



October 2015

SPECIAL EDUCATION

More Flexible
Spending
Requirement Could
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Why GAO Did This Study

IDEA provides federal support to school districts through grants to states for the excess cost of educating students with disabilities. Education is responsible for monitoring states' oversight of district compliance with IDEA, including an MOE requirement to ensure special education spending generally is at least equal to the level spent the preceding year. A 2011 GAO report found an estimated 24 percent of districts anticipated trouble meeting MOE. GAO was asked to examine districts' recent experiences with MOE.

This report examines: (1) the extent to which districts face challenges meeting MOE and why, (2) how MOE affects services for students with and without disabilities, and (3) how well Education and states facilitate school districts' compliance with MOE. GAO surveyed the states, as well as districts that in 2011 anticipated trouble meeting MOE; analyzed MOE data; and interviewed Education officials, disability advocates, and state and district officials in three states selected to illustrate a range of experiences with MOE.

What GAO Recommends

To promote innovation and efficiency while safeguarding special education funding, GAO suggests that Congress consider options for a more flexible local MOE, such as adopting a less stringent requirement. GAO also recommends, among other things, that Education take steps to establish specific time frames for providing prompt feedback to states about their fiscal monitoring of districts. Education agreed with GAO's recommendations.

View [GAO-16-2](#). For more information, contact Jacqueline M. Nowicki at (617) 788-0580 or nowickij@gao.gov.

What GAO Found

States reported that nearly all school districts generally met the local maintenance of effort (MOE) spending requirement for special education, but some districts faced challenges for various reasons. Under the Individuals with Disabilities Education Act (IDEA), MOE requires districts to spend at least the same amount on special education services for students with disabilities that they spent in the preceding year, with some exceptions. In response to GAO's 50-state survey, states reported that nearly all districts met MOE based on the most recent data available in all states (school year 2012-13). However, most states reported that at least some of their districts faced challenges in doing so. In a separate GAO survey of districts, many cited budget and cost reductions—such as state or local revenue declines and new state caps on benefits, which lowered the cost of a special education teacher—as key challenges in meeting MOE.

State and district officials had mixed views on MOE's effects on services for students with and without disabilities. MOE is one of several safeguards meant to protect special education funding, and while some officials reported positive effects, others said the requirement can sometimes create unintended consequences for the services provided to special education students. They said that because the MOE requirement lacks flexibility, it can discourage districts from altering their baseline of special education spending, even when doing so would benefit students with disabilities or result in more efficient delivery of the same services. For example, despite other grant provisions in IDEA that promote innovation, some district officials commented that the MOE requirement can serve as a disincentive to districts' efforts to pilot innovative or expanded services requiring a temporary increase in funds because it would commit them to higher spending going forward. In addition, some district officials noted that prioritizing special education spending to meet MOE resulted in cuts to general education spending that affected services for all students, including the many students with disabilities who spend much of their days in general education classrooms.

Reported Unintended Consequences of the Local MOE Requirement



Can discourage innovation in special education that would increase costs



Can discourage efficiencies in special education that would reduce costs



Can reduce general education spending, affecting services for students with and without disabilities

Source: State and school district officials. | GAO-16-2

The Department of Education's (Education) delayed monitoring feedback has hampered states' efforts to facilitate district compliance with MOE. In 2010, Education initiated its latest round of reviews of states' processes for overseeing their districts' compliance with IDEA, including MOE. However, Education currently has no standards for providing timely feedback on this process and—as of August 2015—had not provided feedback from these reviews to about half the states, due in part to competing priorities. Such delays are contrary to federal standards that call for prompt resolution of findings. Officials in one state said Education's untimely feedback had delayed the state's ability to provide guidance to districts regarding MOE, and in another state, monitoring was on hold until Education approved the state's process for determining MOE compliance.

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Abbreviations

NPRM	Notice of Proposed Rulemaking
CCD	Common Core of Data
CIFR	Center for IDEA Fiscal Reporting
Education	Department of Education
IDEA	Individuals with Disabilities Education Act
IEP	individualized education program
LEA	local educational agency
MOE	maintenance of effort
NCSI	National Center for Systemic Improvement
Recovery Act	American Recovery and Reinvestment Act of 2009
SEA	state educational agency

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October 19, 2015

The Honorable Lamar Alexander
Chairman
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable John Cornyn
United States Senate

Over 6 million children receive special education services each year through a combination of federal, state, and local funding. Under the Individuals with Disabilities Education Act (IDEA), administered at the federal level by the Department of Education (Education), states are required to make a free appropriate public education available to all children with disabilities.¹ In fiscal year 2015, Congress appropriated \$11.5 billion in federal IDEA, Part B funds to help defray the excess costs of educating children with disabilities. To be eligible for these funds, school districts must meet certain conditions, including what is called local maintenance of effort (MOE).² Local MOE generally requires that school districts spend at least the same amount of money on the education of children with disabilities that they spent in the preceding fiscal year.³ However, with the 2008 recession, state and local governments around the country faced record budget shortfalls, raising concerns about school districts' ability to comply with the MOE requirement.

In 2011, we surveyed school districts as part of our work on the American Recovery and Reinvestment Act of 2009 (Recovery Act) and found an estimated 24 percent predicted that they would have trouble meeting

¹ 20 U.S.C. § 1412(a)(1).

² Throughout this report, we use the term school district to refer to a local educational agency, the term used in IDEA.

³ 20 U.S.C. § 1413(a)(2)(A)(iii). IDEA also prohibits states from reducing their special education funding from year to year. 20 U.S.C. § 1412(a)(18)(A).

MOE in the 2011-12 school year.⁴ In light of these findings, you asked us to examine districts' recent experiences with MOE. In this report we examined what is known about (1) the extent to which school districts face challenges meeting MOE and why, (2) how the MOE requirement has affected services for students with and without disabilities in selected school districts, and (3) how well Education and the states have facilitated compliance with the local MOE requirement.

To address these objectives, we used a variety of methodologies. To obtain information at the federal level, we reviewed relevant federal laws, regulations, policy, and guidance and interviewed Education officials. We also interviewed national disability advocacy groups and associations representing school administrators, including the National Center for Learning Disabilities and The Advocacy Institute, the National Disability Rights Network, The School Superintendents Association, the Council of Administrators of Special Education, the National Association of State Budget Officers, and the National Association of State Directors of Special Education. We also reviewed comments submitted in response to Education's September 2013 Notice of Proposed Rulemaking (2013 NPRM)⁵ and searched the Federal Audit Clearinghouse for audit findings related to local MOE compliance.

To obtain information at the state and local level, we conducted surveys and gathered more detailed data from selected states and districts. At the state level, we conducted a survey of special education directors and received responses from the District of Columbia⁶ and all states except Hawaii—which we excluded because it was outside our scope⁷—for a response rate of 100 percent. At the local level, we conducted a follow-up survey of the 103 districts that had indicated on our 2011 survey that they

⁴ GAO, *Recovery Act Education Programs: Funding Retained Teachers, but Education Could More Consistently Communicate Stabilization Monitoring Issues*, [GAO-11-804](#) (Washington, D.C.: Sept. 22, 2011).

⁵ Assistance to States for the Education of Children with Disabilities, 78 Fed. Reg. 57,324 (Sept. 18, 2013).

⁶ In the rest of this report we refer to the District of Columbia as a state.

⁷ We excluded Hawaii from our survey because Hawaii functions as a single school district, responsible for providing a free appropriate public education to children with disabilities, and according to Education regulations, this exempts Hawaii from the local MOE requirement under IDEA. 34 C.F.R. § 300.175.

anticipated having trouble meeting MOE for the 2011-12 school year.⁸ We received responses from 87, for a response rate of 84 percent. (See apps. I and II for more information on our surveys.) We augmented these surveys by gathering state-wide MOE data in five states: Alabama, Arizona, Michigan, Texas, and Virginia. We selected these states to represent diversity on a number of factors that could affect districts' ability to meet MOE, such as recent changes in state funding for elementary and secondary education and the number of districts in the state that anticipated having trouble meeting MOE in our 2011 survey. (See app. III for profiles of the five states included in our review.) We also conducted interviews and reviewed additional documents in three of these states (Michigan, Texas, and Virginia), chosen to reflect a variety of factors that could affect their districts' ability to meet MOE. In each of these three states, we interviewed officials at the state level and in four districts representing a range of experiences with meeting MOE and reviewed documents related to their processes for determining compliance with the MOE requirement.⁹ In these three states we also contacted state-level special education advisory panels representing individuals with disabilities and parents,¹⁰ Protection and Advocacy programs,¹¹ and state associations representing school administrators.

To examine characteristics of school districts that did and did not anticipate trouble meeting MOE, we linked Education data on school district characteristics to GAO's 2011 district survey and used our district follow-up survey to compare characteristics of those districts that

⁸ On our 2011 survey, a total of 104 school districts said they anticipated trouble meeting MOE in 2011-12. We surveyed 103 of these districts because 1 of the original 104 had closed before we launched our survey.

⁹ In Michigan, we also interviewed officials from three intermediate entities responsible for overseeing districts under their jurisdiction.

¹⁰ Under IDEA, states must establish State Advisory Panels to provide policy guidance with respect to special education and related services for children with disabilities in the state. A majority of panel members must be individuals with disabilities or parents of children with disabilities. 20 U.S.C. § 1412(a)(21).

¹¹ Protection and Advocacy programs were established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Pub. L. No. 106-402, § 143, 114 Stat. 1677, 1714 (codified at 42 U.S.C. § 15043). They have the authority to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of individuals with developmental disabilities. 42 U.S.C. § 15043(a)(2)(A)(i).

ultimately did and did not meet MOE. We conducted similar analyses on the characteristics of districts meeting and not meeting MOE in the five states where we gathered statewide MOE data. Results of analyses based on the 2011 survey are generalizable to school districts nationwide in 2011, but results based on analyses of the five states and our district follow-up survey are not nationally generalizable. (See app. IV for more information on these data analyses.) We assessed the reliability of the five states' MOE data by interviewing state officials and reviewing the data for logical inconsistencies. We assessed the reliability of Education's data by reviewing existing information about its data system and conducting electronic testing. We determined that the data were sufficiently reliable for the purposes of this report.

We conducted this performance audit from June 2014 through October 2015 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Special Education under IDEA

First enacted in 1975, IDEA entitles children with disabilities to a free appropriate public education designed to meet the unique needs of each child.¹² To be eligible for IDEA funding, states are required to provide special education in the least restrictive environment; meaning that, to the maximum extent appropriate, these children are to be educated with other children who do not have disabilities.¹³ However, to meet the diverse needs of children with disabilities, states must ensure that school districts provide a continuum of alternative placements, including regular

¹² 20 U.S.C. § 1412(a)(1), (4). To be eligible to receive services under IDEA, a child must have a disability as defined in the Act. 20 U.S.C. § 1401(3). School districts must have policies, procedures, and programs that are consistent with state policies enacted pursuant to these requirements. 20 U.S.C. § 1413(a)(1).

¹³ 20 U.S.C. § 1412(a)(5)(A). Least restrictive environment is determined individually for each child served under IDEA.

classrooms, special classrooms, and special schools.¹⁴ The removal of children with disabilities from the regular classroom can occur only when the nature or severity of the child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.¹⁵

IDEA requires that the services provided to each individual student be determined through an individualized education program (IEP) that describes the child's present levels of academic achievement, goals for progress, and the special education and related services needed to attain those goals.¹⁶ The IEP is developed by a team of teachers, parents, school district representatives, and other educational professionals. This team must meet to develop the initial IEP within 30 days of determining that a child needs special education and related services, and it must continue to meet at least once a year to review the IEP to determine if goals are being met and to make any necessary changes.¹⁷

IDEA also provides for procedural safeguards, including that the parents of a child with a disability have the right to inspect and review educational records with respect to the identification, evaluation and educational placement of the child, and to obtain an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school district.¹⁸ IDEA and related regulations provide methods for resolving complaints between parents and school districts, including mediation, due process hearings, and state complaint procedures.

¹⁴ 34 C.F.R. § 300.115.

¹⁵ 34 C.F.R. § 300.114(a)(2)(ii).

¹⁶ 20 U.S.C. §§ 1412(a)(4), 1414(d).

¹⁷ 34 C.F.R. §§ 300.323(c)(1), 300.324(b)(1)(i).

¹⁸ 20 U.S.C. § 1439, 34 C.F.R. §§ 300.501(a)(1), 300.502(b).

Special Education Administration and Funding

IDEA is administered at the federal level by Education's Office of Special Education Programs in the Office of Special Education and Rehabilitative Services. Part B of IDEA authorizes funding for federal grants to states to enable school districts to provide services for students with disabilities aged 3 through 21. IDEA Part B grants to states are distributed among states using a "base grant"—the amount received by the state for fiscal year 1999—and any remaining funds are distributed based on states' child population and poverty rates.¹⁹ States distribute the funds to school districts similarly, starting with a base grant and then using a formula based on school enrollment and poverty.²⁰ According to Education data, in fiscal year 2015, Congress appropriated approximately \$11.5 billion under IDEA Part B grants to states, serving nearly 6.6 million children with disabilities (see table 1). In fiscal year 2009, the Recovery Act appropriated federal funding for IDEA, Part B that was more than double the 2008 amount.²¹ Since then, federal IDEA, Part B appropriations have been relatively constant.²²

¹⁹ 20 U.S.C. § 1411(d). If the amount available for allocations to states for a fiscal year is equal to or greater than the amount allocated to the states for the preceding fiscal year, the formula requires that each state receive a base grant, which is the amount received by the state for fiscal year 1999. The next step is to distribute the remaining funds among the states as follows: 85 percent based on states' shares of total population ages 3 to 21 and 15 percent based on states' shares of children in poverty.

²⁰ 20 U.S.C. § 1411(f). States may set aside a portion of their federal funds for state-level activities, including monitoring, enforcement, and complaint investigation. 20 U.S.C. § 1411(e)(2)(A).

²¹ Pub. L. No. 111-5, 123 Stat. 115.

²² IDEA, Part B federal appropriations have been relatively constant since 2010 with the exception of the reductions in 2013 due in part to the federal sequestration.

Table 1: IDEA, Part B Grants to States Federal Funding and Number of Students Served (Fiscal Years 2005-2015)

Fiscal year	Federal appropriation (in billions) ^a	Number of students with disabilities served aged 3-21 (in thousands) ^a	Federal share of the national average per pupil expenditure for special education (as a percent)	State and local share of the national average per pupil expenditure for special education (as a percent)
2005	10.6	6,820	18	82
2006	10.6	6,814	18	82
2007	10.8	6,796	17	83
2008	10.9	6,718	17	83
2009	22.8 ^b	6,599	33	67
2010	11.5	6,614	16	84
2011	11.5	6,558	16	84
2012	11.6	6,543	16	84
2013	11.0	6,574	15	85
2014	11.5	6,593 ^c	16 ^c	84 ^c
2015	11.5	6,593 ^c	16 ^c	84 ^c

Source: GAO analysis of Department of Education data (from Education's fiscal year 2016 budget request, accessed on July 28, 2015, <http://www2.ed.gov/about/overview/budget/budget16/justifications/index.html>). | GAO-16-2

^aDollar amounts and number of children served are for the Part B Grants to States (section 611) program and do not include Part B Preschool Grants (section 619). Part B section 611 funds are provided to assist states in providing special education and related services to children with disabilities aged 3 through 21. Part B section 619 funds are provided to assist states in providing special education and related services to children with disabilities aged 3 through 5.

^bIncludes funds available in fiscal year 2009 under the American Recovery and Reinvestment Act.

^cAccording to Education's budget request, these numbers are estimates based on state-reported cumulative totals for children served in the fall of 2013 and do not include the child count for Wyoming or the Bureau of Indian Education.

Education data indicate that the federal share of special education spending has generally declined since 2005, holding steady at about 16 percent since 2010, based on the national average per pupil expenditure.²³ This indicates that the state and local share of special education spending has done the opposite: generally increasing since 2005 and holding steady at about 84 percent since 2010. State and local governments are responsible for funding most of the costs of special education and other K-12 programs, relying primarily on state income and sales tax, as well as local residential and commercial property taxes. As a result of the 2008 national recession, however, state and local revenues

²³ Education's fiscal year 2016 budget request accessed on July 28, 2015 (<http://www2.ed.gov/about/overview/budget/budget16/justifications/index.html>).

fell, resulting in cuts to education and other areas of spending. Research has shown that state funding for elementary and secondary education has been slow to recover from the 2008 recession and that long-term budget challenges are likely to persist.²⁴

As shown in table 1, Education data also indicate that there has been a decline in the number of students with disabilities being served since 2005. Some researchers have suggested this decline may be attributed, in part, to greater emphasis on intervention services that reduce the need for special education among children who struggle but may not need special education with the proper supports.²⁵

Maintenance of Effort Requirements

IDEA funds help cover the costs of educating children with disabilities but cannot be used to take the place of state and local funding allocated to special education programs.²⁶ IDEA's local MOE requirement generally prohibits districts from reducing their expenditures on special education and related services below the level of the previous year.²⁷ Education provides districts with various methods for calculating their MOE amount: They can use only local funding or both state and local funding and can base their calculation on either the total or per-pupil amount.²⁸ Also, a district may be able to reduce its expenditures and still meet the MOE

²⁴ See National Association of State Budget Officers, *State Expenditure Report: Examining Fiscal 2011-2013 State Spending*, (Washington, D.C.: Nov. 21, 2013); National Association of State Budget Officers, Summary: *Spring Fiscal Survey of States*, (Washington, D.C.: June 12, 2014); and Center on Budget and Policy Priorities, *Most States Funding Schools Less Than Before the Recession*, (Washington, D.C.: May 20, 2014).

