Presentation Transcript

Local Education Agency Maintenance of Effort

Mechanics of the Revised Regulations

Steven Byrd

Introduction

0:00

Hi, my name is Steven Byrd. I'm with the U.S. Department of Education's Office of Planning Evaluation and Policy Development. I worked closely with the Office of Special Education Programs in our Office of General Counsel in drafting the new regulations on Local Education Agency (LEA) Maintenance of Effort (MOE), particularly working closely with them on drafting the charts and tables that were in there and a lot of the explanations to try to make that document as user friendly as possible so that states and LEAs could pick up the regulations and work with them and hopefully they made sense for folks to use.

Today, what we're going to do is walk through some of the mechanics of those regulations; how the calculations are done; how the required level of effort is calculated, both on the compliance standard and the eligibility standard; and hopefully provide folks with a better understanding of what the regulations say and what they require in terms of the calculations.

Today's session is part of a broader effort on the part of the department to provide TA on the final regulations on LEA MOE. The revised regulations were released back on April 28 of 2015. OSEP discussed those revised regulations on a national Technical Assistance (TA) call in May. And then there is a session that I presented along with Matt Schneer at the OSEP Leadership Conference at the end of July. And then, at the same time, OSEP released part one of a Q&A on LEA MOE on July 28. The link to that Q&A is https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osepmemo1510leamoeqa.pdf. Large parts of that text comes directly from the final regulations. The reason for that was largely because it would allow us to get the documents out much more quickly, but we realized there were a lot of things that were in that first Q&A that were not addressed. And so the department is currently working on part two of the Q&A, and those Q&As will focus on the exceptions and adjustments and some of the other issues that we've heard from folks as we've been going through and rolling out the regulations and helping people understand how they work.

So the purpose of today's presentation, as I said before, is to walk through the calculations that states and LEAs will be likely to encounter when implementing the revised regulations.

As we go, we're going to largely focus on the tables that were included in the notice of final rulemaking. And the reason that we're doing that is, number one, because those are examples that are going to be available to you to pull down whenever you need. They are easily accessible, and they are ones that will allow you to use the notice of final rulemaking and appendix E of the regulations to really help explain what these regulations mean to anyone who is trying to figure it out, anyone who needs additional support in understanding the regulations.

One thing I do want to also emphasize, as I just said, is all the tables and charts that were included in the notice of final rulemaking we added to appendix E of the regulations. And the reason being is, that way, you don’t actually have to have the final rule with you. You could actually just take the code of federal regulations. You can find it in there in addition because it's included in the federal regulations as that appendix, then gets attached to the compliance supplement that auditors will have access to, to help them understand what LEA MOE is, how it's calculated, and what the requirements are under the statute. So hopefully, as a result, we will have fewer findings from auditors that are actually based on faulty assumptions of what LEA MOE is. So it's not only a tool for you to use when working with your staffs or with your districts or with your states, it's also a tool for you to have to be able to work with auditors to make sure that they understand what the requirements are and that LEAs aren’t hit with findings or states aren’t hit with findings that ultimately are not sustained by the department because it's based on a misunderstanding of what the regulations are.

Under the new regulations, there are two different standards that we clarified. One is the compliance standard, and one is the eligibility standard. In terms of the timeline, the eligibility standard always comes first. It's also known as a budget standard. It's how much an LEA has to say they're going to spend in order to be eligible for the funding in the first place. The compliance standard is really looking back and saying, “After I've established my eligibility and I've gotten my funding, the compliance standard is: did I meet the requirements?” Well, what we're going to do today is focus first on the compliance standard because it's a little bit easier to understand [that] we have all the data because we're looking backwards, and there aren't missing holes in the data, and it really makes things a lot simpler. So we're going to start with the compliance standard today, and then we're going to move into the eligibility standard.

