

Questions and Answers From Maintenance of Effort Monitoring—Beyond the Basics

Q: We are exceeding our state and local test by over \$1 million but failing the local only expenditure tests. How should we proceed? Transfer expenditures out of state and local to try to reduce the amount by which we are passing state and local, or increase the expenditures in local only to pass more tests?

A: *This is an interesting opportunity for you. We recommend you consider current-year and prior-year patterns, coming-year projections, and identify the types of options that could be best for your local situation. Passing state and local tests by such a large amount gives you the opportunity to consider transferring some costs out of special education while still ensuring passage, but not raising your maintenance of effort (MOE) obligation in future years by such a large amount. If you are failing local only expenditure tests, you could think about how you will be entering into the future years—it may be that bolstering local only test passage is a better decision for you. Local only expenditures can be influenced by shifts in pupil counts and the impact of increased state and federal revenues. Considering how current and projected changes to state and federal revenues might influence your future year passage should help you decide which options are the best for you to try. Remember, you can use the Subsequent Year Tracking (SYT) California Department of Education (CDE) Form page to “try out” and see the impact of shifting expenditures on passage. Save a copy as your sample and then adjust the expenditures or allocations on the SYT before you enter adjustments into your Standardized Account Code Structure (SACS) software pages.*

Exemptions

Q: Do we complete two exemption forms for reductions—one for state and local and one for local only?

A: *Great question! No—the form does not allow us to differentiate between state and local and local only exemptions. This is a great wrinkle because it allows you to apply ALL allowable exemptions to both state and local and local only, because that is how the form works. Always apply to both state and local and local only, regardless of the actual fund source.*

Q: Does the exemption amount go both in state and local and local only Section 1/2?

A: *Because of how the form works, you can use the same exemption for both state and local and local only, regardless of actual fund source. Make sure that your exemption is not larger than total expenditures or the budget.*

Q: Some districts in our Special Education Local Plan Area (SELPA) did not apply exemptions to local only in prior years, and only claimed them on state and local combined, such that now their local only MOE is more than their combined state and local. Is there a way to correct for this?

A: *There is a potential way to correct for this, but to take advantage of the possibility you should ask your SELPA leader to connect with the SELPA Finance Committee members. These leaders participate in the MOE workgroup and can investigate whether the CDE would be willing to accept updated and corrected forms from your SELPA. Some exemptions are much easier for the CDE to accept after-the-fact corrections for, such as decline in pupil count, but there may be a way to receive approval for updating your forms from the CDE to adjust for an inadvertent data entry error on the exemptions line.*

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Q: Does the exempt reductions to MOE workbook get updated annually? If so, where can I download the most recent version?

A: The exempt reductions workbook has been updated one time since 2015—recently, in July 2022. The new form is linked in the PPT and in the Resources section in your My SSC workshop resources.

Q: Can you use these exemptions even if you exceed your MOE?

A: MOE exemptions on the exemption form are only available to be applied if you have failed your MOE obligation. If you pass a test, then there is no way to use exemptions to lower your MOE obligation, as your new passage mark resets your comparison year requirement. To use MOE exemptions, you would need to reduce your allocations of expenditures to special education to a level that would cause a failure, and then apply the exemption to pass with exemptions. If you have sufficient allowable exemptions, you can go back to expenditure allocations and consider whether you have discretionary options that could be moved out of special education, which would allow you to use the exemptions to lower your MOE obligation in future years.

Exemption 1—Voluntary Departures

Q: On the exemption form, when there are layoff or resignation/retirement vacancies that will not be filled due to fewer students, is the process to indicate the person left, leave the replacing person as zero, and indicate the reason for not filling the position as services no longer needed due to reduction of students?