²⁵ Scull, Janie and Amber M. Winkler. *Shifting Trends in Special Education*. Thomas B. Fordham Institute. May 2011.

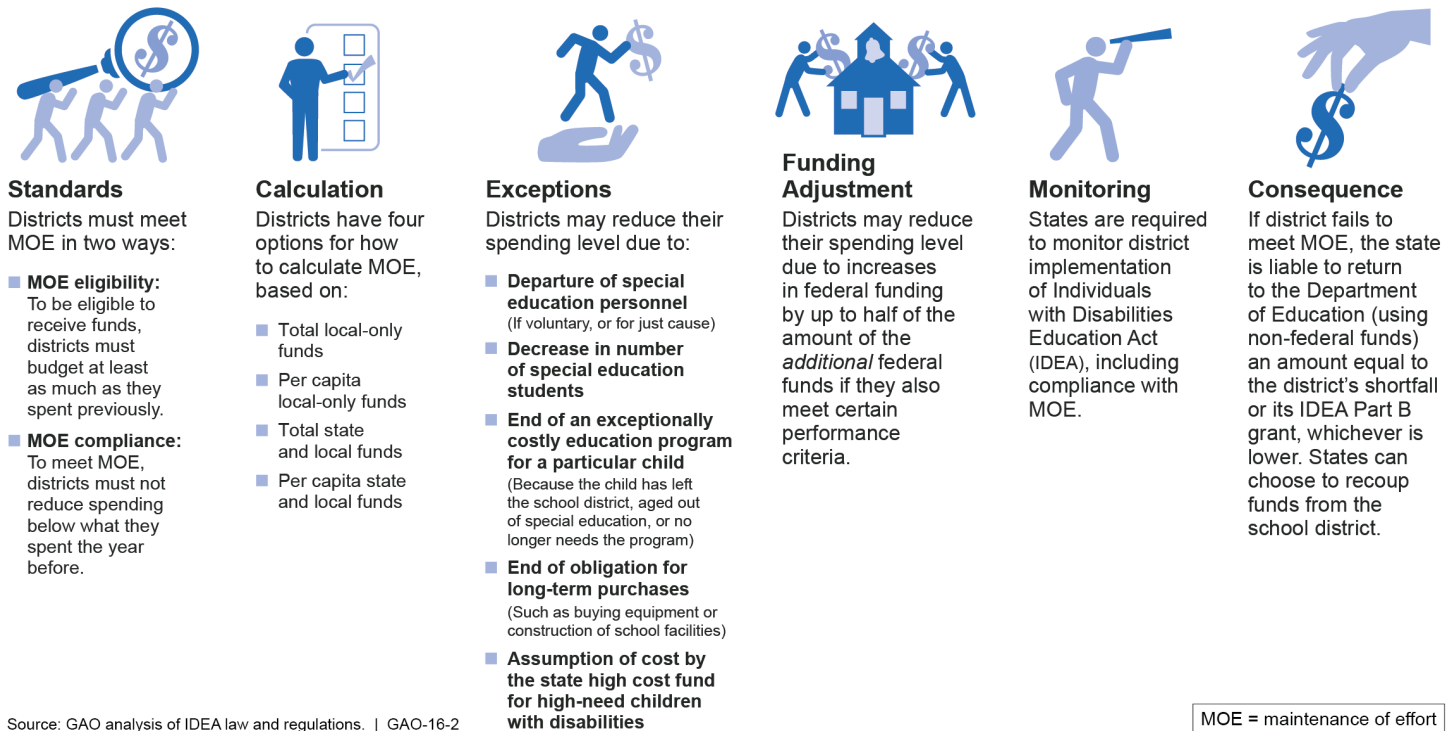
²⁶ Specifically, IDEA requires that school districts use federal funds to pay the "excess costs" of providing special education and related services to children with disabilities, and to supplement, not supplant, state, local, and other federal funding. 20 U.S.C. § 1413(a)(2)(A).

²⁷ 20 U.S.C. § 1413(a)(2)(A)(iii). If a district does reduce spending and is not eligible for one of several allowable exceptions to the requirement, the state is liable to return to the department, using non-federal funds, an amount equal to the district's shortfall or its IDEA grant, whichever is lower. 34 C.F.R. § 300.203(d).

²⁸ 34 C.F.R. § 300.203(a)(1)(i-iv), (b)(2)(i-iv).

requirement if it qualifies for certain allowable exceptions or the funding adjustment specified in IDEA law and regulations (see fig. 1).²⁹

Figure 1: Key Statutory and Regulatory Provisions Related to the Local MOE Requirement



IDEA also contains a state MOE requirement for state funding of special education.³⁰ The standard for state compliance with MOE requires that states maintain the same level of financial support provided (made available) for special education and related services from year to year, regardless of the amount actually expended. Education may waive the states' MOE requirement for exceptional or uncontrollable circumstances, but there is no comparable provision allowing Education or a state to waive the districts' local MOE requirement.

²⁹ 20 U.S.C. § 1413(a)(2)(B), (C)(i), 34 C.F.R. § 300.204(e).

³⁰ 20 U.S.C. § 1412(a)(18)(A).

Other federal funding streams also have MOE requirements, including several Elementary and Secondary Education Act programs. However, in contrast to the IDEA local MOE requirement, which is set at 100 percent of prior year's spending, other education programs—including the Title I, Part A, Education for the Disadvantaged program (the largest federal funding stream for K-12 education)—have a local MOE requirement set at 90 percent of prior year's spending for the amounts that school districts must provide in a given fiscal year from state and local sources (see table 2).³¹

Table 2: Local MOE Requirement under IDEA Compared with Other Selected Education Programs

Program	Percent of the prior year's spending	Flexibility
IDEA program	100%	Five exceptions ^a and a funding adjustment, available under certain circumstances
Elementary and Secondary Education Act programs: - Title I, Part A, Education for the Disadvantaged - Title I, Part B, Subpart 3, Even Start - Title I, Part C, Education of Migratory Children - 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 II, Part D, Enhancing Education Through Technology - Title III, Part A, English Acquisition State Grants - Title IV, Part A, Safe and Drug-Free Schools and Communities - Title IV, Part B, 21st Century Learning Centers - Title V, Part A, Innovative Programs - Title VI, Part B, Subpart 2, Rural and Low-Income School Program	90%	Education may waive the requirement in certain exceptional or uncontrollable circumstances, such as natural disaster or a precipitous decline in the financial resources of a school district. ^b

Source: 20 U.S.C. § 1413(a)(2)(A)(iii), (j), 20 U.S.C. § 7901(a), 20 U.S.C. § 7801(13). | GAO-16-2

^aFour of these exceptions are specified in law. Education's regulations allow for a fifth exception because the statutory authority in 20 U.S.C. § 1411(e)(3) that permits states to establish a fund to pay

³¹ Specifically, a school district may receive funds under a covered program for any fiscal year if the state finds that either the combined fiscal effort per student or the aggregate expenditures of the district and the state with respect to the provision of free public education by the district for the preceding fiscal year was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year. 20 U.S.C. § 7901(a).

for some high costs associated with certain children with disabilities could result in lower expenditures for some school districts. 34 C.F.R. § 300.204(e).

^b20 U.S.C. § 7901(c).

Based on our previous work on federal grant design, as well as more recent work on MOE provisions under the Recovery Act, we have found MOE requirements to be important mechanisms for helping to ensure that federal spending achieves its intended effect.³² However, we have also found that without sufficient flexibility, these requirements can reportedly have adverse effects on state and local governments by distorting state and local priorities, penalizing spending reductions arising from fiscal crisis or increased efficiencies, and discouraging program innovation and expansion. In light of these concerns, in a previous report we concluded that federal MOE requirements should be sufficiently flexible to help mitigate some of the potentially adverse effects of the requirement on state and local governments and asked the Congress to consider enacting a standard maintenance of effort requirement across federal programs to help ease confusion among and potential adverse effects on recipients of federal funds.³³

³² See, for example: GAO, *Temporary Assistance for Needy Families: State Maintenance of Effort Requirements and Trends*, [GAO-12-713T](#) (Washington, D.C.: May 17, 2012); *Temporary Assistance for Needy Families: Implications of Recent Legislative and Economic Changes for State Programs and Work Participation Rates*, [GAO-10-525](#) (Washington, D.C.: May 28, 2010); *Recovery Act: Planned Efforts and Challenges in Evaluating Compliance with Maintenance of Effort and Similar Provisions*, [GAO-10-247](#) (Washington, D.C.: Nov. 30, 2009); *Block Grants: Issues in Designing Accountability Provisions*, [GAO/AIMD-95-226](#) (Washington, D.C.: Sept. 1, 1995); *Proposed Changes in Federal Matching and Maintenance of Effort Requirements for State and Local Governments*, GGD-81-7 (Washington, D.C.: Dec. 23, 1980).

³³ GGD-81-7. Specifically, we recommended that Congress should consider amending the Intergovernmental Cooperation Act of 1968 to enact a standard maintenance of effort requirement applicable to those grant programs where Congress wanted to ensure federal grant funds were used to supplement and not supplant local efforts. The Intergovernmental Cooperation Act of 1968 was repealed in 1982 and had not been amended to establish a standardized MOE requirement prior to its repeal.

States Reported That Nearly All Districts Met MOE, but Some Faced Challenges

States reported that their school districts generally met the MOE requirement without using the allowable exceptions or funding adjustment but that some faced a variety of challenges in doing so. The key challenges in meeting MOE that districts cited involved state and local budget or cost reductions, which are not among the allowable exceptions for districts to reduce spending.

States Reported That Most Districts Met MOE without Using Exceptions or the Funding Adjustment

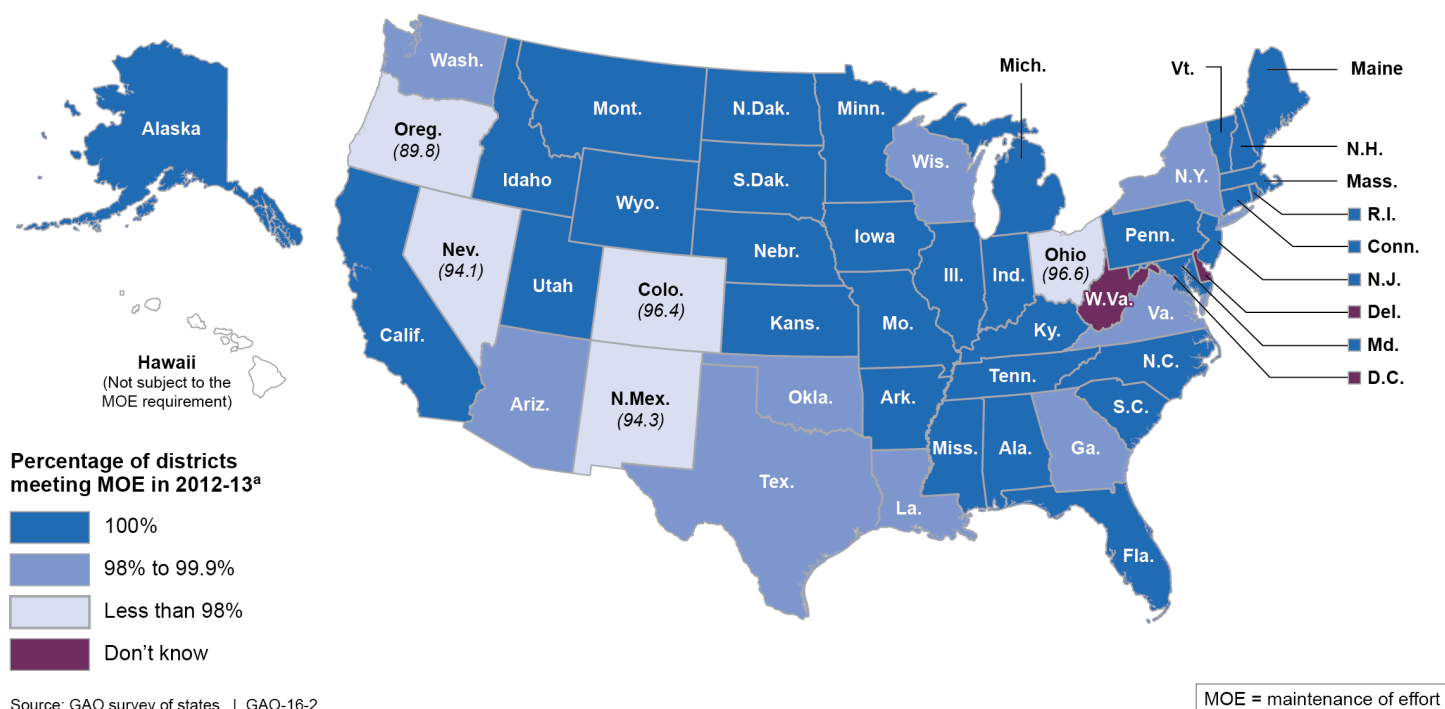
No national level data exist on the extent to which districts are meeting MOE, but according to the responses to our state survey, nearly all school districts met MOE in the 2012-13 school year (the most recent data available in all states at the time of our survey).³⁴ States reported less than 1 percent of districts nationwide failed to meet MOE in 2012-13, and all these districts were located in 14 states (see fig. 2).³⁵ In addition, states indicated that the shortfalls for all districts identified as failing to meet MOE in 2012-13 amounted to a total of about \$877,000 nationwide as of May 2015. However, this number is understated because 2 of the

³⁴ This includes districts meeting MOE whether or not they used exceptions and the funding adjustment. Education currently requires states to report data on districts' eligibility for and use of the MOE funding adjustment, but does not collect national level data on the extent to which districts are meeting MOE or using the exceptions. However, on July 9, 2015, Education published a notice in the Federal Register seeking public comment on its proposed information collection request concerning the EDFacts data collection, including a few proposed changes to the collection. 80 Fed. Reg. 39,421 (Jul. 9, 2015). The proposed additions to the EDFacts collection include whether school districts met MOE and, if they did not, the amount of non-federal funds the state returned to Education and the date the amount was returned. If approved, states would submit these data for the 2015-16 school year in May of 2017.

³⁵ At the time of our survey, 3 states did not yet know if any of their districts failed to meet MOE in 2012-13, but all remaining 33 states reported that all their districts met MOE in that year. We did not verify the numbers reported by most states. However, the MOE data we obtained from the five states we selected for further analysis corroborated that most districts met MOE. In two of these states (Alabama and Michigan), all districts met MOE in 2011-12 and 2012-13; while in the other three states (Arizona, Texas, and Virginia), 1 percent or fewer school districts failed to meet MOE in either year. Also, our search of the federal audit database found few school district audits with findings related to MOE, although this database may not represent the full universe of districts. In the preamble to its final rule issued in April 2015, Education stated that it had conducted a search of the same database and also found few findings related to MOE. 80 Fed. Reg. 23,644, 23,665 (Apr. 28, 2015).

14 states with districts failing to meet MOE were unable to report the amount of their districts' shortfalls at the time.³⁶

Figure 2: Two-Thirds of States Reported All of Their Districts Met the MOE Requirement in 2012-13

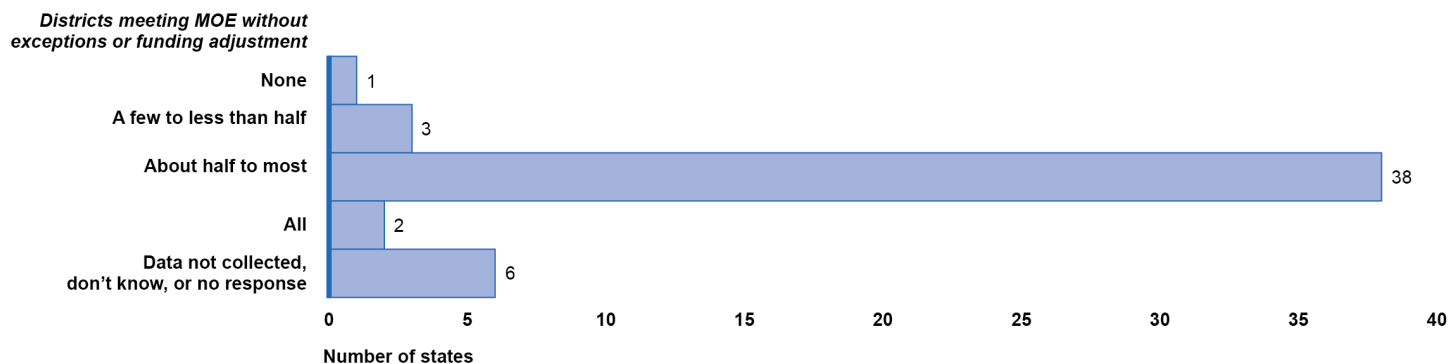


^aStates reported numbers of districts not meeting MOE as of the date they responded to the survey, between January and March 2015. Some states were still in the process of making determinations, and some districts reported as not meeting MOE may have resolved their compliance issues after the state responded to the survey.