Subsequent Year Rule Appendix E—Table 4
5:05

So first thing we're going to do is look at table four, which is in appendix E. The first main change that the new regulations made was they codified the subsequent years rule. The subsequent years rule essentially applies to LEAs the same requirements that were attached for state-level maintenance of financial support. That is, any year in which an LEA fails to meet the compliance standard, what is the required level of effort in the year following that failure? And the subsequent years rule says that the required level of effort in the subsequent year is actually what the LEA was required to spend in the preceding year. So it essentially takes the requirement that was attached to states, state MFS, and also applies it to the local levels, to the LEAs. The other piece that it does is it takes what had been codified by congress in several appropriation laws as requirements and puts it into the regulations. And, that way, LEAs have some certainty that that rule is going to stay in place and they don't have to wait each year for the appropriations act to see if congress is going to continue that policy.

So if we look at table four, first of all, we have the fiscal year of 2012–2013. This LEA's actual level of effort was \$100, and it was required to spend \$100 in that year. So, in this year, the LEA met MOE. If we go down in 2013–2014, because the LEA was required to spend \$100 in 2012–2013 and they spent \$100, the required level in 2013–2014 is \$100. Now, in that year, if the LEA only spends \$90, the LEA fails to meet MOE. And so there's a \$10 short fall in 2013–2014. So in 2014–2015, this is where the subsequent years rule comes into effect. By clarifying that an LEA doesn't get you to essentially take advantage of a failure to permanently reduce its level of effort by saying that the required level of effort in 2014–2015 is what would have been required or what was required in the prior year in their absence of the failure. One hundred dollars is the required level of effort coming down into 2014–2015. The subsequent years rule that congress enacted beginning in 2014 essentially said that an LEA, following a year of a failure, so following 2013–2014, in the census, is required to spend what it was required to spend in the absence of the failure. And so in 2013–2014, it was required to spend \$100. And so regardless of the failure in 2013–2014, the required level of effort does not go down in 2014–2015; it stays at \$100.

So now if we look at 2014–2015, and the LEA spends \$90 again, the LEA fails to meet MOE because, even though its spending did not go down from the prior year, it still has not met the level of effort it originally established back in 2012–2013. So part of the subsequent years rule again, the LEA has still not met MOE since 2012–2013 when it spend \$100, so the required level of effort in 2015–2016 is \$100. Now let's say in 2015–2016 that the LEA spends \$110, so the answer is yes, the LEA met MOE in that year. So the question becomes, for 2016–2017, now what is the required level of effort moving forward? This is the first time that that required level's going to change because the LEA was required to spend $100 and it spent $110, and so the required level of effort coming down in 2016–2017 is $110, and that's the amount that they lock in as a requirement moving forward.

So as you see, the subsequent years rule essentially, absent exceptions and adjustments, means that the required level of effort actually never goes down from one year to the next. It only goes up. And it goes up when an LEA meets MOE and exceeds the requirements. So if an LEA fails, the required level of effort stays the same. If it meets the required level of effort or goes above it, then that required level of effort may go up.

Appendix E—Table 5

9:32

Moving on to table 5 of appendix E. Another thing that we clarified in the regulations is that LEAs are eligible to calculate their compliance and their eligibility using four different methodologies. The reason why we clarified this is, as we were going out and doing monitoring, we noticed that, in a number of instances, the LEAs were not given all four methodologies to use. Either they were being held to using only state and local, using only local, or maybe they were not being allowed to use a per capita calculation. And so we wanted to ensure LEAs had the ability, and it was written into the regulations that LEAs had the ability to use all four different calculation methodologies. So they can calculate whether or not they meet the compliance standard using local funds only in aggregate, state and local funds combined in aggregate, local funds only per capita, or state and local funds combined per capita. Now the per capita are using the aggregate amounts divided by that year's child count. And so here, for local only, we see $500 for 2016. The local only per capita is $50 because we take the $500 divided by the 10 students in the child count for that year. The other piece to keep in mind is, as I said before, LEAs are allowed to meet on any of these four. They are not required to meet on an all four basis, they are only required to meet on one of the four. And whichever one they meet can actually shift from year to year. So simply because an LEA uses local only to meet the standard in one year does not mean the LEA is required to demonstrate compliance using local only in a subsequent year. They are allowed all four methods in every single year as long as they can track and document that they do so.