A: The form requires the departure to be voluntary or for just cause—which could include a decline in pupil count. To use the exemption 1 without replacing the staff member, the local educational agency (LEA) should confirm the obligation of a free appropriate public education (FAPE) to students is met. When there has been a decline in pupil count, there may not be a need to replace or fill a vacancy. Rather than indicating replacement = 0, we recommend that the LEA leave the replacement line blank and then write a brief explanation memo that the SELPA can submit to the CDE with the exemption form as a cover sheet.

Q: If the employee departs mid-year, is the exemption only for the time they vacated?

A: You would be able to calculate the difference from what your expenditure was in the year they were working—whether whole year or part year—and what your expenditure is for the following year. You can claim the difference if there is a difference.

Q: Can we claim an exemption for employees who left, and we were not able to fill their position?

A: This is a delicate question, but there are times when you cannot claim a vacant position. If the district still had an obligation to provide a FAPE to students, and student services were negatively impacted by a departure, or you owe any sort of compensatory service, then you should not use the exemption for departed or separated staff.

If you have a vacancy but do not fill it because there is no direct student need for the position right now, but you do not want to remove the vacancies because you might have a need in the future—then you may be able to count a vacant position as an eligible exemption, not replaced position. We recommend that

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you check with your SELPA leader, as they have access to supports from the MOE workgroup to ensure appropriate exemption use for vacant positions.

Q: If our Special Education Director left in December 2021 and the position is unfilled as of June 30, 2022, is the exemption the unpaid salary from December 2021 to June 2022?

A: This could be true—if your program was able to function appropriately with no impact to student services or receipt of their FAPE services, then you could likely claim this vacancy savings. We recommend you discuss use of this type of exemption with your SELPA. They can guide you to avoid any possible rejections from the CDE.

Q: I was advised by the CDE that we do not necessarily need to replace the existing employee with a new employee. Can you please advise?

A: There are opportunities to decrease staff, especially when the reason for a staff decrease is due to a decline in student population or a decline in student need. You may not need to replace the staff member if you have a clear rationale for why you are not impacting your FAPE obligation with the reduction/exemption. The CDE recommends writing a brief cover memo for your end-of-year submission with the reasons why you are not replacing the staff and are claiming the exemption to ensure adequate documentation in the event of an audit.

Q: Just to clarify, when I am looking for exemptions, am I looking for staff/students who have departed by June 2021 and have been replaced with lower-cost staff in July 2021 to capture a reduction in costs for the entire 2021-22 fiscal year?

A: Yes—the multiyear application of exemptions is a little confusing. For your close of books in 2021-22, which is now, you will use exemptions that occurred from the 2020-21 school year. You will track and identify what expenditures ended in June 2021 that you did not carry through to the fiscal year (FY) 2021-22. You also should start tracking allowable exemptions that occurred in FY 2021-22 that ended in June 2022, because you will need those exemption opportunities when you close for FY 2022-23.

Here is a multiyear example using fiscal years—FY 1 (2020-21), FY 2(2021-22), and FY 3(2022-23):

In FY 1 (July 2020 - June 2021) the LEA has expenditures for two students with high-cost programs and for two veteran educators with high salaries. As of June 30, 2021, the end of FY 1, you realize that these two students and two staff members will not return in FY 2, which starts in July 2021. You will be able to use the exemption form to potentially capture the reduced expenditure for student services and staff costs at the end of FY 2 when you are completing end-of-year forms. Expenditures you had in the prior year (FY 1) that you would not have in the subsequent year (FY 2) are the eligible exemptions you would capture in your FY 2 exemptions worksheet.

To be prepared for an eventual consideration of allowable exemptions from FY 2, staff should diligently track all departed students and departed staff during FY 2 so that at the end of the year they do not have to recall what occurred over a year ago in the June to July transition period when FY 3 commences. Allowable occurrences from FY 2 would represent potential exemptions for FY 3.

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Exemption 2—Decrease in Enrollment

Q: Is the student count decrease exemption the difference between the current year and comparison year?