³⁶ See app. V for more information on the amount of districts' shortfalls in these states. Education has instructed Oregon not to seek repayment from the districts that did not meet MOE in 2012-13 until those districts are given the opportunity to demonstrate that they met MOE using any of the four calculation methods, because the state had not given districts the option of using all four allowable calculations for MOE.

State responses to our survey also indicate that most districts met MOE in 2012-13 without using allowable exceptions or the funding adjustment.³⁷ Forty states responded to our survey that half or more of their districts met MOE without using either of these provisions (see fig. 3).³⁸

Figure 3: Most States Reported Half or More of Their Districts Met MOE without Using Exceptions or Funding Adjustment in 2012-13



Source: GAO survey of states. | GAO-16-2

District responses to our 2015 follow-up survey of those districts that had anticipated trouble meeting MOE in 2011-12 largely mirrored the states' survey responses on meeting MOE.³⁹ Of the 87 districts that responded to this survey, only 7 reported that they had failed to meet MOE in school years 2011-12, 2012-13, or 2013-14. Of the 68 districts that reported

³⁷ Although no national level data currently exist on the extent to which districts use exceptions to meet MOE, states do report to Education on districts' eligibility for and use of the MOE funding adjustment, and these data suggest that the funding adjustment has rarely been used in recent years. According to Education officials, this may be because many school districts have not experienced a significant increase in their federal allocation under IDEA section 611 since fiscal year 2009. In 2013, Education's Inspector General reported concerns with the quality of the funding adjustment data for fiscal year 2009. See: ED OIG/A09-L0011, *Local Educational Agency Maintenance of Effort Flexibility Due to Recovery Act IDEA, Part B Funds*. (July 2013.)

³⁸ The findings were similar in our five states selected for further analysis. Texas did not have data on districts' use of exceptions, but in the remaining four states, generally less than 10 percent of districts used allowable exceptions or the funding adjustment to meet MOE in 2011-12 and 2012-13.

³⁹ Responses to our follow-up survey are not generalizable to school districts nationwide.

meeting MOE all 3 years,⁴⁰ 16 did so using exceptions or the funding adjustment in at least one of those years.

District Officials' Perspectives on Use of Allowable Exceptions and Funding Adjustment under IDEA MOE

- "Our district has staff retire nearly every year, which makes the exception for voluntary staff departure the easiest exception for us to claim."
- "Even when we were eligible to use the funding adjustment, the allowable spending decrease would have been negligible. We decided it was not worth the expenses and amount of time it would have taken us to claim it."

Source: GAO interviews of district officials. | GAO-16-2

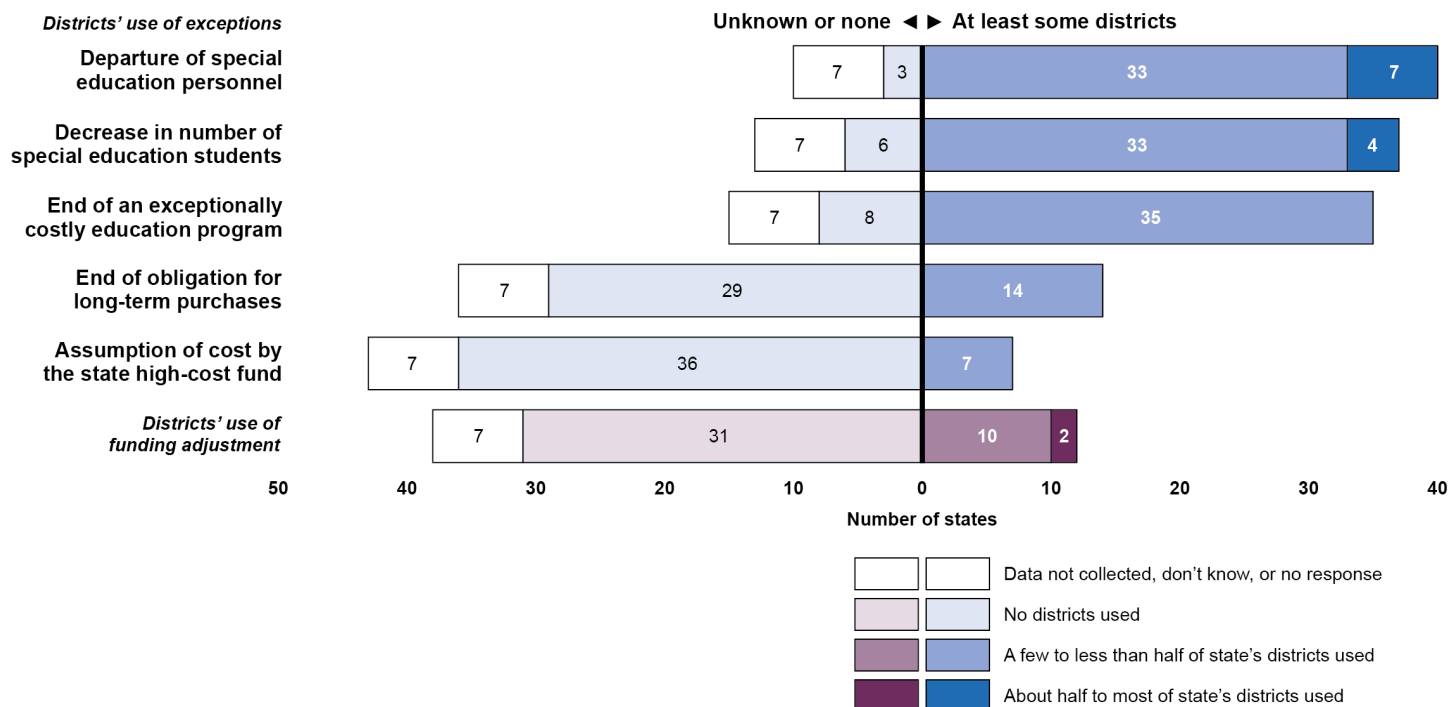
The large number of districts meeting MOE without the use of exceptions or the funding adjustment may be partially explained by rising special education costs. According to some state and district officials we interviewed, rising costs have made it easier for districts to meet MOE in the last few years. In addition, some district officials said that documenting their eligibility to the state for use of exceptions is burdensome, which may lead some districts to avoid using them. Those that did use them, however, relied on some exceptions more than others (see fig. 4).⁴¹ Regarding the funding adjustment, many districts have not used it in the last few years because they were not eligible to do so.⁴²

⁴⁰ The remaining 12 (of 87) districts either did not know whether they had met MOE for 1 or more years or did not answer the question.

⁴¹ Our analysis of detailed MOE data from four selected states (one of our five selected states did not maintain data on districts' use of exceptions) and responses to our 2015 district follow-up survey indicated similar patterns in districts' use of exceptions and the adjustment.

⁴² Under IDEA, districts may only use the funding adjustment if their allocation of IDEA section 611 funds is greater than the allocation they received the prior year. 20 U.S.C. § 1413(a)(2)(C)(i). Under IDEA, states must prohibit districts from using the funding adjustment if the state finds that a district is not meeting requirements under the Act. 20 U.S.C. § 1416(f).

Figure 4: States Reported Districts Used Some Exceptions More Than Others in 2012-13



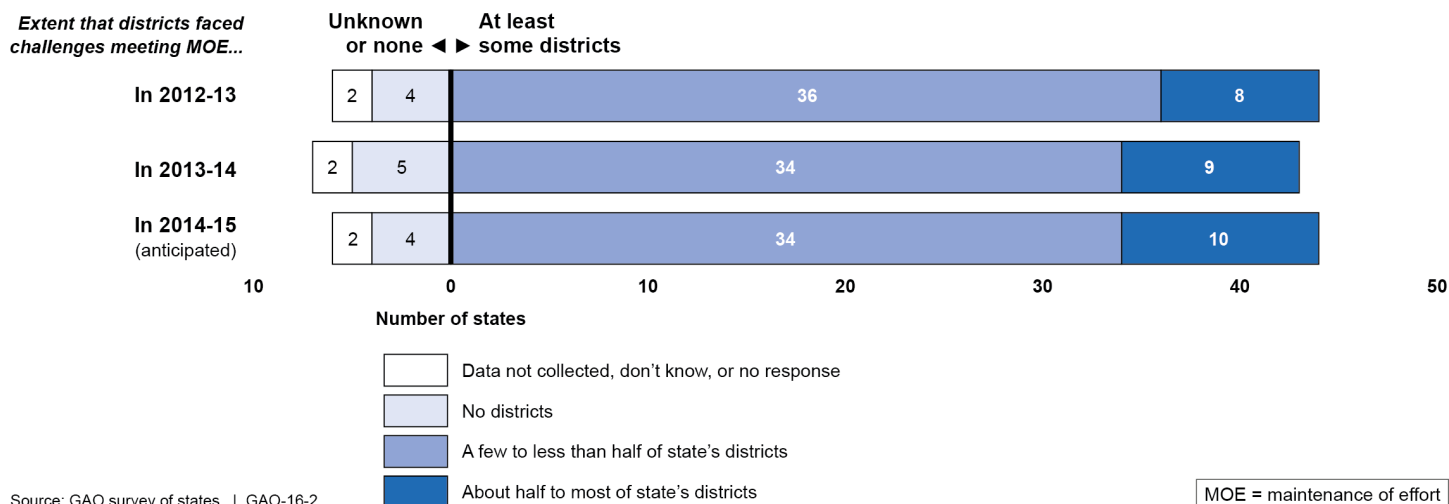
Source: GAO survey of states. | GAO-16-2

MOE = maintenance of effort

Almost All States Reported at Least Some of Their Districts Faced Challenges Meeting MOE

Although states reported on our survey that most of their districts met MOE in 2012-13, almost all states indicated that some districts faced challenges, and the number of states reporting that half or more of their districts have faced or may face challenges is increasing (see fig. 5).

Figure 5: Most States Reported at Least Some Districts Have Faced or May Face Challenges Meeting MOE



Source: GAO survey of states. | GAO-16-2

Similarly, of the districts that anticipated trouble meeting MOE in 2011-12, about half of those responding to our follow-up survey (44 of 87) said that they ultimately did face challenges meeting MOE in 2011-12, 2012-13, or 2013-14.

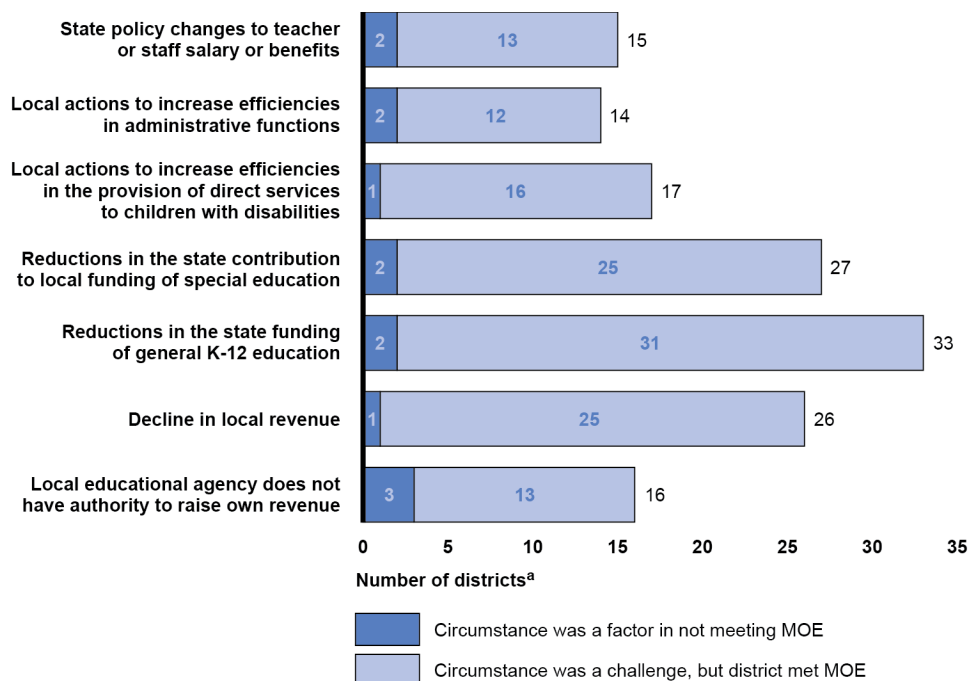
In our characteristics analysis comparing districts that had and had not anticipated having trouble meeting MOE in 2011-12, we identified small, but statistically significant differences with respect to declining enrollment and the extent to which districts were rural.⁴³ This analysis was based on the nationally representative sample of districts for our 2011 survey and is therefore generalizable to districts nationwide in that year. (For a more detailed discussion of this analysis and the results, see app. IV.)

⁴³ Specifically, districts that had anticipated having trouble meeting MOE experienced a 2.4 percent decline in enrollment, on average, from 2009-10 to 2010-11 (plus or minus 1.9 percent)—in contrast, districts that had not anticipated having trouble experienced a 1.5 percent increase in enrollment (plus or minus 2.8 percent). Also, 57.8 percent of districts that had anticipated having trouble meeting MOE were rural (plus or minus 11.1 percent)—in contrast to 41.0 percent of districts that had not anticipated having trouble (plus or minus 6.5 percent). These estimates were significantly different at the .05 level, even when the margins of error overlap.

Exceptions Do Not Address Key Challenges Some Districts Faced in Meeting MOE

Among districts that reported facing challenges in meeting MOE, officials described a number of reasons for those challenges that were not covered by allowable exceptions.⁴⁴ As reflected in responses to our district survey, illustrated in figure 6 below, and our discussions with selected districts, often the key reasons that districts faced challenges or failed to meet MOE involved circumstances that decreased special education spending from one year to the next but were not covered by the allowable exceptions and, in some cases, were outside the districts' control. Specifically, in response to our survey and in interviews at selected sites, district officials identified budget or revenue reductions and various circumstances related to cost reductions—such as local actions to implement efficiencies—as key challenges in meeting MOE.

Figure 6: Districts Reported Various Circumstances Created Challenges in Meeting MOE



Source: GAO 2015 follow-up survey of a subset of school districts. | GAO-16-2

MOE = maintenance of effort

⁴⁴ For a description of the allowable exceptions to MOE, see fig. 1 in the Background section.

^aBased on GAO's follow-up survey of the 103 school districts that had anticipated trouble meeting MOE in 2011-12. Of the 87 total respondents, 7 indicated that they did not meet MOE at least once during the school years 2011-12 through 2013-14. Another 41 indicated that they had faced challenges in meeting MOE in at least one of those years (3 districts indicated they experienced both). We asked these 48 respondents for information on the circumstances creating challenges for them. Results presented here reflect the responses of these 48 districts and are not generalizable to districts nationwide. (For details, see app. II.)

Budget or Revenue Reductions Districts surveyed most frequently cited reductions in state funding of K-12 education and reductions in the state contribution to funding for special education as a factor in not meeting MOE (see fig. 6). The MOE requirement does not include an exception for such challenges and is, in fact, designed to protect special education funding in such circumstances. Officials in one Texas district we interviewed told us their state funding had been cut for the 2011-12 school year, in spite of an increase in the district's student population. In response to reduced funding, the district made cuts to special education as well as general education spending, and as a result it had come close to not meeting MOE for the 2011-12 school year.⁴⁵ A Virginia district we interviewed met MOE in 2011-12 and 2012-13, but officials said it has been difficult to maintain special education expenditures because the county cut its funding in response to declines in local revenue.

Cost Reductions District officials reported three different types of circumstances that can result in reduced costs that are not allowable exceptions to MOE: (1) local actions to increase efficiencies, (2) state policy changes to staff salary or benefits, and (3) a gradual decline in enrollment over multiple years.

- **Increased efficiencies.** District officials we surveyed and interviewed described various challenges stemming from efforts to implement efficiencies, even when these changes had no effect on service delivery. In response to our survey, 17 districts reported challenges due to local actions to increase efficiencies in the provision of direct services, and 14 districts reported challenges due to efficiencies in administrative functions (see fig. 6). For example, a New Jersey district official commented on our survey that his district failed to meet MOE after reorganizing to share the cost of a special education director with another district. Similarly, officials we interviewed in one

⁴⁵ In January 2015, district officials told us that, based on their calculations, the district had not met MOE, but they noted that they had not yet received an official MOE determination from their state agency for 2011-12 or 2012-13. Subsequently, a state official told us that according to state records the district had met MOE.