So let's look now at 2017. So here we've got $400 local only, $950 for state and local, $40 local per capita, and $95 state and local per capita. So as we go through, an LEA spent $500 and we are going to assume they met MOE using all four methods in 2016. Five hundred dollars, meeting MOE. They go down to $400 in 2017. The LEA fails in 2017 on local only. So we go over to state and local. They spent $950 in the prior year and met MOE. This year they're spending $950; therefore, they met MOE on that basis. As we go across to local only per capita, they spent $50 in 2016, and now they are spending $40 per student in 2017. So they fail local only per capita. Now, as we move down to state and local per capita, they spent $95 in 2016. They're spending $95 in 2017; therefore, they meet. So this LEA meets MOE on the state and local basis and the state and local per capita basis. And they failed using the local only calculation and local only per capita calculation. So, looking at this across 2017, this LEA meets the compliance standard. And it meets the compliance standard because of the fact that it met at least one of the four methods. It meets two of the four. It could meet one, two, three, or all four, and it is still fine according to the regulations.

Let's go down in 2018. Here we've got $500 local only, $900 state and local, $50 local per capita, and $90 state and local per capita. So the subsequent years rule kicks in here for local only because there's a failure in the prior year. So the $500 that it spent in 2018, we look back to the last year the LEA met MOE using local only and it was $500 to what they spend. So they spent $500 in 2016. They're spending $500 in 2018; therefore, the LEA meets MOE in that year using local only.

Moving over to state and local. Once again here, if we look back, we look to 2017. What do they spend in the prior year? They spent $950, and they met MOE; therefore, we don’t need to look back to 2016. We just look back to 2017 when they spent $950. So in 2018 spending $900, they fail MOE using that calculation methodology. When we go to a local only per capita in 2018, we look back to 2017; there's a failure, so we look back to 2016. They met at $50. So in 2018, they're spending $50. They're meeting that required level of effort from two years prior; therefore, they meet MOE in local only per capita. State and local per capita—its $90. We look back to 2017 where they met in 2017, spending $95, so it's a reduction from the prior year, and therefore, they fail in 2018 using state and local per capita.

So if we look at this in total, we see that, in 2017 and 2018, the LEA met MOE in both years, but they use a different calculation methodology in each year, and that's absolutely fine. LEAs are allowed to do that. The other thing to keep in mind here is that, simply because the LEA meets using two methods here—so for instance, in 2018, simply because they meet using local only and local only per capita does not mean under the regulations they're required to demonstrate to the state that they meet using both methods. If a state wants to ask for that information, they're absolutely able to do so; however, the regulations do not require that the LEA demonstrate that it meets on both methodologies. However, an LEA should maintain documentation for all four methodologies if it ever plans to switch back to one of those methodologies in the future. So for instance, if an LEA in 2017 decided not to calculate its local only effort or is unable to calculate its local only effort in 2017 or 2018, and it does not maintain any records to calculate that, then the LEA cannot then in 2019, 2020, 2021 establish they meet the compliance standard on a local only basis. And the reason is, is that they cannot establish what the required level of effort is because they do not maintain that documentation to demonstrate it.

Another issue that we've heard from a number of LEAs in a number of states is that there are certain state budgeting finance systems that comingle state and local funds together. And as a result, local school districts are unable to split state funds from local funds, precluding a calculation on a local only basis. One thing to keep in mind is that, even though we say that LEAs are eligible to use a local only and should be allowed to use a local only calculation, does not mean that states are required under the regulations to change their budgeting or finance systems to allow for that calculation. If an LEA has a methodology that allows for them to separately track local funds from state and local funds, using generally accepted accounting principles and something that will satisfy auditors who come to look at these funding streams, then LEAs can use those documentations. However, states should be careful that, in an instance where state and local funds are comingled, that the LEA procedure and process for disentangling those funds or tracking those funds separately will stand up to the scrutiny of state auditors because if your auditor comes in and says that the system is insufficient to separately track those funds, it is unlikely that OSEP will not sustain the finding simply because we will defer to state auditors and state practices on whether or not the process is sufficient to separately account for those funds.

