily Attendance	447,848	449,63	
17		Total Operating Expend. per Pupil (Refined ADA) (15/16)	\$8,015	\$7,664	95.616 %
18		Membership	468	471	
19		Total Operating Expend. per Pupil (Membership) (15/18)	\$7,670	\$7,316	95.385 %
20		Enrollment	468	471	
21		Total Operating Expend. per Pupil (Enrollment) (15/20)	\$7,670	\$7,316	95.385 %
22		Adjustment to NCLB Entitlements (Refer to C Note below)			0.000 %

NCLB LEA MOE Calculation Template

To estimate preliminary compliance (prior to the consideration of exceptions or state considerations) with the NCLB LEA MOE requirement, LEAs may complete the template posted on the [Maintenance of Effort](#) page of the TEA website.

Appendix 1: NCLB LEA MOE Calculation Methodology

The information required to calculate MOE is obtained from the Public Education Information Management System (PEIMS). 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 NCLB 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 NCLB 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 NCLB 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 NCLB 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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