Michigan district told us that they negotiated a staff pay cut of 10 percent due to a budget deficit. As a result, they were paying 10 percent less for the same services. The district met MOE only because Michigan elects to test its MOE compliance in aggregate with other districts, according to local officials who oversee that district and others.⁴⁶ Another Michigan district we interviewed said that when they had difficulty hiring a staff psychologist they had to contract for psychologist services, which turned out to be less costly than what the district spent on those services previously, causing challenges in meeting MOE. A Texas district official told us that when their state funding was cut, they reduced costs by increasing the number of classes taught by middle and high school teachers, allowing them to cut 237 staff positions without eliminating any courses, programs, or special education services. Despite continuing to deliver the same services, because it was less costly, they came close to not meeting MOE.

- **State salary or benefit changes.** Survey respondents from 15 districts cited state policy changes to teacher or staff salary or benefits as a challenge (see fig. 6). All districts we interviewed in Michigan told us they faced challenges meeting MOE when the state legislature passed a law capping the amount that public employers, such as school districts, could contribute toward employee health benefits. This effectively reduced the amount districts spent on special education teachers and other staff, the majority of any district's special education spending. One Michigan district we visited was very small and had only one special education teacher. As a result of the new state cap, officials said that their teacher decided to opt out of the district's health insurance plan for the 2013-14 school year, which decreased their special education spending by about \$10,000. The district did not meet MOE on its own for 2013-14, but it did meet it in aggregate with other districts (the level the state tests for compliance), according to local officials.
- **Gradual enrollment decline.** Officials we interviewed in several selected districts said meeting MOE could be a challenge if a district

⁴⁶ In Michigan, intermediate school districts, which oversee multiple school districts, are the subgrantees of IDEA funds within the state; therefore, the state monitors MOE compliance at this intermediate level. State officials told us they do monitor individual district compliance with MOE but do not assess penalties against districts as long as the intermediate school district has met MOE in aggregate.

experienced a gradual decline in enrollment over multiple years that eventually resulted in needing fewer special education teachers on staff. In the three states we visited, officials interpreted the decreasing enrollment exception as applying only to year-to-year decreases. One local official in Michigan who oversees several school districts said that they have experienced gradual reductions in special education caseloads as a result of population decline that do not always necessitate immediate staff reductions. He explained that if districts let one staff member go at the end of each year, it would be easier to meet MOE using either the per capita calculation or the exception for a decrease in enrollment (see fig. 1 for a description of MOE calculations and exceptions). However, districts often wait 3 or 4 years until they reach a crisis point and have to lay off two or more special education staff, which makes meeting MOE more difficult. Officials in one of the districts he oversees explained that they would not eliminate staff positions due to the loss of only two or three students, but over the course of 5 years, a gradual decline could justify a decrease in staff.

States and Districts Report That MOE Protects Funding, but Can Create Unintended Consequences Affecting Services for Students

State and district officials had mixed views on MOE's effects on services for students with and without disabilities. MOE is one of multiple safeguards established under IDEA to protect special education funding, and while some officials reported positive effects, others said the requirement can sometimes have the unintended consequence of deterring districts from innovating and implementing efficiencies in special education services. Additionally, some states and districts pointed out that prioritizing special education spending to meet MOE during a period of budget constraints resulted in cuts to general education spending that affected services for all students, including the many students with disabilities that spend much of their days in general education classrooms.

MOE Helps Safeguard Funding but May Deter Innovation and Efficiencies in Special Education Services

Disability advocates and state and district officials we interviewed generally agreed that MOE protects special education funding along with several other IDEA safeguards that help ensure students with disabilities receive a free appropriate public education. In particular, these other safeguards include developing an IEP with input from a team that includes the parents, teachers, and school district representatives; regular reviews of progress toward the IEP goals; and procedural safeguards

District Officials' Perspectives on MOE as a Safeguard to Protect Services

- "The IDEA MOE requirement has helped to protect our schools [special education] from state general fund budget reductions."
- "If the MOE requirement didn't exist ... based on my own opinion I believe services for children with disabilities would be reduced. While accountants and even other personnel may not like that it exists, it does protect children with disabilities."

Source: GAO survey of districts. | GAO-16-2

District Officials' Perspectives on MOE as a Deterrent to Improved Services That Either Decrease OR Increase Costs

- "MOE hinders our ability to offer innovative methods for delivery of services, if the cost of the new, innovative method is less than in the previous year."
- "The MOE requirement also fosters a lack of innovation in the program [special education] for fear of adding to the spending base."

Source: GAO survey of districts. | GAO-16-2

such as dispute resolution.⁴⁷ District officials often told us that they viewed MOE as a secondary consideration and not a factor in determining the level of services planned for special education students. Instead, they said they fund special education services based on the IEP process and are required by law to provide the services outlined in those plans regardless of MOE. However, a disability advocate we interviewed noted that the amount of services districts prescribe in the IEP is often determined by the funding available, and MOE helps to prevent districts from decreasing those funds.

At the same time, some state and district officials we interviewed said MOE can discourage efforts to implement innovations or expand services. For example, some district officials we spoke with said that because of MOE, they do not want to commit to a higher level of spending to implement innovative services, despite other provisions in IDEA that are intended to encourage innovation.⁴⁸ An official in one Texas district said that although their special education director recommended expanding their integrated athletics program for children with disabilities, they chose not to because they did not want to commit to the increased costs in an environment of ongoing budget uncertainty. Similarly, a Michigan district official said that program innovations, such as introducing new technology or new co-teaching methods, can be costly to implement and cannot be piloted and discontinued if unsuccessful without decreasing spending and jeopardizing the district's ability to meet MOE.⁴⁹ This concern is consistent with our past work that concluded that federal MOE requirements without sufficient flexibility can discourage program expansion and innovation.⁵⁰

Moreover, as noted earlier, implementing efficiencies can create challenges in meeting MOE. As a result, some district officials said that

⁴⁷ IDEA and its implementing regulations provide formal methods—due process complaint and hearing procedures (20 U.S.C. § 1415(b)(6)) and state complaint procedures (34 C.F.R. § 300.153)—for resolving disputes between parents and school districts, which represent important protections for families under IDEA.

⁴⁸ Specifically, other provisions in IDEA provide for grants to implement innovative services such as use of emerging technologies to assist students with disabilities. 20 U.S.C. §§ 1462, 1474.

⁴⁹ Co-teaching involves pairing a general classroom teacher with a special education teacher to help meet the educational needs of students with disabilities served in general education classrooms.

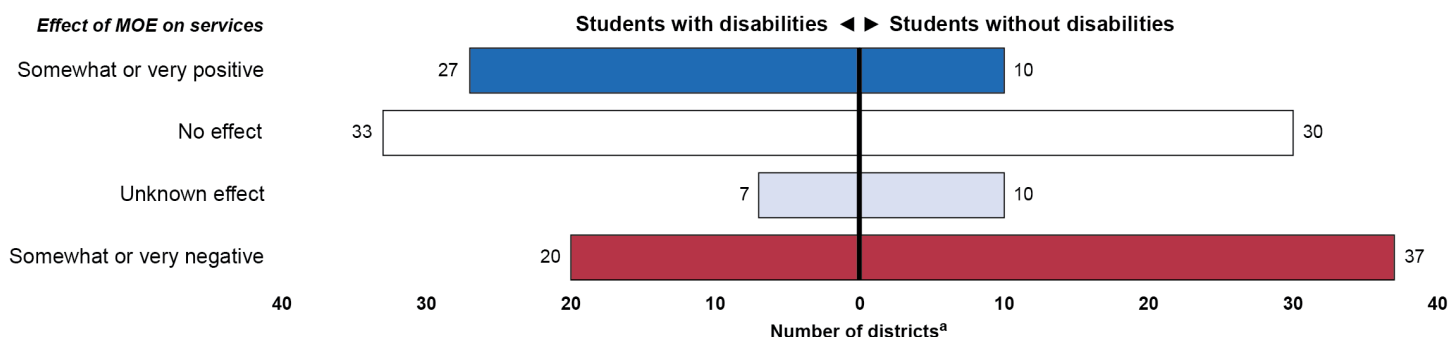
⁵⁰ GGD-81-7

MOE can discourage efforts to implement efficiencies that could help reduce costs and can lead to unnecessary spending to comply with the requirement. For example, one Wisconsin district official commenting on Education's 2013 NPRM said that because of state legislative changes that required reductions in their contributions to teacher benefits, they had to find other ways to spend money on special education to meet MOE regardless of whether the expenditures were needed. Further, a Virginia state education official we interviewed said that Virginia districts feel penalized for complying with IDEA's directive to serve more students with disabilities in general education classrooms since this more inclusive model can be less costly than placing all these students in special education classrooms; yet the MOE requirement is not flexible enough to allow for this without putting districts at risk of failing to meet MOE.⁵¹ At the same time, a disability advocate we interviewed noted that if districts do have cost savings in special education, districts should reinvest those savings back into special education.

Similarly, district officials reported mixed views about whether MOE had positive or negative effects on students in our 2015 follow-up survey of districts that had indicated in 2011 that they anticipated trouble meeting MOE in 2011-12. More districts said MOE had a positive effect on services for students with disabilities than for students without disabilities. But, even for students with disabilities, the majority of districts said it had a negative effect or no effect on services for these students (see fig. 7). Several district officials noted that protecting special education funding does not necessarily equate to protecting or improving special education services. For example, a Minnesota district official said the 100 percent MOE requirement may discourage districts from striving to make students with disabilities as independent as possible if such actions would reduce special education spending. He was concerned that not enough attention was being given in the IEP process to encouraging greater independence and inclusion and that the process was being driven by maintaining expenses rather than responding to the evolving needs of students. Also, a Texas district official commented that a district could still meet MOE if it were to give a 3-percent raise to special education educators while reducing costs related to services and programs by an equal amount.

⁵¹ On the other hand, some district officials we interviewed said a more inclusive model generally requires them to hire more special education support staff to serve special education students dispersed throughout general education classrooms, thus increasing the cost of special education.

Figure 7: Districts Reported Positive and Negative Effects of MOE on Services for Students with and without Disabilities



Source: GAO 2015 follow-up survey of a subset of school districts. | GAO-16-2

MOE = maintenance of effort

^aBased on GAO's follow-up survey of the 103 school districts that had anticipated trouble meeting MOE in 2011-12, with 87 total respondents. Results are not generalizable to districts nationwide. (For details, see app. II.)

Some Districts Reported That MOE Contributes to Budget Pressures That Can Lead to Cuts in General Education Services

When districts experience reductions in state and local funding and are forced to make cuts, they generally must prioritize special education to meet the MOE requirement, which can result in cuts to general education services. The 100 percent requirement is significantly stricter than the 90 percent MOE requirement established by law for other K-12 education programs and provides districts less latitude to adjust spending to minimize negative effects on services.⁵² Moreover, while state education funding may be beginning to recover from the recession, many districts have experienced severe budget challenges in the last 4 years. For example, according to Education data for fiscal year 2011,⁵³ 33 states had decreases in their state and local K-12 per-pupil revenue, and for 20 of these states, the decreases ranged between 2 and 13 percent.⁵⁴ In our

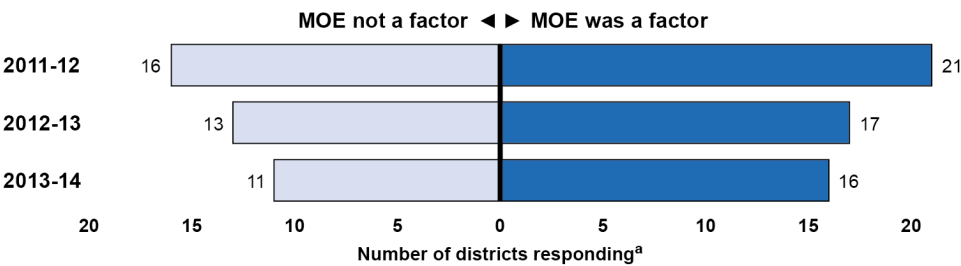
⁵² See table 2.

⁵³ U.S. Department of Education, National Center for Education Statistics, *Revenues and Expenditures for Public Elementary and Secondary Education: School Year 2011-12 (Fiscal Year 2012)*, NCES 2014-301 (Washington, D.C.: January 2015). These Education data, the most recent available, indicate that inflation-adjusted state and local revenues per pupil decreased nationally by 2.8 percent in fiscal year 2011 and 0.8 percent in fiscal year 2012. These data also indicate that per-pupil national expenditures decreased by 1.6 percent in fiscal year 2011 and 2.8 percent in fiscal year 2012.

⁵⁴ More recently, state education funding is reportedly increasing. According to our state survey, officials from 35 of 50 states reported an increase in state funding of general K-12 education in school year 2012-13, 43 of 50 reported an increase in school year 2013-14, and 39 of 50 reported an increase in school year 2014-15.

2015 district follow-up survey, about half of those responding (44 of 87) reported reducing general education spending at least once during school years 2011-12 through 2013-14. Of those reporting reductions, about half (21) said MOE was one of several reasons for the cut, and one district reported that MOE was the primary reason in at least one of these school years (see fig. 8). In addition, one Virginia district official we interviewed noted that if a district is penalized for not meeting MOE, the penalties hurt students by further reducing already constrained district resources.

Figure 8: Over Half of Districts That Reduced General Education Spending Reported MOE Was a Factor



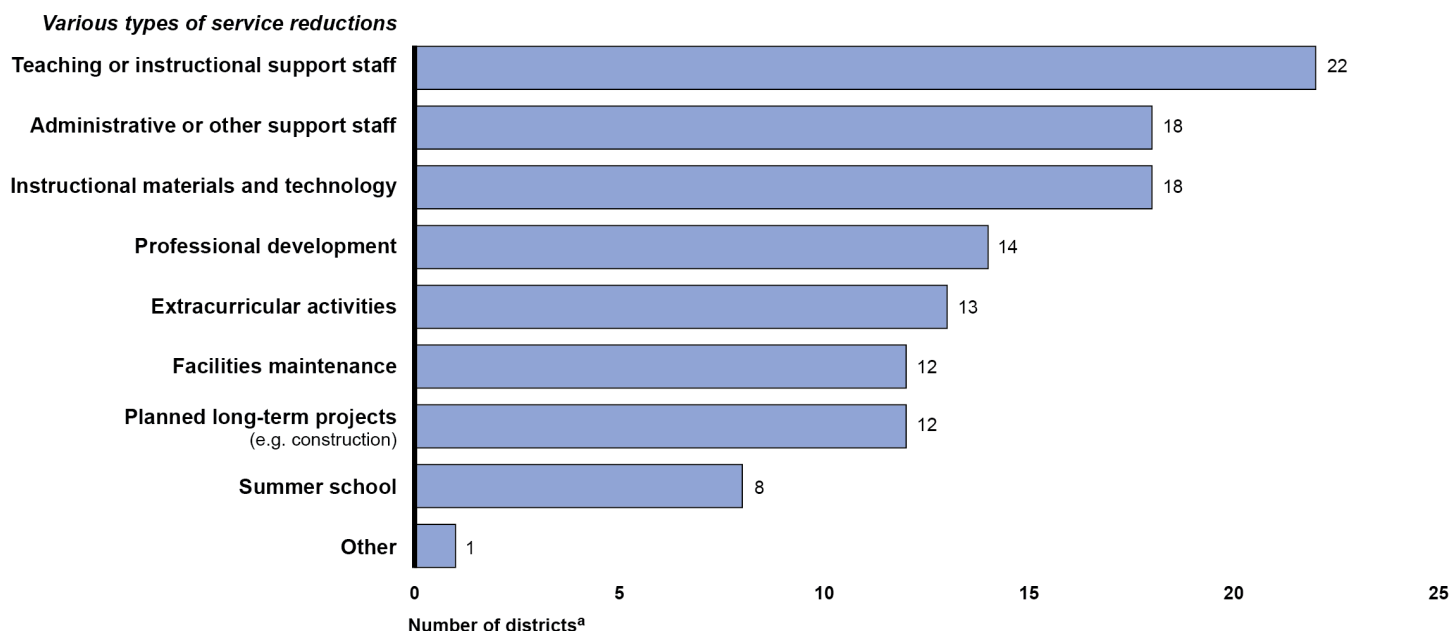
Source: GAO 2015 follow-up survey of a subset of school districts. | GAO-16-2

^aBased on GAO's follow-up survey of the 103 school districts that had anticipated trouble meeting MOE in 2011-12. Of the 87 total respondents, 37 reported reducing their general education spending in 2011-12, 30 in 2012-13, and 27 in 2013-14. Results reflect the responses of these districts as indicated for each year, and are not generalizable to districts nationwide. (For details, see app. II.)

MOE = maintenance of effort

As figure 9 shows, cuts to general education spending can affect services in a variety of ways. Responses from the 22 districts that attributed general education service cuts, at least in part, to MOE, indicated that these cuts often led to reductions in teachers and support staff, classroom materials, and technology. Some district officials we interviewed noted that such cuts can result in increased classroom sizes, decreased class offerings, and reduced extracurricular activities.