Practice

17:52

And now what we wanted to do is give you an opportunity to practice with a table of example data. What we're going to do is we're going to provide you with a sample table that has several cells missing. And so you'll have two tasks. First will be to fill in the missing cells with the level of effort expended in each year. So for instance, we'll give you an aggregate amount, and you'll have to calculate what the per capita is or vice versa. And also, then, after you filled in that amount, we're going to ask you to take a look and see what calculation methods for each year the LEA could have used to demonstrate MOE. We'll assume that the LEA met MOE using all four calculation methods in the first year.

Example Data

46:45

So here is our chart of example data. So we have fiscal year, local only, state and local, local only per capita and state and local per capita with child counts in the far right column. So if you want to go through and attempt to fill out the amounts of funds made available in each year or the amount of funds expended in each year, you can go ahead and do that now.

Feel free to pause the video while you fill in the chart, and then, once you’ve filled it out, you can go ahead and press play and we'll move on to the next step.

And now we have the chart with all of the amounts expended filled in. At this point, we'd like you to go through and determine which methods the LEA could have used in each year to meet the MOE requirements, to meet the compliance standard. Remember once again, in 2016, we are assuming that the LEA met using all four methods. Feel free to pause the video while you are filling out this chart.

All right, now we're going to go through the sample data. So once again, for 2016, we assume that the LEA met using all four methodologies. So for 2017, we look down. We have $10,400. We look back to the last year, 2016, and the LEA spent $10,500. We've got a reduction from the prior year, so the LEA fails to meet MOE in that year using that method. Moving over to state and local, they went from $21,000 in the last year, in 2016, where they met, and they went up to $21,600; therefore, the LEA met in 2017. We go across to local only per capita. They went from $1,050 up to $1,300; therefore, they met using that methodology. State and local per capita went from $2,100 up to $2,700, so once again, the LEA met using that methodology. As we look across 2017, we notice that the LEA met using three of the four methodologies; therefore, this LEA met MOE. And the LEA can use either state and local, local only per capita, or state and local per capita to demonstrate to the state that it met the compliance standard in that year. The LEA is not required by the regulations to demonstrate that it meet using all four. However, as we said before, we would recommend that, regardless of whether or not an LEA uses local only per capita or state and local per capita or any of the methods to document to the state that it meets the compliance standard, an LEA should maintain documentation of all four calculation methodologies for future years to ensure that it maintains the option moving forward to use all four to demonstrate that it meets the compliance standard.

Let's go down to 2018. In 2018 we got $10,650 local only. We look back to the last year the LEA met MOE—it was at $10,500; therefore, the LEA meets because it went up from the last time they met MOE. In 2018, our look back year is 2017 because it goes from $21,600 down to $21,500. Because it’s a decrease from the last time they met MOE, it's a failure using that methodology. Now we go over to local only per capita. It's $1,065. We look back to the last year they met MOE using that methodology, and it was 2017. One thousand three, hundred dollars down to $1,065; therefore, that's a failure in that year. And state and local per capita—$2,150 is a decrease from the last time they met MOE, which was $2,700 and, therefore, that's a failure in that year. So as we look across 2018, every method that the LEA met MOE using in 2017, it now has a failure in 2018. However, because it met using local only in 2018, it still meets the compliance standard in this year.

Now, the LEA would document to the state $10,650 is more than $10,500. Keep in mind that the LEA does not simply, because it met MOE in 2017, lock in the $10,400 requirement moving forward on local only. When you're using the subsequent years rule, it always stays within the calculation methodology. And so, when you are looking at whether or not an LEA meets the compliance standard using local only, we essentially ignore all of the other calculation methodologies. We look at what did the LEA do in this methodology? When was the last time they met using this methodology? And we look back to there.