A: *It is always the current and prior year, not the comparison year. You will need to look at the SYT sheet to determine the availability of that exemption. This is one case where the comparison year expenditures do not matter, you can only claim the pupil count decrease between prior and current year.*

Exemption 3—Termination of High-Cost Obligations

Q: What if we have a new student with high-cost needs after the previous student with high-cost needs has left our district? Are we still able to take the exemption for the previous student?

A: *You can claim the exemption for the ended obligation to provide high-cost services to a specific student. It does not matter if you replaced the student with another high-cost student. The exemption is specific to the student that exited your program. This is why it is important to track the high-cost services for students individually, so that you can claim the impact of ended service obligations from year to year when possible.*

Q: If a student no longer needs a 1:1 aide (or nurse, or behavior specialist, etc.), can districts count the reduction of cost an exemption?

A: *Absolutely. You can claim the high cost of a service for a 1:1 aide using exemption 3 if it is equal to two times your excess cost threshold, or \$22,000, whichever is higher. If the staff member departs your employment, you may also be able to claim the savings using exemption 1.*

Q: Would it be possible to explain the threshold of the exemptions one more time? Is the recommendation to meet two times the excess cost requirement before claiming an exemption just for Exemption 3?

A: *The federal statute requires the state educational agency to set a threshold for determining what is considered a high-cost student for purposes of exemption 3. The CDE has indicated that the threshold for exemptions is at least two times your excess cost calculation, or two times the statewide average, which currently totals \$22,000. If two times your excess cost is lower than \$22,000, we recommend that you check with your SELPA so they can connect with the MOE workgroup to ensure you are safe to use that lower amount.*

Q: For exemption 3, under what item would savings for program redesign be captured (e.g., bringing a student back from residential treatment program and providing services on campus)—A, B, or C?

A: *If you are bringing a student back to your local program from a high-cost program, you can use C—no longer needs the program of special education. In this instance, the program of special education that is no longer needed is the residential treatment program. This does not mean that the student is exited from special education completely, although, if they are exited, then this would also be a change in need of the program.*

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Q: If a student comes back to a local special education program from a non-public school (NPS), can you write off the total amount of the NPS, or do you need to decrease it by the excess cost of the student because they are still a special education student?

A: *The total amount of the NPS can be used for exemption 3. You are not obligated to subtract the amount of the excess cost or base cost of your new program. You are required to ensure that the total amount of the NPS is at least two times your excess cost, or \$22,000 as the two times the statewide average of \$11,000.*

Exemption 4—Termination of High-Cost Purchase

Q: Can we exempt new furniture? If it is part of a project and we are capitalizing the expense?

A: *For exemption 4, termination of high-cost purchase, the per-unit cost must be \$5,000 or more. Most furniture would not meet this threshold and would not be included in the exemption. The fact that the purchase is part of a larger approved project that is being capitalized does not change the per-unit cost threshold. If the cost per unit exceeds the appropriate threshold, such as for high-cost specialty equipment or chairs for students with low incidence disabilities, then you may be able to use this exemption for that one-time purchase.*

Q: As far as bus purchases—if we purchased a special education funded bus in 2019-20, 2020-21, and 2021-22, can we claim the exemption in 2021-22 if we need to use this exemption to meet MOE during the 2021-22 school year?

A: *You would need to make certain that you claimed the correct and allowable amount in the correct reporting year. The exemption in this example would include amount paid during the 2021-22 school year, and you would claim that exemption when you file your end-of-year closing documents in 2023, as you would be claiming the expenditure that you did not incur in the 2022-23 school year. You cannot add up the total cost of the bus purchases for all three years.*

Comparison Year

Q: Are we always looking or entering exemption for the comparison year only? Meaning if I know about 2021-22 exemptions now—do I not worry about entering those until next year?