Figure 9: Districts Reported Reductions in Various General Education Services Due to MOE



Source: GAO 2015 follow-up survey of a subset of school districts. | GAO-16-2

MOE = maintenance of effort

^aBased on GAO's follow-up survey of the 103 school districts that had anticipated trouble meeting MOE in 2011-12. Of 87 total respondents, 22 reported reducing various general education services at least once during school years 2011-12 through 2013-14 due, at least in part, to MOE. Results reflect the responses of these 22 districts and are not generalizable to districts nationwide. (For details, see app. II.)

District Officials' Perspectives on MOE's Effect on General Education

- "The district is committed to providing a free and appropriate education for all students. However, the federal and state mandates associated with special education combined with inadequate funding from federal and state sources, have significantly impacted the district's programs for students without disabilities."
- "MOE requirements limit the amount of cost savings that can be realized by special education. The effect is that there are less resources available for general education students."

Source: GAO survey of districts. | GAO-16-2

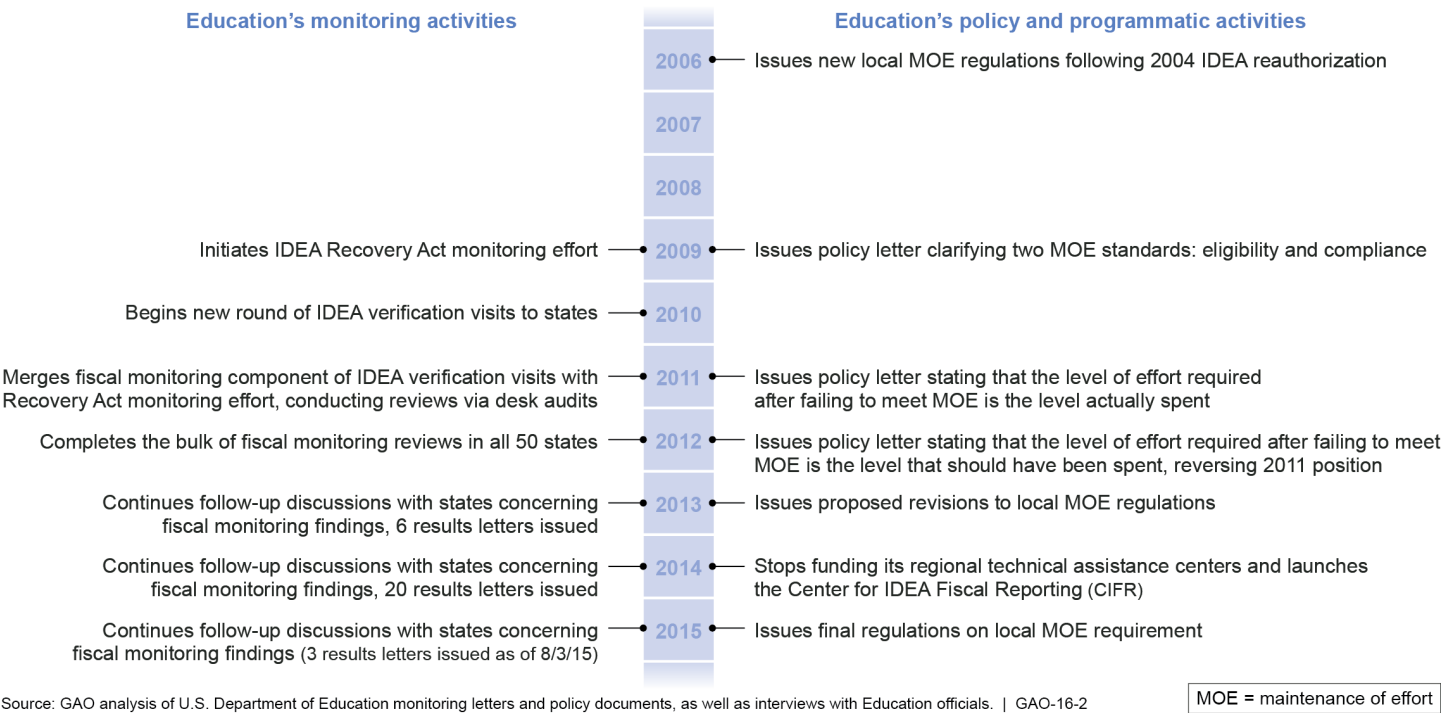
General education service reductions negatively affect all students—both those with and without disabilities. But this may be especially true for the growing number of special education students being served in general education classrooms—another unintended consequence of MOE. Education recently reported that the percentage of special education students spending at least 80 percent of their school day in general education classrooms increased from 33 percent in 1990–91 to 61 percent in 2012–13.⁵⁵ One Virginia district official we interviewed said students with disabilities served in general education classrooms were particularly affected by increased classroom sizes resulting from reductions in general education spending.

⁵⁵ U.S. Department of Education, National Center for Education Statistics, *The Condition of Education 2015*, NCES 2015-144 (Washington, D.C: May 2015).

Education’s Delayed Feedback and Evolving Policies Have Frustrated State Efforts to Facilitate Districts’ MOE Compliance

Education’s delayed monitoring feedback and evolving policies over the past decade (see fig. 10) have hindered states’ efforts to facilitate compliance with the MOE requirement, according to state officials. States and school districts cited the need for additional technical assistance, information sharing, and training to help them meet—not just understand—this complex requirement.

Figure 10: Timeline of Education’s Delayed Monitoring Feedback and Evolution of Key MOE Policies



Education’s Delayed Feedback Has Hindered State Monitoring Efforts

Although Education carried out its fiscal monitoring reviews of states’ compliance from 2010 through 2012, it has yet to issue feedback letters to nearly half the states—keeping these states waiting at least 3 years for their monitoring results. Education began its latest round of IDEA programmatic and fiscal monitoring in 2010, initiating the new monitoring

cycle with verification visits to 16 states.⁵⁶ Then in 2011, Education removed the fiscal component from its visits and merged the findings from that component with the fiscal monitoring it was conducting for the Recovery Act. From that point on, the merged fiscal monitoring effort was conducted through desk audits rather than site visits, and as a result, Education officials told us that they were able to complete the bulk of these reviews of all 50 states by the end of 2012.

In 2010, when Education began its latest round of monitoring, it had a performance standard to provide feedback to states within 88 days of a verification visit.⁵⁷ However, Education did not set a performance standard for the merged fiscal monitoring reviews. We found that although the bulk of these reviews were completed by the end of 2012, as of August 2015, 22 states were still waiting for Education to provide results letters telling them whether their fiscal monitoring systems comply with federal requirements. The delay of 3 years or more in providing written feedback to states significantly exceeds the timeframes Education had considered reasonable for its previous verification visits and is inconsistent with federal government standards that call for the findings of audits and other reviews to be promptly resolved.⁵⁸

States reported that Education's delayed feedback has kept them from taking corrective actions in a timely way. For example, an Oregon state official we interviewed as part of our survey follow-up told us Education conducted its fiscal monitoring of the state in 2010 but did not provide

⁵⁶ Under IDEA, Education monitors states' implementation of the provisions of the Act (20 U.S.C. § 1416(a)(1)), and Education has included states' efforts to ensure school district compliance with MOE as part of its overall IDEA fiscal monitoring process. Education is required to monitor the states and also, as specified under the Act, requires states to monitor school districts. 20 U.S.C. § 1416(a)(3). Although fiscal monitoring is a key component of the monitoring process, IDEA specifies that the primary focus of federal and state monitoring should be on improving educational results and functional outcomes for children with disabilities. 20 U.S.C. § 1416(a)(2).

⁵⁷ Education established this performance standard in response to requirements of the Government Performance and Results Act of 1993 (GPRA) (Pub. L. No. 103-62, 107 Stat. 285) as enhanced by the GPRA Modernization Act of 2010 (Pub. L. No. 111-352, 124 Stat. 3866 (2011)) to set strategic and annual performance goals and to report annually on their results in achieving their goals.

⁵⁸ Specifically, federal government standards state that monitoring of internal controls should include policies and procedures for ensuring that the findings of audits and other reviews are promptly resolved. See GAO, Standards for Internal Control in the Federal Government, GAO/AIMD-00-21.3.1 (Washington, D.C.: November 1999).

feedback requiring corrective action until the fall of 2014. The state official told us the state is in the process of taking corrective actions in response to Education's findings but said it could have taken such steps earlier to better facilitate district compliance had Education provided more timely feedback. Similarly, state officials in Delaware told us they experienced delays of more than a year while in discussions with Education on the state's proposed changes to bring the state's MOE calculation methodology into compliance. The state put its monitoring of MOE on hold until Education approves its proposed changes because those changes will require updates to the state's information technology system which will take time and resources. In the meantime, state officials said they are unable to determine whether districts are meeting the MOE requirement.

Education officials told us competing priorities and staffing issues contributed to the delays in providing states feedback. For example, they said they were implementing a new accountability system and finalizing revised regulations for MOE that Education issued in April 2015. They also said they were working to eliminate a backlog of independent audit reviews that contained findings pertaining to IDEA programs. Education officials also said that, while dealing with these competing priorities, multiple staff involved in the monitoring process left Education and that it took time to replace them.

At the time of our review, Education officials said they would like to release the findings for the remaining states by fall of 2015. However, some fiscal monitoring letters were undergoing departmental review—one of the final steps before release—while others were still in the drafting stage. Also, because so much time had elapsed since its monitoring reviews, Education was contacting some states again to ensure it had up-to-date information about those states' monitoring systems and to confirm that the findings from its reviews were still relevant. As of August 2015—the most recent data Education provided—22 states were still waiting for feedback.

Education officials told us they are planning to begin piloting their next cycle of IDEA monitoring during fiscal year 2016. They said that the new monitoring system will be a risk-based system, and, while they expect to review all states to determine which states require monitoring, they have not established a schedule for completing reviews of all states within a specified period of time, nor for providing feedback to states. Education officials told us they did not yet have a written plan, including timelines

and performance measures, for implementing the new monitoring process.

States Report Frustration Due to Education's Unclear and Changing Guidance

Prior to Education's April 2015 final rule revising its MOE regulations, states said they experienced confusion and uncertainty about Education's policies, making it difficult for them to help districts comply with the MOE requirement. They identified two areas, in particular, as having caused the most confusion and frustration: (1) the existence of two MOE standards and (2) the level of spending required after failing to meet MOE.

- **Standards for eligibility and compliance.** In two states, the state officials we interviewed indicated uncertainty about the need to meet MOE based on two different standards: eligibility (based on a district's budgeted amounts) and compliance (based on a district's actual expenditures). Apparently other states had also been confused about this. Despite Education's policy letters that attempted to clarify the existence of two standards, in the preamble to its 2013 NPRM, Education acknowledged that some states had still not understood that two different standards were in place based on the wording of the 2006 regulations.⁵⁹ To address this issue, in its April 2015 final rule, Education made revisions to clearly label and explain the differences between the two standards.⁶⁰ Officials in one state also told us that implementing the eligibility standard would require them to modify their data systems.
- **"Subsequent years" rule.** Some states and special education stakeholders had generally understood MOE to require a district to maintain the level of spending from the previous year, even if they had failed to meet MOE in that year (referred to as the "subsequent years" rule). The 2006 regulations did not specifically address this issue, but in a 2011 policy letter, Education confirmed this general understanding. In April 2012, however, Education reversed this policy

⁵⁹ 78 Fed. Reg. 57,324, 57,326 (Sept. 18, 2013). See app. VI for a comparison of the language related to compliance and eligibility in Education's 2006 and 2015 regulations.

⁶⁰ Education stated in the preamble to its final rule that "[t]he Department believes that the MOE regulations provide necessary clarification on, and therefore will increase understanding by States and [districts] of, the MOE requirement, including...the eligibility and compliance standards..." 80 Fed. Reg. 23,644, 23,663 (Apr. 28, 2015).

and instead said that a district's required level of spending after failing to meet MOE is equal to the amount it should have expended in the prior year had it met MOE. Congress included similar language in two separate appropriations acts,⁶¹ and Education's April 2015 final rule included a provision codifying this interpretation and examples of how states should apply this rule.⁶² Officials in two states told us this change in the guidance frustrated their efforts to monitor districts' compliance with MOE, and in one state, required them to change their tracking systems.

In its 2013 NPRM, Education acknowledged that the MOE requirement is complex and that a significant lack of understanding of the requirement had persisted. To help states navigate this complexity and to promote a better understanding of MOE, the April 2015 final rule includes several tables detailing how to comply with the requirement. In addition, Education officials said they have provided a webinar, presentations at Education's IDEA leadership conference, and a written question and answer document to help explain the revised regulations.

States and School Districts Want More Technical Assistance, Information Sharing, and Training

Education has provided various types of technical assistance regarding compliance with MOE, as required under IDEA,⁶³ but more may be needed. While Education has provided states with assistance to help them understand the MOE requirement, responses to our surveys indicate that states and school districts could benefit from additional technical assistance, information sharing with their peers, and training to help districts meet—not just understand—the MOE requirement.

Prior to 2014, Education funded multiple regional resource centers that provided webinars and established communities of practice focused on issues including MOE. In our survey, many states commented that they had relied on these centers for support related to the MOE requirement. In 2014, Education moved away from a regional assistance model to a more centralized approach and established two new national technical assistance centers, the Center for IDEA Fiscal Reporting (CIFR) and the

⁶¹ Pub. L. No. 113-76, 128 Stat. 5, 394 (2014) and Pub. L. No. 113-235, 128 Stat. 2130, 2499 (2014).

⁶² 80 Fed. Reg. 23,644, 23,667 (Apr. 28, 2015) (codified at 34 C.F.R. § 300.203(c)).

⁶³ IDEA requires Education to provide technical assistance to states in carrying out the requirements of the law. 20 U.S.C. § 1417.

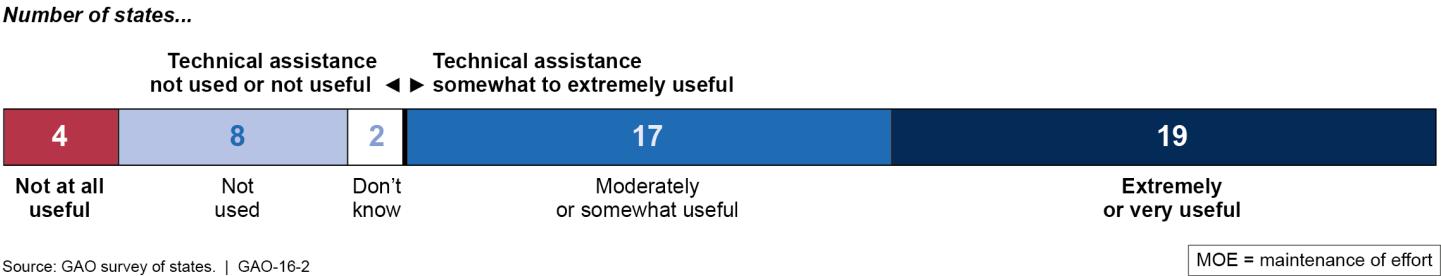
National Center for Systemic Improvement (NCSI). Education officials told us that NCSI will provide some general fiscal technical assistance to states, but that any detailed technical assistance on the MOE requirement will come from CIFR.

CIFR is charged with providing technical assistance to states on collecting and reporting special education fiscal data.⁶⁴ It plans to work collaboratively with states and other federally funded technical assistance centers to (1) improve the capacity of states to collect and report accurate fiscal data and (2) increase states' knowledge of the underlying fiscal requirements and the calculations necessary to submit valid and reliable data, according to its website. However, it is too early to assess how effective CIFR will be in achieving these goals. Since opening its doors in November 2014, CIFR has launched its website, conducted introductory webinars targeted to states, and established a listserv that 45 of 60 states and entities have joined. It is collecting data from the states to develop a database about each state's fiscal reporting that will be used by CIFR to plan its technical assistance activities and is holding regional meetings and communities of practice for states to exchange information on various fiscal and programmatic issues, including those related to the MOE requirement. Education officials told us they anticipate that CIFR will be able to provide technical assistance and facilitate information sharing among states related to the MOE.

The results of our surveys and interviews indicate that states value Education's technical assistance (see fig. 11), and several states added that they would like Education to provide additional technical assistance, training, tools, and opportunities to share information across states.

⁶⁴ Funded by Education, CIFR is a partnership among WestEd, American Institutes for Research, Technical Assistance for Excellence in Special Education at the Utah State University, and Westat.

Figure 11: States' Views on the Usefulness of Education's MOE Technical Assistance



While Education is charged with providing technical assistance to the states, the states, in turn, are charged with providing assistance and support to their districts. In response to our state survey, states reported providing technical assistance, training, and tools to school districts to assist them in complying with the MOE requirement. Among the school districts we surveyed, well over the majority indicated these resources were useful.

However, in our interviews and in our 2015 follow-up survey, school districts reported that they would like additional training to help them comply with the MOE requirement. For example, some districts officials we interviewed specifically stressed the need to have training for special education directors, finance or business managers, and superintendents because each plays a role in decisions affecting MOE compliance. Some districts we surveyed commented that they would like assistance in managing and tracking their MOE status throughout the year. One district specifically noted that they wanted to be more pro-active in ensuring compliance, while others wanted more transparency in how their state calculates MOE. In Virginia, though districts submit data to the state annually, the state's system allows districts to enter their expenditures throughout the year to track MOE. Officials in one district we interviewed said this was extremely helpful, allowing them to track their compliance with MOE on an ongoing basis.