Lets' go down in 2019. We've got $10,800, local only. Look back, last time they met MOE using local only, it was $10,650. Well, they met because it's an increase from that. For 2019, for state and local, we have $22,200. We look back. The last time they met MOE using state and local was 2017, where they spent $21,600. It's an increase from that, and so they meet using that. Local only per capita—we have $900. The last time they met MOE was 2017, when they spent $1,300. This is a decrease and, therefore, they fail using that methodology. State and local per capita is $1,850. We look to the last time they met using that methodology, which was 2017, and they were at $2,700 at that point. It's a reduction from that, and so it's a failure in 2019 using state and local per capita. Here we've got an LEA being able to demonstrate that it meets the compliance standard using both local only and state and local. The LEA has the option to demonstrate using either one of those to the state. Notice if you look at 2017, 2018, and 2019, we've got the LEA meeting three of the four methodologies, one of the four methodologies, and two of the four methodologies. In this instance, the LEA is fine in 2017, 2018, and 2019. They meet the compliance standard in every single year.

So let's go down to 2020. We have $8,900. Let's look back at the last time they met MOE. It was $10,800 back in 2019. So that's a decrease from that year, and so it's a failure. We go across to state and local—$22,000. The last [time] they met was 2019 at $22,200. It's a decrease, so that's a failure. We go to local only per capita. It's $890. Look back to the last [time] they met using that methodology, which is all the way back in 2017 at $1,300; therefore, that's a failure. And state and local per capita—$2,200. The last time they met was back in 2017, again at $2,700. They're down about $500 from that point, and so that's a failure. So here in 2020 is the first time we actually have a failure to meet the compliance standard, and that's because the LEA fails all four tests in this instance. And only when an LEA fails all four tests does the LEA fail to meet the compliance standard.

One additional question that folks have raised as we've gone along is, in the instance an LEA does not or has not historically maintained documentation on a local only basis, they've historically been tracking state and local basis. Their question is, how far back am I required to look in terms of establishing my required level of effort? And because of when the requirements first were put into the federal Appropriations Act by congress, the furthest look-back year the LEA will have to contend with is 2011. An LEA, it's not going to have to go back prior to 2011 to look at what its required level of effort is because 2011 is the furthest look-back year that the subsequent years rule will attach to. And so, if for instance, an LEA goes back to 2011 and identifies how much it spent in those years, then you will use that level moving forward. Even if there's a failure in 2012, 2013, 2014, and

2015, in 2016, the required level is what was back in 2011. It's not actually ever going to be required to go back to before that time.

Exceptions & Adjustments Appendix E—Table 6
27:22

Now that we've established the subsequent years rule and the four calculation methodologies, what we want to talk about is how exceptions and adjustments get rolled into these calculations. And so what we're going to do, to talk about that, is look at table six in appendix E. And for exceptions and adjustments, what they are going to do is they are going to reduce the required level of effort. They do not increase the actual level of effort. And the reason that I say that is because, as we've gone out and we worked with states and worked with LEAs, we've notice some procedures in which a state will look at how much an LEA actually spent in a year. They will calculate that they had, for example, $1,000 worth of allowable exceptions and adjustments. And they will simply add $1,000 to the actual level of effort to determine whether or not the LEA met MOE in that year. That's actually not the way that exceptions and adjustments work. Exceptions and adjustments in the regulations and in the statute reduce the required level of effort. They don’t increase the actual. And so what you should do is, in the instance that an LEA has $1,000 of allowable exceptions and adjustments, you will look at the required level of effort from the prior year, and you would reduce that required level of effort by that amount.