A: *Exemptions are costs you had in the most recent prior fiscal year that you do not have in the current fiscal year. You can use projected exemptions in the Budget section of the SYT, at the bottom of the CDE Form you will see where you enter in your Special Education Maintenance of Effort Budget (SEMB) amounts for budget. Each Budget box also has a small yellow box next to it—here is where you would enter your projected exemptions for the future year. This would be a projection only, and you would still have to document and complete the allowable exemption worksheet for final submission.*

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Q: What if my comparison year is currently 2019-20? Can I do exemptions for 2019-20?

A: *The answer is nuanced. You would not be lowering your MOE obligation for 2019-20, as that year has passed. What you would do is compare your allowable exemptions for the prior year, not comparison year, to your expenditures for the current year. If your comparison year is 2019-20 then you would subtract those allowable exemptions from the comparable amounts from 2019-20. The year 2019-20 is your benchmark year when you last passed a test—so you would subtract any allowable exemptions from that amount to consider for use as your new comparable amount to current-year expenditures. Your exemptions are always expenditures from the most current prior year that you do not have in the current year no matter what your comparison year happens to be.*

Q: Does this reduce the current year or the comparison year? Referring to Exemption 4.

A: *An exemption lowers the comparison year amount that you compare your current actual or budget to.*

Q: Does Column B have to be the last year the LEA met MOE?

A: *Yes, the LEA and SELPA must review the SYT to ensure that they use the appropriate comparison year—which is a federal requirement of the process. You will hard code in the comparison year once you identify it on the SYT.*

Q: If we passed with exemptions, can we use that year's reported total?

A: *If you use an exemption to pass a specific test, you have established a new comparison year and comparison amount. Use the amount that is indicated as passed with exemptions.*

Program Cost Allocation

Q: Can you show how to manually reduce Program Cost Report Allocation (PCRA)?

A: *Portions of form PCRA are auto populated from the SACS budget forms. Any cells that are auto populated cannot be manually changed on the PCRA form. If the data is incorrect, you must go in and make changes in your financial system and or the data inputs on the Program Cost Report Schedule of Allocation Factors (PCRAF) form. The changes cannot be made in SACS for cells that are auto populated.*

Q: When calculating the number of Classroom Units under the PCRAF, should we be adding up all classrooms, used and vacant, or just classrooms in use?

A: *Classroom Units that are vacant should not be included on form PCRAF. Form PCRAF should be used to identify classrooms that are in use for student instruction.*

Q: For form PCRAF—do we enter full-time equivalents (FTEs) excluding vacancy or including?

A: *If the position is truly vacant, it should not be included on form PCRAF. If students are receiving instruction from a substitute teacher, I would include them in the count. The FTE data should be confirmed with human resources for accuracy.*

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Indirect Cost

Q: I have heard that use of indirect to meet or reduce MOE is something the CDE reviews and that if the level of indirect is not comparable year to year, they may say an LEA has not met MOE if one year the LEA did not apply indirect, and then they did in the subsequent year to meet MOE. Is that not true?

A: *It is true that, if there are large back and forth swings in indirect cost charge, then auditors and the CDE may question the practice. However, we have been told directly by the person who reviews the Special Education Maintenance of Efforts Actuals (SEMA)/SEMB and SYT forms that if the indirect decreases year over year, or if it disappears for several years, that is not a challenge. Backing out indirect may be a multiple-year process or choice, but it is not a strategy to use from year to year to prevent MOE failure.*

SELPA

Q: You keep recommending that we talk with our SELPA. What are some of the flexibilities that a SELPA can consider?

A: *SELPA's have had training on the opportunities we discussed here today, as well as some individualized strategies that the CDE has requested we not share broadly but could be utilized in unique circumstances. SELPA leaders would likely connect you with the Chair for the Finance Committee or another member of the MOE workgroup for individualized support. We always recommend you review any failures with your SELPA to ensure you have maximum flexibilities.*

Legal Fees

Q: Can't you code legal fees/settlements to goal 0000, even if they are special education costs?