Our surveys and interviews with state and district officials identified two areas, in particular, where more technical assistance could be helpful to state efforts to facilitate compliance with MOE—a key requirement of the law: (1) use of the four methods for calculating MOE and (2) use of exceptions to meeting MOE.

District Official's Perspective on Availability of All Calculations

- “We experienced cuts in state funding for special education that dropped us below the MOE required for state and local expenditures combined, but our local funding for special education increased during the same period. We think we could have met MOE if we had been able to use one of the local only calculations.”

Source: GAO interview. | GAO-16-2

District Official's Perspective on Exceptions

- “We would like to be able to claim as an exception those teachers who leave the special education program but remain in the district in other positions. It is more cost-effective for us to retain trained special education teachers than to let them go because a student who needed that expertise is no longer served by the district.”

Source: GAO interview. | GAO-16-2

- **Use of the four calculation methods.** In our state survey, 19 states said that they do not routinely use all four calculations to determine MOE, in some cases because the data on state and local funds that districts use for MOE calculations are pooled together.⁶⁵ This means that districts in their states do not have ready access to the data needed for the two MOE calculations based on local expenditures separately. For example, an Arizona state education agency official we interviewed said the state does not maintain separate records for state and local expenditures; therefore, the state would have to redesign its system in order to use the local-only calculation. Further, a Tennessee official commented that it would be helpful if Education could assist in identifying ways to track local funds when state and local funds are separated. More information sharing across states could be helpful, as well: In Texas, where the state system also does not separate state and local expenditures, the state educational agency had recently developed a way for districts to impute their local only expenditures using a newly created state tool, which could potentially benefit other states.
- **Use of exceptions.** Similarly, the ability to use exceptions could also be important to districts facing challenges in meeting MOE, because these provisions may enable districts to reduce their expenditures and still meet the MOE requirement. However, we found that some state officials had questions about how to implement these provisions. For instance, a Rhode Island state official commented to Education’s 2013 NPRM that more guidance for determining the dollar threshold for an “exceptionally costly” program is needed. Another state official from Colorado asked for additional guidance on the exception for “termination of costly expenditures for long-term purchases.” Also, an official from Louisiana who responded to our state survey said examples of allowable exceptions would be helpful. The lack of clarity of how exceptions should be applied was further evidenced in the states we visited, where we found states used different criteria for applying certain exceptions (see table 3). In its 2013 NPRM,

⁶⁵ Of the 19 states, 14 replied that they did not use the total local expenditures calculations, and 17 replied that they did not use the per capita local expenditures to determine MOE. In our survey of states, we asked if the state, or school districts in the state, routinely calculate MOE using each of the four allowable methods of calculation. We did not ask states if they make all four calculations available.

Education acknowledged that some states were not applying the exceptions correctly or were not applying them at all.⁶⁶

Table 3: Variations in How Selected States Apply Criteria for Certain Exceptions to the MOE Requirement

Exception to the maintenance of effort (MOE) requirement	Various criteria used in different states
Voluntary departure of personnel	In one state, a district may use this exception if a staff person leaves the special education program but remains in the district in another position In another state, a district may use this exception only if a departing staff person has left the district.
Decreased enrollment	In one state, a district may use this exception if a student with disabilities who required special services leaves the district, based on the cost of services for that specific child. In another state, a district may use this exception when it has a decrease in enrollment; the state automatically reduces the amount the district must spend by the same percentage decrease the district experienced in enrollment.
Exceptionally costly program	In one state, no expenditure threshold for use of this exception has been set. In another state, as of fiscal year 2014, the expenditure threshold for use of this exception was set at the district's average cost for special education services; formerly, the threshold was set at \$35,000. In yet another state, the expenditure threshold for use of this exception is set at 20 percent greater than a district's average cost for providing special education and related services.

Source: GAO interviews and state MOE guidance documents. | GAO-16-2

At the time of our review, Education officials told us that they had not yet identified specific areas of focus for CIFR's technical assistance and information sharing regarding fiscal issues; however, CIFR was in the process of soliciting input from the states to help identify key areas of concern.

⁶⁶ 78 Fed. Reg. 57,324, 57,326 (Sept. 18, 2013). Education did not address these concerns in its April 2015 final regulations, noting that they went beyond the scope of the proposed rule. 80 Fed. Reg. 23,644, 23,645 (Apr. 28, 2015). However, Education told us that it intends to issue future guidance related to the local MOE requirement but did not specify plans or a timeframe for doing so.

Conclusions

Across the federal government, MOE requirements are important mechanisms for helping to ensure that federal spending achieves its purpose. The local MOE requirement under IDEA is intended to safeguard local financial support for educating the over 6 million children in the United States who require special education services. Meeting MOE generally is not a problem for districts when state and local economies and tax revenues are strong and when districts experience increases in the numbers of students with disabilities. But when state and local economies falter as they did during the 2008 recession, or when districts experience declines in numbers of students with disabilities, as has been the trend recently, meeting the local MOE requirement can become a challenge. Most states reported that at least some districts faced challenges in meeting the requirement, despite exceptions intended to help in such situations. Current exceptions do not address the key challenges that districts face, including factors that are outside of their control and that do not affect the level of services provided to students with disabilities. In these situations, it is unclear whether funds spent on special education to comply with MOE result in enhanced services for students with disabilities.

Further, the MOE requirement's lack of flexibility can lead to unintended consequences that affect services for students with disabilities. IDEA's 100 percent MOE requirement is stricter than the 90 percent MOE requirements mandated for other K-12 education programs. Our previous work has shown that such rigidity can discourage program expansion and innovation, and we found examples of this within the IDEA program. We also found that such rigidity resulted in reductions in general education services that benefit all students—including students with disabilities, a large and increasing number of whom are served for much of their day in general education classrooms. A less rigid MOE requirement would allow districts more latitude to adjust their spending at the margins—focused on providing the best services to address the most pressing needs of students with disabilities—while mitigating the effects of unintended consequences.

Education's lack of timely monitoring feedback has hampered some states' efforts to facilitate school district compliance with MOE—a key requirement of the law. Although Education completed its fiscal monitoring reviews in 2012, 3 years later nearly half the states are still waiting for feedback on their monitoring results. In addition, some districts may be failing to meet MOE because limitations to their state financial systems do not allow them to use all four MOE calculations, as provided for in Education's regulations. Because these various ways of calculating

MOE are intended to provide districts with the ability to calculate MOE based on local circumstances, the ability to create workarounds to use these calculations could be the difference between a district meeting MOE or not. Providing more technical assistance and facilitating more information-sharing among states and districts could help them navigate the complexities of the local MOE requirement and avoid the detrimental effects of noncompliance.

Matter for Congressional Consideration

To help districts address key challenges in meeting MOE and mitigate unintended consequences that may affect services for students with disabilities, while preserving the safeguard for funding for students with disabilities, Congress should consider options for a more flexible MOE requirement. This could include adopting a less stringent MOE requirement to align with the MOE requirements in other education programs or adding to or modifying exceptions. For example, current exceptions could be changed to allow one-time increases in spending without changing a district's MOE baseline in order to encourage pilot innovations or to allow certain spending decreases (e.g., state caps on teacher benefits), as long as a district can demonstrate the decrease does not negatively affect services.

Recommendations

To strengthen states' monitoring and facilitate local MOE compliance, the Secretary of Education should

- establish and document set timeframes for providing prompt feedback to states on findings from its next cycle of IDEA fiscal monitoring; and
- prioritize technical assistance and information sharing across states on ways to facilitate local MOE compliance with respect to the use of the four calculation methods and the exceptions.

Agency Comments and Our Evaluation

We provided a draft copy of this report to the Department of Education for review and comment. Education's comments are reproduced in appendix VII. Education also provided technical comments, which we incorporated into our report where appropriate. (In addition, we provided officials from the state educational agencies we reviewed with portions of the draft report that included information specific to their states. We incorporated their technical comments where appropriate.)

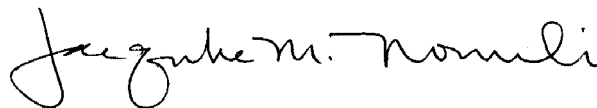
In its comments, Education agreed with both of our recommendations. Regarding our recommendation to establish timeframes for providing prompt feedback to states on findings from its next cycle of IDEA fiscal

monitoring, Education stated that in its new system of monitoring it will include timelines for providing prompt feedback on monitoring results, including findings and corrective actions. Regarding our recommendation to prioritize technical assistance and information sharing across states on ways to facilitate local MOE compliance with respect to the use of the four calculations methods and the exceptions, Education stated it is currently working on a set of questions and answers that will place particular emphasis on the allowable exceptions, as well as calculation issues.

Education also commented on the importance of the MOE requirement as a safeguard designed to protect funding for students with disabilities. While acknowledging the challenges that meeting the local MOE requirement presents during difficult economic times, Education noted that the requirement also provides a crucial protection that helps ensure students with disabilities continue to receive a free appropriate public education. We agree; as stated in our report, we believe the requirement is an important mechanism intended to safeguard local financial support for educating the over 6 million children in the United States who require special education services. Nevertheless, we believe there are opportunities to reduce the rigidity of the requirement while continuing to preserve MOE as a safeguard of funding for students with disabilities.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Education, and other interested parties. In addition, the report will be available at no charge on GAO's web site at <http://www.gao.gov>.

If you or your staff should have any questions about this report, please contact me at (617) 788-0580 or nowickij@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix VIII.



Jacqueline M. Nowicki
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Appendix I: Survey of States on Local Maintenance of Effort Requirement

State Survey Methodology

To obtain information on efforts to meet the local maintenance of effort (MOE) requirement under the Individuals with Disabilities Education Act (IDEA),¹ we designed and administered a web-based survey of state special education directors in all 50 states and the District of Columbia. The survey included questions about the extent to which school districts (referred to by law and in the survey as local educational agencies—LEA) in the state met the local MOE requirement in the 2012-13 school year, state perspectives on challenges their school districts face in meeting the MOE requirement, procedures used by state educational agencies (SEA) for monitoring compliance with the requirement, and the state and federal role in assisting school districts in complying with the requirement.² The survey was in the field from January to March 2015. We received responses from the District of Columbia and all states, except Hawaii (which we determined was outside our scope),³ for a response rate of 100 percent. To obtain the maximum number of responses to our survey, we sent three reminder emails to non-respondents and contacted the remaining non-respondents over the telephone.

We took steps to minimize non-sampling errors, including pretesting draft instruments and using a web-based administration system. During survey development, we pretested the draft instrument with five state special education directors from October through November 2014. In the pretests, we were interested in the clarity of the questions and the flow and layout of the surveys. Based on feedback from the pretests, we made minimal revisions to the survey instrument. As an additional step to minimize non-sampling errors, we used a web-based survey. By allowing respondents to enter their responses directly into an electronic instrument, this method automatically created a record for each respondent in a data file and eliminated the errors associated with a

¹ IDEA also prohibits states from reducing their special education spending from year to year. 20 U.S.C. §1412(a)(18).

² We use the term school district throughout this report to mean local educational agencies.

³ We determined that Hawaii was out of the scope of our survey because Hawaii functions as a single school district, responsible for providing a free appropriate public education to children with disabilities, and according to the Department of Education's (Education) regulations, this exempts Hawaii from the local MOE requirement under IDEA. Under the department's regulations, a state educational agency that provides a free appropriate education to children with disabilities is not required to meet the local MOE requirements. 34 C.F.R. § 300.175.

manual data entry process. We also checked the accuracy of our work by independently verifying programs used to analyze the survey data and make estimations. Lastly, after we closed the survey, we contacted respondents in some states to conduct follow-up interviews in order to clarify their responses and gather further information.

State Survey Results

The questions we asked in our survey of state special education directors are shown below. Our survey was comprised of closed- and open-ended questions. In this appendix, we include all the survey questions and aggregate results of responses to the closed-ended questions; we do not provide information on responses provided to the open-ended questions. All survey respondents did not always respond to each individual survey question; therefore, the total responses for each question do not always add up to the number of total survey respondents.

1. Has funding from state sources for *K-12 education* for each of the years listed below decreased, remained about the same, or increased compared with the previous school year?

	Decreased by 10% or more	Decreased by less than 10%	Remained the same	Increased by less than 10%	Increased by 10% or more	Don't know	Total responses
a. 2012-13 school year	1	4	8	35	-	2	50
b. 2013-14 school year	-	2	4	40	3	1	50
c. 2014-15 school year	-	2	4	38	1	4	49

2. Has funding from state sources for *special education* for each of the years listed below decreased, remained about the same, or increased compared with the previous school year?

	Decreased by 10% or more	Decreased by less than 10%	Remained the same	Increased by less than 10%	Increased by 10% or more	Don't know	Total responses
a. 2012-13 school year	-	1	17	27	3	2	50
b. 2013-14 school year	-	5	11	28	5	1	50
c. 2014-15 school year	-	2	9	31	3	5	50

3. What was the total number of local educational agencies (LEAs) in your state that were subject to the LEA maintenance of effort (MOE) requirement for the 2012-2013 school year?

Mean	Minimum	Maximum	Total responses
301.26	17	1337	50

**Appendix I: Survey of States on Local
Maintenance of Effort Requirement**

4. What was the number of LEAs in your state that did not meet MOE for the 2012-2013 school year?

Mean	Minimum	Maximum	Total responses
1.98	0	34	47

5. For the 2012-2013 school year, about how many LEAs in your state fell into each of the following categories?

	None	A few	Less than half	About half	More than half	Most	All	Data not collected	Don't know	Total responses
a. Met MOE using one or more of the five exceptions allowed under 34 C.F.R. § 300.204	1	30	11	1	1	1	-	3	1	49
b. Met MOE using the funding adjustment allowed under 34 C.F.R. § 300.205	29	12	1	1	-	-	-	4	1	48
c. Met MOE using both exception(s) and adjustment	32	9	-	1	-	-	-	4	2	48
d. Met MOE without using exception(s) or adjustment	1	-	3	-	8	30	2	4	1	49

**Appendix I: Survey of States on Local
Maintenance of Effort Requirement**

6. During the 2012-2013 school year, about how many LEAs in your state used the following exceptions or a funding adjustment to meet the MOE requirement or lessen the shortfall if not meeting the MOE requirement? (Please answer based on exceptions or funding adjustments actually used by your LEAs rather than whether they were eligible for the exception or adjustment.)

	None	A few	Less than half	About half	More than half	Most	All	Data not collected	Don't know	Total responses
a. Voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel	3	28	5	1	2	4	-	3	2	48
b. Decrease in enrollment of children with disabilities	6	25	8	3	1	-	-	3	2	48
c. Termination of an obligation to provide an exceptionally costly program of special education to a particular child	8	29	6	-	-	-	-	3	2	48
d. Termination of costly expenditures for long-term purchases (e.g., acquisition of equipment or construction of school facilities)	29	13	1	-	-	-	-	3	2	48
e. Assumption of cost by the high cost fund operated by the SEA under 34 C.F.R. § 300.704(c) (If your state did not operate a high cost fund, please indicate "None".)	36	6	1	-	-	-	-	3	2	48
f. Funding adjustment to reduce local MOE expenditures by up to 50 percent of the increase in the LEA's subgrant allocation over that of the previous year	31	9	1	1	1	-	-	4	1	48

7. Whether or not they ultimately met MOE, about how many LEAs in your state would you estimate have faced and/or may face challenges in meeting the MOE requirement in the following school years?

	None	A few	Less than half	About half	More than half	Most	All	Don't know	Total responses
a. In 2012-13 school year	4	25	11	3	1	4	-	2	50
b. In 2013-14 school year	5	26	8	4	1	4	-	2	50
c. Anticipate challenges for 2014-15 school year	4	25	9	7	-	3	-	2	50

8. LEAs might experience challenges in meeting the MOE requirement for several possible reasons. Based on your general sense of your LEAs' experiences, were any of the following main reasons why LEAs in your state experienced challenges meeting the MOE requirement?

	Yes	No	Don't know	Total responses
a. State policy changes to teacher or staff salary or benefits	11	30	6	47
b. Local actions to increase efficiencies in administrative functions	29	8	10	47
c. Local actions to increase efficiencies in the provision of direct services to children with disabilities	33	4	10	47
d. Reductions in the state contribution to local funding of special education	10	33	4	47
e. Reductions in state funding of general K-12 education	13	29	5	47
f. Decline in local revenue	27	12	8	47
g. LEA does not have authority to raise own revenue	14	21	12	47
h. Other	7	9	22	38

9. Did the main reasons why LEAs in your state experienced challenges meeting the MOE requirement vary by school year?

Yes, varied	No, stayed the same	Don't know	Total responses
11	28	8	47

10. In your state, does your state agency (or the LEAs) routinely calculate the LEAs' MOE using each of the following calculations?