So let's look at it through table six. In 2016 this LEA had a $500 required level of effort and did not qualify for any exceptions and adjustments. And so $500 was its required level of effort. It actually spent $500. And so, in 2017, $500 becomes a new required level of effort. In this instance, once again, we'll say no exceptions and adjustments, so the required level of effort stays at $500. The LEA actually spends $400, so [as] part of the subsequent years rule down in 2018, the required level of effort stays at $500. Now in 2018, let's say the LEA qualifies for $50 in allowable exceptions and adjustments. What the state or the LEA would do is they would take the $500 originally required and subtract out the $50 of exceptions and adjustments. And so, in this instance, this LEA is only required to spend $450 in 2018. In this instance, the LEA spends $450 in 2018 and, therefore, it meets MOE. Notice, this is the only time in which the required level of effort actually goes down. Because of the subsequent years rule, the only time an LEA's required level of effort can decrease is in the event that it qualifies for an exception or an adjustment and that it takes the exception or adjustment.

If, for instance, in 2018 this LEA was only required to spend $450 and it spent $500, its required level of effort moving forward would stay at $500. It would not decrease because of the fact that the LEA did not decrease its spending. Here the LEA did take advantage of the exceptions and adjustments that will allow and reduce its spending by $50. And so the

$450 that was expended in 2018 becomes the required level of effort in 2019. In 2019, the LEA qualifies for a $10 exception and a $10 adjustment for a total of $20 of exceptions and adjustments. We would take the required level of effort, subtract the $20 allowable exceptions and adjustments, and its required level of effort then becomes $430 for 2019.

In 2019, the LEA spent only $405; therefore, the LEA fails to meet MOE in 2019 because it failed to meet the $430. And so here, the amount of the short fall is $25. The short fall is not $45. It's not the difference between the $405 it spent and the $450 it spent in the prior year because that $20 exceptions and adjustments reduces the required level of effort moving forward. Now, the next question is, after 2019—there's a failure of $25 in 2019—what's the required level of effort going to be in moving down into 2020? And in this instance, per the subsequent years rule, in a year following a failure, the required level of effort is what would have been required in the absence of the failure in the preceding year. What was required in the preceding year here is the $430. And, therefore, the required level of effort down in 2020 for this LEA would be $430 because of the exceptions and adjustments that they were allowed to take in 2019.

Per Pupil Calculations Appendix E—Table 5
32:26

Now, we move on to the per pupil calculations in table six. The reason that we want to be clear about how the per pupil calculations in the per capita piece works is because it gets a little complicated in terms of what your child count is used for. Because, obviously, if an LEA qualifies for $1,000 of exceptions and adjustments in aggregate, it does not get to take $1,000 off its per capita amount. It has to take a per capita amount of the exceptions and adjustments. So here we're looking at 2016. There are 10 students in the district. The required level of effort originally was $50. They spent $50. And so $50 is the required level moving down in 2017. In 2017, the required level of effort is once again $50 because the original requirement was $50. They did not qualify for any of the exceptions and adjustments and, therefore, it stays at $50. So we're going to assume, in 2017, they only spent $40. So that's a failure in 2017. And so per the subsequent years rule, the amount that would have been required in the absence of the failure in 2017 is what's required coming down in 2018. And so the $50 stays as the requirement in 2018.

Now looking at exceptions and adjustments, we said before that this LEA qualified for $50 of exceptions and adjustments in 2018. So what we do is we take the $50 of exceptions and adjustments it qualifies for, and we would divide it among the 10 students that it had in the comparison year, which is the last year they met MOE by that method. Keep in mind, the 10 that's being divided by in 2018 is actually the 10 students that the LEA had in 2016. So last year, I had one teacher that was spread out across the district. I had one high-cost student whose costs were there. That high-cost student and the cost associated with providing services to that student on a per capita basis are spread out across the 10 students I had in 2017. The exceptions and adjustments are always divided by the child count from the comparison year, which is the last year MOE by that method.

