

Responses to public comments on the Draft Technical Manual For Use and Accounting of IDEA Part B Entitlement Grants and Draft Technical Manual for Documenting Maintenance of Effort

Purpose

As required by SBE Rule Series 1300, the Vermont Agency of Education Special Education Finance Team sought public comments on draft *Technical Manual for Use and Accounting of IDEA Part B Entitlement Grants* and draft *Technical Manual for Documenting Maintenance of Effort*. The period for public comment was Wednesday, May 4, 2022, through Tuesday, June 6, 2022, at 4:30 p.m. Below you will find each comment received and AOE's responses.

Public Comment on The Draft Technical Manual For Use And Accounting Of IDEA Part B Entitlement Grants

Comment 1: The term 'Psychologist' should be either 'School Psychologist' or 'School Psychologist or Psychologist.'

Response 1: Updated the term 'Psychologist' language in the *Technical Manual for Use and Accounting of IDEA Part B Entitlement Grants*

Public Comments on The Draft Technical Manual For Documenting Maintenance Of Effort

Comment 2: As a current special educator in the Champlain Valley School District, I believe 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 not be circumvented.

Response 2: AOE agrees special education documentation should and will be streamlined as much as possible to not violate federal law.

Comment 3: I am a school psychologist in the Champlain Valley School District. I think that while the spirit of the MOE is to hold accountability, in reality, it is not within the spirit of 173 whose aim is to provide more time with students and teachers and less time on documenting the time that we spend doing the work that we do. Please consider using the time we spend documenting our time to allowing us to catch up on evaluations, instruction and interventions with our students!

Response 3: The purpose of the Technical Manual for Documenting Maintenance of Effort is to provide guidance for acceptable backup documentation. LEA's failure to obtain adequate budget and expenditure documentation would result in possibly returning IDEA-B funds. AOE

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is working on guidance that explains five ways to complete time and effort, in order to provide backup MOE documentation, three of which a teacher or para meets no time filling out the form; by using one of these methods:

- i. Annual periodic time certification – Teacher and or Supervisor signature – once or twice a year
- ii. A contract with a quarterly review that will need a supervisor to sign or initial that this staff is still working on the exact cost objectives
- iii. Work assignment form with schedule work – Teacher and or Supervisor signature – Quarterly
- iv. Timesheet with particular language on it
- v. Then there is the original PAR – This one is more intense labor work.

Comment 4: 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. Although this approach was questioned by Advisory Group members during stakeholder group meetings, the Agency confirmed it would be used. As a result, several member organizations of the Advisory Group sought 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). Their analysis confirms for the Advisory Group that the AOE approach is not only unnecessary, but it is inconsistent with Federal requirements and results in excessive documentation that will not realize the paperwork-reduction intended by Federal law and Act 173.

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

* “[W]e 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 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.

Therefore, the Advisory Group makes the following recommendations:

1. That the Agency reconsider the overall documentation approach in this guidance document.
2. 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. The Advisory Group would be willing to support the Agency in this work of developing alternative documentation methods.

The Advisory Group also believes it critical to note that the desire to streamline documentation and maximize flexibility, while critical components of the Act, do not negate the requirement that special education services be provided in the targeted, specialized manner required by law. Any changes to documentation requirements must preserve the integrity of special education services.

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.

Response 4: AOE met with Brustein & Manasevit, PLLC on February 25, 2022, based on conversation and guidance, AOE staff met on March 11, 2022 made the decision to provide a list of allowable options to ensure documentation of special education allowable time to include in IDEA MOE. On March 16, 2022 AOE and the Time Study Stakeholder Group met, AOE shared this decision, based on key points listed in the additional info column, and began to work with the extended team to ensure all examples of staff salary and benefits would be captured for back up documentation for IDEA MOE, examples of this flexibility are listed above in response 3.

May 2022, AOE reached out to CIFR (Center for IDEA Federal Reporting), our two TA liaisons read, review and provided feedback to both technical manuals for us to update and provide clarity. In our continued communication VT AOE guidance is in alignment with how other states who utilize the CIFR LEA MOE calculator.

AOE will continue to receive and review feedback in order to adjust technical manuals and guidance in an effort to provide clarity.

Comment 5: 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 has required time-consuming paperwork to document time spent on special education. This had been 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.

VCSEA membership 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 VCSEA that this 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, VCSEA recommends that the Agency reconsider the documentation approach in this guidance document. VCSEA further recommends that the Agency consult with a representative from the Center for IDEA Fiscal Reporting (CIFR) 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, VCSEA believes the following comments 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 (only the excess cost of providing special education and related services) 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. Federal IDEA funds can be spent on the excess cost of providing special education and related services. (Excess cost is a fiscal measure tested by looking at aggregate spending, not individual expenses.) Any state/local expense can 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.

We recommend that the Agency of Education seek a system aligned with the EPSDT moment in

time analysis for school counselors and nurses as a potential process for documenting time for MOE analysis along with the Special Education Expenditure Report through the fiscal offices of each district. This is an example process for documenting time in a way that would decrease paperwork and address time documentation required for MOE.

We believe the transition to a census-based funding model can and should enable streamlined documentation of special education spending and allows for more time to be spent on direct service to students. We respect that the AOE Stakeholder Group has continued efforts to explore methods to document time for MOE, and we look forward to an opportunity to discuss this further in a future meeting with them.

Response 5: In conjunction with response 4 above. Implementation of Act 173 has resulted in an abbreviated Act 173 Special Education Plan (formally known as Special Education Service Plan, due annually each fall) and SEER. Without annual collection of these documents, data and calculation of MOE must be performed at the LEA level. AOE has added a section in the published *Technical Manual for Documenting Maintenance of Effort* to include program codes previously used in SEER submissions to be included in MOE calculation.

If you have questions, please reach out to [Bill Bates](#), AOE CFO