A: *Yes—legal fees and settlements can be coded to goal 0000; however, they would need to be allocated typically at the end of the year. This is where local discretion can be utilized. Since these legal fees or settlement costs are likely being paid out of General Fund contribution, you could choose to code them to a general education administrative goal, and not a special education goal code, thereby keeping those costs out of your MOE obligation. Our recommendation is that LEAs always consider whether they want or need to have these costs included in their special education costs, as spiking the MOE obligation by including one-time expenditures that would not be allowable exemptions can take years to recover.*

Q: What type of legal fee would be considered an appropriate charge to special education if any?

A: *This is a local decision. It would be totally appropriate to charge legal fees to a special education goal code, but it is not required, and it may spike your MOE obligation in future years. This is an example of a discretionary allocation, and LEAs should consider the impact of these decisions on an annual basis.*

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Q: I see that legal fees are not an exemption but what about a settlement? For a legal settlement that is paid out over three years, can it be an exemption in the fourth year?

A: *If you can legitimately use exemption 3 to claim that a high-cost service or program to a student is no longer required, then you may be able to utilize a settlement cost as an exemption. It would be only the amount spent in the prior year, not the total settlement amount, and you would be wise to ensure that you have appropriate documentation to show that the high-cost was for a service or program to a student, not for legal fees, advocate costs, or payments that may not have been tied to services or program support to students.*

Q: Slide 31 states legal fees can be exempt, and then slide 48 states they cannot be exempt. Can you clarify please?

A: *The slides were indicating that legal fees are discretionary and do not need to be charged to special education, and that legal fees are not allowable exemptions, so if they are charged to special education, then regardless of whether they are a single-year or multi-year costs, you cannot use exemptions to claim a reduction in legal fees.*

Q: Our SELPA holds AB 602 dollars for legal fees. Can we reimburse the district for some legal fees?

A: *Legal fees can be allowable special education costs, and there is no restriction on using state AB 602 funds for this purpose. MOE obligations do not monitor the source of funds, they only track expenditures. If you utilize state AB 602 funds for legal fees and code to goal 5xxx, then it will count towards your MOE obligation regardless of fund source, you would not be able to claim a reduction in legal fees as an MOE exemption.*

Transportation

Q: Is it appropriate to continue to use a special education goal for special education transportation that is now being coded to an unrestricted resource or is that incorrect?

A: *You want to ensure that you are only charging to the special education goal those students who have transportation as a related service on their Individualized Education Program (IEP). These students are eligible for transportation, and it is part of their special education services. As you grow your transportation plan and offer transportation to more of the priority students—which includes special education students who currently do not have transportation on their IEP—then you should carefully consider how you code these Function 3600 services. The IEP should not be modified to include free transportation under the new home-to-school transportation (HTST) plan—and you also may want to treat these students as general education students by not including in a special education goal—because the transportation provided to these students would be because of the HTST changes, not because they need transportation as a service under their IEP.*

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MISCELLANEOUS

Q: How long does it take to get a bill from the CDE if a district does not pass MOE?

A: We are not 100% sure how long the invoicing process takes. Prior to 2019-20, there had been no failures of MOE that required the CDE to invoice an LEA. We were always able to assist LEAs to pass their requirement. COVID-19 set up a new paradigm where the CDE has been reviewing potential or actual failures.

Q: Would the Learning Recovery Services/Dispute Prevention and Dispute Resolution reimbursement to Resource 6500 impact local contribution?

A: Yes, it is possible that it would impact your local contribution in any one year. However, Resource 6500 funds can be carried over from year to year, so if you need to spread out the impact of these funds over multiple years, shifting them from Resource 6537 and 6536 to 6500 would ensure that you could carry the funds over into future fiscal years.

Q: Do we calculate Special Education Local Contribution using Goal only or Resource and Goal, or as I have been doing calculate using Resource 6500?

A: Resource is not considered in the MOE calculation, only the goal.