

PUBLIC COMMENT PROVIDED TO: VT Agency of Education
FROM: Meagan Roy, Ed.D. (Chair, Census-Based Funding Advisory Group)
TOPIC: Draft Technical Manual on Documenting Maintenance of Effort
DATE: June 6, 2022

The enactment of Act 173 was intended to move Vermont to a special education funding model that would be sufficiently flexible so that LEAs could implement a robust and well-designed MTSS that is not constrained by the need to document “eligible” and “ineligible” costs. Prior to this shift, Vermont required time-consuming paperwork to document time spent on special education. This was driven by reliance on a reimbursement model of funding that required a level of detail at the state level that is far above and beyond the federal documentation requirements. A census-based model was intended, among other things, to eliminate this.

The Advisory Group understands that maintaining an appropriate level of documentation to manage the Maintenance of Effort calculation is required to ensure our IDEA allocation from the federal government.

In its Draft Technical Manual on Documenting Maintenance of Effort, the Agency has opted to use the same requirements for documentation of Federal funds (in this case, IDEA-B funds) to document Maintenance of Effort. After seeking input from the Office of Special Education Programs (OSEP) and the Federal Education Group (FEG - a law firm specializing in work with SEAs regarding special education rules and finance), it is clear to the Advisory Group that their approach is not only unnecessary, but it is inconsistent with Federal requirements and results in excessive documentation requirements that will not realize the paperwork-reduction intended by Federal law and Act 173. Therefore, **the Advisory Group recommends that the Agency reconsider the documentation approach in this guidance document. The Advisory Group further recommends that the Agency consult with a representative from the Center for IDEA Fiscal Reporting (CIFER) or the Federal Education Group to review the guidance from other states as well as Federal guidance to develop documentation more aligned with the broad-based requirements noted in Federal law and consistent with the spirit and letter of the law found in Act 173..** This approach would be consistent with the Agency’s willingness to revise its definition of special education after consultation with the Federal Education Group during the 2360 Series rulemaking process.

Specifically, the Advisory Group believes the following comments (emphasis added) from the Federal Education Group are particularly relevant to the above recommendation:

- “As you will see, **we are concerned with the premise that state/local spending can only count towards MOE if the underlying costs could have been charged to IDEA, Part B. This is not consistent with federal law, which uses different standards for determining what can be charged to IDEA, Part B** versus what can count towards MOE (any cost attributable to the education of students with disabilities). **Limiting MOE-eligible expenses to IDEA-allowable costs also seems inconsistent with OSEP policy for flexibility as flagged in our comments.**”
- "The allowable use of federal IDEA funds and the state/local expenses that can be counted towards MOE are different things governed by different standards. **Any state/local expense can**

PUBLIC COMMENT PROVIDED TO: VT Agency of Education
FROM: Meagan Roy, Ed.D. (Chair, Census-Based Funding Advisory Group)
TOPIC: Draft Technical Manual on Documenting Maintenance of Effort
DATE: June 6, 2022

count towards MOE as long as it is attributable to students with a disability. This is potentially a broader measure than federal IDEA spending."

- "A broad approach is consistent with ED policy as reflected in these comments about why it was necessary to revise MOE regulations in 2015: '**However, in general, the findings made during fiscal monitoring demonstrating that States are providing less flexibility to LEAs than is allowable under the law suggest that the clarifications included in these regulations would reduce costs for both LEAs and States.**' (80 FR 23665)'"
- In response to the entire section on Salary & Benefit documentation: "It is not clear why this is included. This section has to do with the rules for documenting employee personnel costs charged to federal funds. **It is not relevant to MOE** or costs paid with state/local funds."
- Regarding the chart on pg6: "It is not clear what this chart is intended to convey, and, as noted above, does not seem relevant for MOE." And it goes on to repeat again that MOE and Federal Funds requirements are two different and unrelated constructs.

In short, the Advisory Group is unsure how the Agency came to its position that MOE be documented using the same documentation used for Federal grants (IDEA-B, in this case). These State funds are not Federal funds. **The Advisory Group believes that without evidence of this requirement, the current time documentation manual is unnecessarily exceeding Federal requirements and is inconsistent with Act 173.**

Finally, the Advisory Group would like to raise a concern about the legality of the Technical Guidance document itself, because the use of the proposed document is a mechanism through which to make new rules without complying with the Administrative Procedures Act (3 VSA §800-849). Although we understand the legitimate interest in administrative flexibility, the proposed document applies to all schools, all students, all personnel, and all boards. Its broad reach may signal a need for reliance on the formal rulemaking process. *See Parker v. Gorczyk*, 170 Vt 263; 744 A.2d 410 (1999); *see also Parker v. Gorczyk*, 170 Vt 263, 787 A.2d 494 (2001). The Advisory Group welcomes a larger discussion on this issue.

The Advisory Group firmly believes that the transition to a census-based funding model can and should enable streamlined documentation of special education spending and allow for more time to be spent on direct service to students. It is critical that this intent of Act 173 should not be circumvented through cumbersome and unnecessary guidance.