So here, the $50 is divided by 10 kids. That's $5 on a per capita basis. $50 minus $5 is $45. Here let's assume in 2018, the LEA spends $45; therefore, they meet MOE and $45 comes down as the requirement in 2019. In 2019, that LEA only has 9 kids in the district. So let's look once again—we had $20 of allowable exceptions and adjustments—$10 exception, $10 adjustment. Those $20 worth of exceptions and adjustments are divided by the 10 children that the LEA had back in 2018 because that's the year they last met MOE by that method. It should always be divided by the reference year, never by the current-year child count. So I take $20 divided by 10. I get $2 per child. That's allowable. That $43 is my required level of effort. In this year, the LEA spent $45 per child and, therefore, they meet MOE using this method. As we're going into 2020, even though the LEA was only required to spend $43, its required level of effort in 2020 is $45 because, in 2019, they were required to spend $43, but they spent $45. So the $45 is what comes down into 2020. So here the LEA was eligible to take the exceptions and adjustments on a per capita basis but did not exercise the reductions that it was allowed to take. And that's fine. An LEA is never required to take the exceptions and adjustments. It's an allowable flexibility built into the statute. And so, in this instance, simply because the LEA did not reduce its spending, the $45 is what comes down as the required level of effort. However, if the LEA has spent $44 or $43 that number would have actually been what comes down into 2020.

Eligibility Standard

36:48

Now that we have covered the compliance standard, we want to move on to the eligibility standard. And as we've said before, the eligibility standard is really about what the LEA plans to do in a subsequent year. The reason that we're looking at the eligibility standard second is because there are additional complications that get baked in, namely the fact that an LEA will not necessarily have all of the data available when it's budgeting. So for instance, if an LEA is in the midst of the 2015–2016 school year and they are budgeting for the 2016–2017 school year, the LEA will not have final data for 2015–2016 when they are budgeting for 2016–2017. As a result, the LEA cannot use 2015–2016 as its guide to how much it has to spend in 2016–2017. Therefore, their comparison year is the most recent year of data [that] the LEA has available. If you are budgeting in the middle of one school year for the school year that follows, well then the most recent year of which you have data available is going to be the year preceding the current year.

So let's take a look at what that would look like. So here we're going to look at table 8 of appendix E. So in 2015, the LEA spent $500 local only, $1,000 state and local, $50 local only per capita, and $100 state and local per capita. 2016—we have $450, $1,000, $45, and $100. Now in this example, I am in the midst of the 2016–2017 school year; therefore, I don’t have final data on my expenditures for that year. And so, when I'm budgeting for 2018, I have to look at the most recent year for which data are available. So in 2018, my requirements are based on 2016 because that's the most recent year that I have data. When I'm looking at local only, my requirement for 2018 is you look back to 2016—$450. However, if I look to 2015, I see that $450 in 2016 is actually a failure. So I look back, per the subsequent years rule, to the last year the LEA met MOE using that methodology. And so, as I look back to 2015, I see $500. And so my requirement in 2018 is $500 on a local only basis.

State and local, I look back to the last year the LEA met MOE, which will be 2016. Therefore, the $1,000 comes down as my requirement for budgeting in 2018. Looking to local only per capita, I look to the last year in which the LEA met MOE using that method, which will be 2015. I had $50 in that year, and so my requirement is $50. State and local per capita—my requirement is based on the last year I met MOE using that method, which was 2016 at $100 and, therefore, $100 is what comes down. So notice now we have $500 local only, $1,000 state and local, $50 local only per capita, and $100 state and local per capita. As we're looking at this, keep in mind that LEAs are not in any way required to budget to meet all four standards. However, even though an LEA is only required to use one of the four, the LEA should obviously be planning that, if something happens, that they are able to make up the difference. The reason we say that is this: if an LEA, for example, were required to spend $50 per capita in 2018, and that is the only methodology their budget actually meets using, that's fine and they meet the eligibility standard. However, if the LEA sees a surge in child count in 2018, they are still required to meet MOE using one of the four methodologies. And they may have to come up with money or move money around their budget in order to meet the compliance standard at the end of the year. And so keep in mind when you're budgeting that LEAs should always plan for and prepare for unforeseen circumstances in case the picture shifts and they need to use something different. As part of that, it's also important to know that simply because an LEA establishes eligibility on the basis of one of these four methods does not require the LEA to establish compliance using one of the four methods.