	Yes	No	Don't know	Total Responses
a. Total local expenditures	35	14	1	50
b. Total local and state expenditures	48	2	-	50
c. Per capita local expenditures	32	17	-	49
d. Per capita local and state expenditures	44	5	-	49

11. What comments do you have about why LEAs in your state might not use certain allowable calculations? Open-ended

12. Does your state routinely monitor MOE compliance in the following ways for all, a subgroup, or none of the LEAs in your state?

	All	Subgroup	None	Don't know	Total responses
a. State determines whether LEAs met MOE for at least one of the four allowable calculations, based on expenditure data provided by the LEA (e.g., state provides MOE calculator that LEAs populate)	46	1	2	-	49
b. State reviews LEAs' independent audit reports	31	9	9	1	50
c. State periodically throughout the year monitors whether districts are on track to meet MOE	10	5	35	-	50
d. State reviews LEA documentation to verify eligibility for any exceptions or funding adjustment used	35	13	2	-	50
e. State approves LEA use of exceptions or funding adjustments	41	6	2	-	49
f. State reviews LEA budget compared to prior year's spending to determine eligibility for IDEA, Part B funding	44	1	5	-	50
g. Other	3	1	10	12	26

13. What additional comments do you have about how your state monitors LEA compliance? Open-ended

14. Does your state routinely assist LEAs in complying with the MOE requirement in any of the following ways?

	Yes	No	Don't know	Total responses
a. Provide general guidance documents (e.g., manuals, Q&A)	48	2	-	50
b. Provide web tools to track and calculate MOE (e.g., worksheets, calculators)	35	15	-	50
c. Offer training for LEA staff	46	4	-	50
d. Offer technical assistance	49	-	-	49
e. Contact U.S. Department of Education for clarification of LEA MOE requirements	28	20	1	49
f. Other	8	7	13	28

15. With respect to your state's efforts to assist LEAs in complying with the MOE requirement, how useful are the following resources provided by the U.S. Department of Education?

	Extremely useful	Very useful	Moderately useful	Somewhat Useful	Not at all useful	Resource not used	Resource not provided/ Don't know	Total responses
a. Regulations including preamble, comments, and discussion	4	17	13	13	3	-	-	50
b. Policy or Dear Colleague letters	7	18	11	10	2	2	-	50
c. Monitoring protocols (e.g. Critical Elements Analysis Guide (CrEAG) and ARRA Monitoring Inventory)	5	9	12	11	6	6	1	50
d. Other guidance documents available on U.S. Department of Education website	3	9	14	14	3	5	2	50
e. Technical assistance	9	10	8	9	4	8	2	50
f. Other	1	-	-	-	-	5	23	29

16. What other resources (not directly from the U.S. Department of Education), if any, has your state relied on for monitoring or assisting LEAs with MOE compliance?

Open-ended

17. What additional resources, if any, from the U.S. Department of Education would your state find useful for monitoring or assisting LEAs with MOE compliance?

Open-ended

18. Do you have any other suggestions for potential changes that could be made at the federal level related to the LEA MOE requirement under IDEA?

Open-ended

Appendix II: Survey of School Districts' on Local Maintenance of Effort Requirement

District Survey Methodology

To obtain information on efforts to meet the local MOE requirement under IDEA, we conducted a web-based follow-up survey of school districts (referred to by law and in the survey as local educational agencies—LEA) that had indicated previously that they anticipated having trouble meeting the MOE requirement in future years.¹ Specifically, we sent a follow-up survey to the superintendents of the 103 school districts that had indicated in a 2011 GAO survey on the use of Recovery Act funds that they anticipated they would have trouble meeting the MOE requirement in the 2011-12 school year.² Our 2015 follow-up survey included questions about whether school districts met the MOE requirement in 2011-12, 2012-13, and 2013-14, as well as their perspectives on challenges, effects on services, and the roles of SEAs and Education in assisting school districts in complying with the requirement. The survey was conducted from January through March 2015. We received responses from 87 school districts, for a response rate of 84 percent. To obtain the maximum number of responses to our survey, we sent three reminder emails to non-respondents and contacted the remaining non-respondents by telephone.

As with our state survey, we took steps to minimize non-sampling errors, including pretesting the draft instrument and using a web-based administration system. During survey development, we pretested draft instrument with officials in four school district in November 2014. In the pretests, we were interested in the clarity of the questions and the flow and layout of the survey. Based on feedback from the pretests, we made minimal revisions to the survey instrument. As an additional step to minimize non-sampling errors, we used a web-based survey. By allowing respondents to enter their responses directly into an electronic instrument, this method automatically created a record for each respondent in a data file and eliminated the errors associated with a manual data entry process. We also checked the accuracy of our work by

¹ We use the term school district throughout this report to mean LEAs.

² *Recovery Act Education Programs: Funding Retained Teachers, but Education Could More Consistently Communicate Stabilization Monitoring Issues*, [GAO-11-804](#) (Washington, D.C.: Sept. 22, 2011). The survey for this report was sent to a stratified random sample of 688 LEAs that GAO selected from the population of 15,994 LEAs based on data obtained from Education's Common Core of Data in 2008-09, and the results of the survey were generalizable nationwide. In response to this survey, a total of 104 school districts (24 percent) said they anticipated trouble meeting MOE in 2011-12. However, as of our 2015 follow-up survey, one of those school districts had since closed.

independently verifying programs used to analyze the survey data and make estimations.

District Survey Results

The questions we asked in our survey of school districts are shown below. Our survey was comprised of closed- and open-ended questions. In this appendix, we include all the survey questions and aggregate results of responses to the closed-ended questions; we do not provide information on responses provided to the open-ended questions. All survey respondents did not always respond to each individual survey question and, in some cases, the survey asked respondents to skip a question based on their response to the prior question; therefore, the total responses for each question do not always add up to the number of total survey respondents.

1. In our 2011 survey, your LEA indicated it thought it may have trouble meeting the MOE requirement in the future. Was your LEA able to meet the MOE requirement in the following school years?

	Met MOE	Did not meet MOE	Don't know	Total responses
a. 2011-12	77	4	5	86
b. 2012-13	79	3	4	86
c. 2013-14	74	2	10	86

If you indicated that your LEA met MOE in ALL of the years in question 1, please skip to question 3. Otherwise, continue to question 2.

2. For school years when your LEA did not meet MOE, did any of the following contribute to your LEA not meeting the MOE requirement?

	Yes	No	Don't know	Total Responses
a. State policy changes to teacher or staff salary or benefits	2	5	-	7
b. Local actions to increase efficiencies in administrative functions	2	5	-	7
c. Local actions to increase efficiencies in the provision of direct services to children with disabilities	1	6	-	7
d. Reductions in the state contribution to your district's local funding of special education	2	5	-	7
e. Reductions in state funding of general K-12 education	2	4	-	6
f. Decline in local revenue	1	5	1	7
g. LEA does not have authority to raise its own revenue	3	4	-	7
h. Other	2	3	2	7

If you indicated that your LEA did not meet MOE in ALL of the years in question 1, please skip to question 6. Otherwise, continue to question 3.

**Appendix II: Survey of School Districts' on
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3. For the school years when your LEA met MOE, was it a challenge or not a challenge to meet the MOE requirement?

	Challenge	Not a challenge	Not applicable	Don't know	Total responses
a. 2011-12	35	42	2	4	83
b. 2012-13	36	40	3	4	83
c. 2013-14	34	39	3	6	82

If you indicated that it was not a challenge to meet MOE in ALL of the years in question 3, please skip to question 6. Otherwise, continue to question 4.

4. For the school years when your LEA met MOE but found it challenging, did your LEA find it challenging for any of the following reasons?

	Yes	No	Don't know	Total Responses
a. State policy changes to teacher or staff salary or benefits	13	27	-	40
b. Local actions to increase efficiencies in administrative functions	12	27	-	39
c. Local actions to increase efficiencies in the provision of direct services to children with disabilities	16	23	1	40
d. Reductions in the state contribution to your district's local funding of special education	25	16	-	41
e. Reductions in state funding of general K-12 education	31	9	1	41
f. Decline in local revenue	25	14	-	39
g. LEA does not have authority to raise its own revenue	13	23	2	38
h. Other	7	19	3	29

5. Did the reasons that your LEA experienced challenges meeting the MOE requirement vary by school year?

Yes, varied	No, stayed the same	Don't know	Total responses
10	31	1	42

6. Do you have any other comments on factors that may have affected your LEA's ability to meet the MOE requirement?

Open-ended

7. Did your LEA use an exception or funding adjustment provided by law to help meet the MOE requirement in any of the following school years?

	Yes	No	Don't know	Total responses
a. 2011-12	8	69	7	84
b. 2012-13	9	71	4	84
c. 2013-14	8	65	11	84

**Appendix II: Survey of School Districts' on
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7ABC. In the [specified] school year, did your LEA use any of the following exceptions or a funding adjustment?

	Yes	No	Don't know	Total responses
a. Voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel				
2011-2012	3	3	1	7
2012-2013	4	3	1	8
2013-2014	5	2	1	8
b. Decrease in enrollment of children with disabilities				
2011-2012	4	4	-	8
2012-2013	3	6	-	9
2013-2014	1	6	-	7
c. Termination of an obligation to provide an exceptionally costly program of special education to a particular child				
2011-2012	3	4	-	7
2012-2013	1	7	-	8
2013-2014	-	6	-	6
d. Termination of costly expenditures for long-term purchases (e.g., acquisition of equipment or construction of school facilities)				
2011-2012	1	6	-	7
2012-2013	1	7	-	8
2013-2014	2	4	-	6
e. Assumption of cost by the high cost fund operated by the SEA under 34 C.F.R. § 300.704(c)				
2011-2012	1	4	1	6
2012-2013	1	7	-	8
2013-2014	1	4	-	5
f. Funding adjustment to reduce local MOE expenditures by up to 50 percent of the increase in the LEA's subgrant allocation over that of the previous year				
2011-2012	1	6	-	7
2012-2013	2	6	-	8
2013-2014	3	2	-	5

8. For any of the following school years, did your LEA reduce general education spending?

	Yes	No	Don't know	Total responses
a. 2011-12	38	45	3	86
b. 2012-13	31	53	2	86
c. 2013-14	28	55	2	85

If you indicated that your LEA did not reduce general education spending in ALL of the years in question 8, please skip to question 11. Otherwise, continue to question 9.

**Appendix II: Survey of School Districts' on
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9. For the school years when your LEA reduced general education spending, were the reductions for any of the following positions or activities?

	Yes	No	Don't know	Total responses
a. Teaching or instructional support staff	39	3	-	42
b. Administrative or other support staff	37	6	-	43
c. Instructional materials and technology	30	8	2	40
d. Professional development	21	17	2	40
e. Facilities maintenance	23	14	2	39
f. Planned long-term projects (e.g. construction)	16	18	5	39
g. Extracurricular activities	19	18	3	40
h. Summer school	13	25	2	40
i. Other	2	18	7	27

10. For any of the following school years, was the IDEA MOE the main reason, one of several reasons, or not a reason for the reduction in general education spending?

	Main reason	One of several reasons	Not a reason	Total responses
a. 2011-12	-	21	16	37
b. 2012-13	-	17	13	30
c. 2013-14	1	15	11	27

11. In general, has the IDEA MOE requirement (i.e., prohibiting the reduction of local spending on special education) had a positive effect, no effect, or negative effect on services overall for students with and without disabilities?

	Very positive	Somewhat positive	No effect	Somewhat negative	Very negative	Don't know	Total responses
a. Students with disabilities	6	21	33	15	5	7	87
b. Students without disabilities	3	7	30	26	11	10	87

12. Do you have any additional comments about why or how the IDEA MOE requirement affected services for students with and without disabilities?

Open-ended

13. Did your LEA use a funding adjustment under IDEA during any of the following school years? (Section 613(a)(2)(C) of IDEA (20 U.S.C. § 1413(a)(2)(C)) allows certain LEAs to reduce local MOE expenditures by up to 50 percent of the increase in the LEA's subgrant allocation over that of the previous year.)

	Yes	No	Don't know	Total responses
a. 2011-12	2	79	6	87
b. 2012-13	4	78	5	87
c. 2013-14	2	76	9	87

If you indicated that your LEA did not use a funding adjustment in ALL of the years in question 13, please skip to question 16. Otherwise, continue to question 14.

14. For the school years when your LEA used a funding adjustment, did it have a positive effect, no effect, or negative effect on services overall for students with and without disabilities?

	Very positive	Somewhat positive	No effect	Somewhat negative	Very negative	Don't know	Total responses
a. Students with disabilities	-	-	5	-	1	2	8
b. Students without disabilities	-	2	3	-	1	2	8

15. Do you have any additional comments about why or how your LEA's use of a funding adjustment affected services for students with and without disabilities? Open-ended

16. How comfortable are you with the level of understanding of the MOE requirements within your LEA?

Very comfortable	Comfortable	Neither comfortable nor uncomfortable	Uncomfortable	Very uncomfortable	Don't know	Total responses
22	31	23	10	1	-	87

**Appendix II: Survey of School Districts' on
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17. How useful are the following resources provided by the SEA in assisting your LEA to comply with the MOE requirement?

	Extremely useful	Very useful	Moderately useful	Somewhat useful	Not at all useful	Resource not used	Resource not provide/ Don't know	Total responses
a. General guidance documents (e.g., manuals, Q&A)	4	19	17	32	4	3	8	87
b. Web tools to track and calculate MOE (e.g., worksheets, calculators)	6	20	14	16	6	9	16	87
c. Training for LEA staff	6	6	14	27	5	11	18	87
d. Technical assistance (e.g., SEA staff or contractors available to answer questions)	7	13	17	24	5	11	10	87
e. Other	1	2	2	1	-	13	28	47

18. What additional resources, if any, from the SEA would you find useful in assisting your LEA to comply with the MOE requirement? Open-ended

19. Has your LEA accessed any resources directly from the U.S. Department of Education in its efforts to comply with the MOE requirement?

Yes	No	Don't know	Total responses
9	61	17	87

19A. What U.S. Department of Education resource(s) has your LEA used and how useful have these resources been in assisting your LEA in complying with the MOE requirement? Open-ended

20. Do you have any suggestions for potential changes that could be made at the federal level related to the MOE requirement under IDEA? Open-ended

Appendix III: Profiles of States Selected for In-Depth MOE Data Analysis

Table 4: Profiles of States for In-Depth MOE Data Analysis and Interviews

	Alabama	Arizona	Michigan ^a	Texas ^a	Virginia ^a	United States
Number of school districts subject to the local MOE requirement, school year 2012-13	135	575	554	1,229	132	295 ^b
Student population characteristics						
Number of public elementary and secondary school students enrolled, school year 2012-13	744,637	1,089,384	1,555,370	5,077,659	1,265,419	975,904 ^b
Percentage of students eligible for free/reduced-price lunch, 2012-13	58.0	51.9	47.9	60.3	39.5	51.3
Percentage of students served under IDEA, Part B, 2012-13	10.7	11.8	13.1	8.7	12.8	12.9
Funding characteristics						
Federal IDEA Part B section 611 allocation, FY 2012						
• Per pupil (in thousands)	2,266	1,479	1,905	2,231	1,747	1,766
• Percent change, FY 2011-12	0.04	0.01	0.05	0.01	0.02	0.01
State and local revenue for public elementary and secondary education, FY 2012 ^c						
• Per pupil	8,409	7,341	10,626	8,644	10,576	10,917
• Percent change, FY 2011-12	0.6	-5.9	-2.2	-3.4	-1.2	-0.8
Current expenditures for public elementary and secondary education, FY 2012 ^c						
• Per pupil	8,577	7,382	10,477	8,213	10,656	10,667
• Percent change, FY 2011-12	-4.5	-7.8	-3.8	-8.1	-0.1	-2.8

Source: GAO state survey data on the number of school districts; U.S. Department of Education, National Center for Education Statistics, Common Core of Data; and GAO analysis of federal IDEA Part B section 611 allocations from the U.S. Department of Education's Office of Special Education Programs. | GAO-16-2

^aDenotes state selected for district interviews.

^bDenotes the national average for the 50 states and Washington, D.C.

^cMost recent data available.