Just as LEAs are allowed to switch between methodologies when demonstrating compliance, they're also able to switch between methodologies between eligibility and compliance from year to year. And so an LEA may demonstrate to its state that it is budgeting enough on a local only basis to establish eligibility. And then when it comes time for compliance, they actually show that they met the compliance standard on the basis of state and local per capita. That's completely allowable, and LEAs have that flexibility to be able to do that.

Appendix E—Table 9

42:09

Now let's look at table 9 to figure out how exceptions and adjustments are taken into account. When we're looking at exceptions and adjustments, we actually had a very important piece of feedback between our proposed rule and our final rule related to how exceptions and adjustments are accounted for. And namely what LEAs were telling us was that, if I am budgeting for subsequent year and I know that I am going to be able to take an exception or an adjustment in the year for which I'm budgeting or I'm taking one right now in my current year, I should be able to take all that into account when I'm budgeting. So, for instance, if I am a superintendent of the school district and I know that I have a particularly high-cost child that is going to be aging out of my system, and they are aging out this year. So they are 21 years old and they will not be around the next year that I will have to provide them services; therefore, I'm going to be able to take an exception in the year for which I'm budgeting. What the revised regulations allow you to do is, when you are budgeting, you are allowed to take into account the exceptions and adjustments you are taking in the current year. So for instance, if I know that a teacher's already left, I can take that, and I can also take into account any exceptions and adjustments I reasonably expect to take in the year for which I'm budgeting. So I know that student's aging out; therefore, I can reasonably expect that I'm going to be allowed to take an exception and adjustment as a result of that. And, therefore, I can budget in a lower level taking those things into account.

So for instance, in this example: in 2015, I have actual spending levels of \$500, \$1,000, \$50, and \$100. I can look at 2016, the year I'm in now, and I can say I'm currently taking \$50 of exceptions and adjustments, which reduces my local only and state and local. And then, on a per capita basis, it's \$5 each, and then what I expect to take in the year for which I'm budgeting. So I'm budgeting for 2017. I expect that high-cost student to be leaving my system. And, therefore, I'm going to take an additional \$25 exception and adjustment for the year for which I'm budgeting. And so, as a result, I take the \$500 that was my actual level of effort, minus the \$50 I'm taking this year, minus the \$25 I expect to take next year, and so my required level of effort to meet the eligibility standard, my required budget amount, is \$425. An important thing to keep in mind here, as well, as we talk with LEAs, is when it comes to the exceptions and adjustments that you reasonably expect to take for 2017, it's always safer to take a more conservative approach to those. And the reason we say that is if an LEA expects that a child will be leaving the district. So for instance, let's say you have a high-cost child that is 17 years old, and you believe that they will be leaving the district in the subsequent year. And so you reasonably expect them to not be in the district in the subsequent year; therefore, when you budget, you assume that you're going to be allowed to take that exception and adjustment. However, when 2017 rolls around, the student actually has not departed the district. The student stays in the district. What the LEA's then going to have to do is it's going to have to come up with that money in order to meet the compliance standard at the end of the day. And so, when the compliance standard comes around, the LEA may have to shift funds in order to meet compliance when it comes up. And so we don't want LEAs to budget themselves so tightly by being so expansive with their expectations for exceptions and adjustments they actually make it very difficult to meet the compliance standard when the time comes. Particularly because the compliance standard is what creates the liability at the state level for paying funds back to the federal government. So, as we're going across local only, state and local, local per capita, and state and local per capita, exceptions and adjustments are going to be what you are taking in the current year and what you reasonably expect to take in 2017. You subtracted those out from each other, and then you get the amount that is required to be budgeted in the year to meet the eligibility standard.