Appendix IV: Analysis of School District Characteristics

To determine the characteristics of districts meeting, not meeting, and facing challenges meeting MOE, we analyzed data from the Department of Education’s Common Core of Data (CCD). This data set is comprised of fiscal and non-fiscal data collected annually about all public schools, public school districts, and state educational agencies in the United States. The CCD data elements and years we used for each part of our analysis are summarized in table 5. To assess the reliability of the CCD data elements used for our analysis, we reviewed existing documentation about the data system from the National Center for Education Statistics and conducted electronic testing. In a few cases where a district’s variable values were illogical, we changed the values or set them to missing for purposes of our analysis.¹

Table 5: Common Core of Data Elements Used in Characteristics Analysis, and Years

Data element description (variable name)	Year used in analysis of 2011 survey districts	Year used in analysis of 2015 follow-up survey districts	Year used in analysis of five states’ districts
Elements from the Local Education Agency Universe Survey			
Total enrollment (MEMBER)	2010-11	2012-13	2012-13
Percentage change	2009-10 to 2010-11	2010-11 to 2011-12 2011-12 to 2012-13	2010-11 to 2011-12 2011-12 to 2012-13
Students with IEPs (SPECED)	2010-11	2012-13	2012-13
Percentage change	2009-10 to 2010-11	2010-11 to 2011-12 2011-12 to 2012-13	2010-11 to 2011-12 2011-12 to 2012-13
Urban/ rural designation (ULOCAL)	2010-11	2012-13	2012-13
From the Public Elementary/ Secondary School Universe Survey			
Students eligible for free or reduced price lunch (TOTFRL)	2010-11	2012-13	2012-13
From the School District Finance Survey			
Total local revenue (TLOCREV)	2010-11	2011-12 ^a	2011-12
Percentage change	2009-10 to 2010-11 2007-08 to 2010-11 ^b	2010-11 to 2011-12	2010-11 to 2011-12

¹ Specifically, in one case the number of students with IEPs reported for a district was higher than the total enrollment reported for the district, and we set the number of students with IEPs to equal the total enrollment. In a second case, the reported number of students with IEPs was negative and we treated the value as missing. Lastly, for five districts that reported over a 1,000 percent change in local revenues we also treated the values in question as missing.

Data element description (variable name)	Year used in analysis of 2011 survey districts	Year used in analysis of 2015 follow-up survey districts	Year used in analysis of five states' districts
Local revenue from property taxes (T06)	2010-11	2011-12	2011-12
Percentage change	2009-10 to 2010-11 2007-08 to 2010-11 ^b	2010-11 to 2011-12	2010-11 to 2011-12
Total revenues (TOTALREV)	2010-11	2011-12	2011-12
Total expenditures (TOTALEXP)	2010-11	2011-12	2011-12
Total current expenditures for elementary and secondary education (TCURELSC)	2010-11	2011-12	2011-12

Source: GAO analysis and U.S. Department of Education, Common Core of Data documentation. | GAO-16-2

Note: IEP = individualized education program.

^aMost recent year of data available.

^bFor 2011 survey districts, we calculated the percentage change in local revenue from 2007-08 to 2010-11, adjusting for inflation using the gross domestic product price index.

We linked the CCD data to three different sources of information on district experiences with MOE. The methodology and results of each of these analyses are described below.

1. GAO's 2011 survey of school districts.² To examine the characteristics of districts facing challenges and not facing challenges meeting MOE, we linked the CCD data to responses to the question on GAO's 2011 survey of school districts that asked, "Do you currently anticipate your LEA [local educational agency] having trouble meeting the IDEA Maintenance of Effort (MOE) requirement for 2011-12?" This survey was sent to a nationally generalizable sample of school districts, which means that the results of our analysis are generalizable to the total population of school districts in 2011.³ For our characteristic analysis of 2011 survey respondents, we primarily used CCD data from the 2010-11 school year, which described district

² See GAO, *Recovery Act Education Programs: Funding Retained Teachers, but Education Could More Consistently Communicate Stabilization Monitoring Issues*, [GAO-11-804](#) (Washington, D.C.: Sept. 22, 2011). GAO fielded this survey from March to May 2011. The weighted response rate to the survey was 78 percent. From these survey responses, we estimated that 24 percent of districts anticipated having trouble meeting the MOE requirement for 2011-12, with a margin of error of 5 percent.

³ For our analysis linked to districts' 2011 survey responses, we calculated 95 percent confidence intervals and ran t-tests to determine whether differences were statistically significant at an alpha level of 0.05.

characteristics in the year of the survey. See table 6 below for the findings of this analysis.

Table 6: Characteristics of Districts That Did and Did Not Anticipate Having Trouble Meeting the Maintenance of Effort Requirement for 2011-12

Characteristic	Districts anticipating trouble meeting MOE		Districts not anticipating trouble meeting MOE		Statistically significant difference?*
	Estimate	Margin of error (+/-)	Estimate	Margin of error (+/-)	
Percent urban	7.4	3.8	17.0	3.0	Yes
Percent rural	57.8	11.1	41.0	6.5	Yes
Averages in 2010-11					
Total enrollment	3,186	1,328	3,264	553	No
Percent of students with IEPs	16.9	2.8	14.7	1.7	No
Percent of students eligible for free or reduced price lunch	46.0	4.9	45.5	3.6	No
Total expenditures per student	\$18,539	\$6,412	\$13,402	\$1,180	No
Total local revenue	\$14,785,949	\$4,125,552	\$19,079,612	\$3,666,248	No
Property tax revenue	\$12,182,973	\$3,589,190	\$16,018,153	\$4,109,639	No
Average percentage change from 2009-10 to 2010-11					
Total enrollment	-2.4	1.9	1.5	2.8	Yes
Number of students with IEPs	-2.2	2.4	1.1	3.0	No
Total local revenue	7.7	7.5	49.1	64.5	No
Property tax revenue	6.2	5.7	6.5	2.8	No
Average percentage change from 2007-08 to 2010-11 (adjusted for inflation)					
Total local revenue	4.0	7.5	59.2	55.5	No
Property tax revenue	11.1	7.5	7.3	3.6	No

Source: GAO analysis of 2011 district survey responses and data from the U.S. Department of Education Common Core of Data. | GAO-16-2

* Significance tested using alpha of 0.05.

- 2. GAO's 2015 follow-up survey of a subset of school districts.**⁴ To examine the characteristics of a subset of districts both meeting and not meeting, as well as facing challenges and not facing challenges meeting MOE, we linked the CCD data to responses to our 2015 follow-up survey of those school districts that anticipated having trouble meeting MOE for 2011-12. For our characteristics analysis of our follow-up survey respondents, we primarily used the most recent CCD data available at the time.

In comparing the districts responding to our survey that they met MOE with those responding that they did not, we found some differences in the average characteristics between these two groups but did not report on these differences because the small size of the not-meeting group (7 districts) made it unlikely that these differences were meaningful. In comparing the districts responding to our survey that meeting MOE had been a challenge with those responding that it had not been a challenge, the largest differences were in total enrollment, change in total enrollment and number of students with IEPs from the prior year, and change in local revenue from the prior year. However, the results of this analysis reflect only the characteristics of those districts that responded to the follow-up survey and are not generalizable to the total population of school districts in either 2011 or 2015.

- 3. Five states' MOE data for all their districts.** To examine the characteristics of districts meeting and not meeting MOE in the five states that provided us with detailed MOE data on all their districts statewide (Alabama, Arizona, Michigan, Texas, and Virginia), we linked the CCD data to information provided to us by these five states on their school districts' MOE status for school years 2011-12 and 2012-13. For our characteristics analysis of the districts in our five selected states, we primarily used CCD data from the years corresponding to their MOE data. To assess the reliability of state MOE data, we interviewed state officials and reviewed the data for logical inconsistencies. In two cases, states submitted revised MOE data based on our follow-up questions. Although we could not verify that all state MOE data were completely accurate, we determined that these data were sufficiently reliable for our purposes, which were to examine the general extent of districts meeting and not meeting MOE and their use of the exceptions and funding adjustment.

⁴ See app. II for more details about our methodology for conducting the 2015 follow-up survey.

The results of this analysis reflect only the characteristics of the districts in these five states and are not generalizable to the total population of school districts. In addition, because so few districts did not meet MOE in these states, we could not identify meaningful differences between districts that did and did not meet, and patterns in the characteristics of districts not meeting MOE were inconsistent.

Appendix V: Shortfall Amounts in Districts Failing to Meet Local MOE Requirement

When a school district fails to meet MOE, the state is liable to return to the Department of Education—using non-federal funds—an amount equal to the district’s shortfall amount or its IDEA grant, whichever is lower.¹ According to Education officials, states return funds to Education’s Office of the Chief Financial Officer. These funds are identified by the grant number, but there is no way to identify monies returned due to noncompliance with MOE, specifically. Officials in the Office of Special Education Programs said they were working with the Office of the Chief Financial Officer to better track funds returned for this reason.² We followed up with the 14 states reporting in our survey that some of their school districts failed to meet the local MOE requirement in the 2012-13 school year and requested information on the amount of the shortfall for those districts that year. Based on the states’ responses, we estimate that, as of May 2015, the shortfall nationwide in the 2012-13 school year amounted to at least \$877,000 total. However, this amount is understated because 2 of the 14 states were unable to provide the amounts of their districts’ shortfalls at the time.

Of the 14 states reporting district shortfalls, 11 confirmed they had returned at least a portion of the funds to Education, with 10 of the 11 confirming that they had recouped at least a portion of the shortfall amounts from the districts. At the time we did our work, repayment of funds was still pending in the remaining 3 states.³

Among the five states for which we analyzed MOE data, three had at least one district that did not meet MOE in 2011-12 or 2012-13. According to the data provided by these states, the shortfalls for their districts were as follows:

¹ 34 C.F.R. § 300.203(d).

² On July 9, 2015, Education published a notice in the Federal Register seeking public comment on its proposed information collection request concerning the EDFacts data collection, including a few proposed changes to the collection. 80 Fed. Reg. 39,421. The proposed additions to the EDFacts collection include whether school districts met MOE and, if they did not, the amount of non-federal funds the state returned to Education and the date the amount was returned. If approved, states would submit these data for the 2015-16 school year in May of 2017.

³ One of these states had been instructed by Education not to seek repayment from the districts that did not meet MOE in 2012-13 until those districts are given the opportunity to demonstrate that they met MOE using any of the four calculation methods because the state had not given districts the option of using all four allowable calculations for MOE.

- In Virginia, while all districts met MOE in 2011-12, one district did not meet MOE in 2012-13, and its shortfall, after accounting for allowable exceptions, was about \$320,000, which represented less than 1 percent of the district's expenditures of state and local funds for special education in that year. Virginia officials reported that the state had returned this amount to Education.
- In Arizona, six districts did not meet MOE in 2011-12, and five did not meet in 2012-13. The shortfall amounts, after accounting for allowable exceptions, ranged from less than \$100 to about \$220,000. The average shortfall in these districts was about 6 percent of the districts' state and local expenditures in 2011-12, and about 4 percent in 2012-13. At the time Arizona reported these data, the state noted it had returned some but not all of these shortfall amounts to Education.
- In Texas, officials reported that one district did not meet MOE in 2011-12, and four did not meet MOE in 2012-13. In three of these five districts, the state reported that auditors had not found an actual shortfall. State officials later clarified that in the district originally found out of compliance with MOE for 2011-12, they had not sustained this finding. For the two districts for which the state reported shortfalls, the amounts were about \$25,000 and about \$40,000.

Appendix VI: Comparison of Education's 2006 and 2015 Regulations on MOE

2006 regulations

§ 300.203 Maintenance of effort.

(a) *General.* Except as provided in §§ 300.204 and 300.205, funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

(b) *Standard.* (1) Except as provided in paragraph (b)(2) of this section, the SEA must determine that an LEA complies with paragraph (a) of this section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:

- (i) Local funds only.
- (ii) The combination of State and local funds.

(2) An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section.

(3) The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA in determining an LEA's compliance with the requirement in paragraph (a) of this section.

2015 regulations

§ 300.203 Maintenance of effort.

(a) *Eligibility standard.* (1) For purposes of establishing the LEA's eligibility for an award for a fiscal year, the SEA must determine that the LEA budgets, for the education of children with disabilities, at least the same amount, from at least one of the following sources, as the LEA spent for that purpose from the same source for the most recent fiscal year for which information is available:

- (i) Local funds only;
- (ii) The combination of State and local funds;
- (iii) Local funds only on a per capita basis; or
- (iv) The combination of State and local funds on a per capita basis.

(2) When determining the amount of funds that the LEA must budget to meet the requirement in paragraph (a)(1) of this section, the LEA may take into consideration, to the extent the information is available, the exceptions and adjustment provided in §§ 300.204 and 300.205 that the LEA:

(i) Took in the intervening year or years between the most recent fiscal year for which information is available and the fiscal year for which the LEA is budgeting; and

(ii) Reasonably expects to take in the fiscal year for which the LEA is budgeting.

(3) Expenditures made from funds provided by the Federal government for which the SEA is required to account to the Federal government or for which the LEA is required to account to the Federal government directly or through the SEA may not be considered in determining whether an LEA meets the standard in paragraph (a)(1) of this section.

(b) *Compliance standard.* (1) Except as provided in §§ 300.204 and 300.205, funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

(2) An LEA meets this standard if it does not reduce the level of expenditures for the education of children with disabilities made by the LEA from at least one of the following sources below the level of those expenditures from the same source for the preceding fiscal year, except as provided in §§ 300.204 and 300.205:

- (i) Local funds only;
- (ii) The combination of State and local funds;
- (iii) Local funds only on a per capita basis; or
- (iv) The combination of State and local funds on a per capita basis.

(3) Expenditures made from funds provided by the Federal government for which the SEA is required to account to the Federal government or for which the LEA is required to account to the Federal government directly or through the SEA may not be considered in determining whether an LEA meets the standard in paragraphs (b)(1) and (2) of this section.

Not shown are two new subsections:

(c) *Subsequent years, and* (d) *Consequence of failure to maintain effort*

Key to colors

Compliance standard

Eligibility standard

Source: 71 Fed. Reg. 46,540, 46,780 (Aug. 14, 2006);
80 Fed. Reg. 23,644, 23,666 (Apr. 28, 2015). | GAO-16-2

Appendix VII: Comments from the Department of Education



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

September 24, 2015

THE ASSISTANT SECRETARY

Jacqueline M. Nowicki
Director, Education, Workforce, and Income Security Issues
U. S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Nowicki:

Thank you for providing the U.S. Department of Education (Department) the opportunity to review and comment on the U.S. Government Accountability Office (GAO) draft report, "Special Education: More Flexible Spending Requirement Could Mitigate Unintended Consequences While Protecting Services" (GAO-16-2). The study examines: (1) the extent to which school districts face challenges meeting the local maintenance of effort (MOE) requirement and why, (2) how MOE affects services for students with and without disabilities, and (3) how well the Department and States facilitate school district's compliance with MOE.

Prior to addressing GAO's specific recommendations, the Department would like to note the importance of the local educational agency (LEA) MOE requirement. As noted by GAO, LEA MOE is a key safeguard designed to protect funding for students with disabilities. We think it is important to maintain this protection. While acknowledging the challenges that meeting the requirement presents during difficult economic times, the Department continues to believe that LEA MOE provides a crucial protection, helping ensure that students with disabilities continue to receive a free appropriate public education.

GAO has two specific recommendations for the Department:

Recommendation 1:

Establish and document set timeframes for providing prompt feedback to states on findings from its next cycle of IDEA fiscal monitoring.

Response:

We agree with this recommendation. The Office of Special Education Programs (OSEP) is currently developing and getting feedback from the field on a new differentiated system of monitoring and support. This system will include fiscal monitoring and support. OSEP will include timelines for providing prompt feedback on monitoring results, including findings and corrective actions that are warranted, in the new system.

Recommendation 2:

Prioritize technical assistance and information sharing across states on ways to facilitate local MOE compliance with respect to the use of the four calculations methods and the five exceptions.

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Page 2 – Jacqueline M. Nowicki, GAO

Response:

The Department agrees with this recommendation. As GAO mentioned, OSEP has been providing considerable technical assistance (TA) on LEA MOE since the release of the new regulations. In addition to webinars and a presentation at OSEP's leadership conference, OSEP released Part I of a Question and Answer Document on LEA MOE, posted on <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osepmemo1510leamoeqa.pdf>. We are currently working on Part II, which will place particular emphasis on the allowable exceptions and adjustment, as well as calculation issues. In addition, the Center for IDEA Fiscal Reporting (CIFR), an OSEP supported TA center focused on IDEA fiscal data reporting and the underlying fiscal requirements, including LEA MOE, is developing tools, such as an LEA MOE calculation tool, that will be helpful to States and LEAs. CIFR also facilitates regional communities of practice (COP) that provide avenues for continued support. CIFR is currently planning a series of COP meetings that will feature Department staff to provide detailed, hands-on support on how to calculate LEA MOE. CIFR also is available for one-on-one and targeted TA with States.

Thank you for your work on this important issue and for your consideration of our comments. We remain available if you have additional questions or concerns. We look forward to receiving the final report.

Sincerely,



Michael K. Yudin

Appendix VIII: GAO Contact and Staff Acknowledgments

GAO Contact

Jacqueline M. Nowicki, (617) 788-0580 or nowickij@gao.gov.

Staff Acknowledgments

In addition to the contact named above, Margie K. Shields (Assistant Director), Cady S. Panetta (Analyst-In-Charge), Sandra Baxter, Justin Dunleavy, Lauren Gilbertson, and Nina Thomas-Diggs made key contributions to this report. Also contributing to this report were James Bennett, Deborah Bland, Caitlin Croake, Holly Dye, Ying Long, Jean McSween, Chris Morehouse, Karen O'Connor, Jonathon Oldmixon, James Rebbe, and Jessica Tollman.

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