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**State of New Mexico**  
**OFFICE OF THE STATE AUDITOR**

September 2, 2015

VIA EMAIL

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Representative Jimmie C. Hall, Vice-Chairman  
Legislative Finance Committee  
325 Don Gaspar, Suite 101  
Santa Fe, NM 87501

Representative Dennis J. Roch, Chairman  
Senator John M. Sapien, Vice-Chairman  
Legislative Educational Study Committee  
325 Don Gaspar, Suite. 200, State Capitol N.  
Santa Fe, NM 87501

Hanna Skandera, Secretary  
Public Education Department  
300 Don Gaspar  
Santa Fe, NM 87501

Dear Chairmen, Vice-Chairmen, Secretary Skandera:

The Office of the State Auditor released the Special Audit of the State of New Mexico's special education funding Maintenance of Effort Requirements. The Special Audit identified material weaknesses and significant deficiencies in the internal controls at the state and local level, in addition to other instances of non-compliance. The Office is concerned with the findings in this Special Audit, and has prepared this letter to raise awareness of these issues and to strongly encourage PED to take corrective action.

Special education funding is complicated and involves multiple layers of laws and regulations. The federal Individuals with Disabilities Education Act – Part B, commonly known as IDEA-B, is a critical piece of the funding puzzle. States apply to the federal government to receive IDEA-B funds. In order to receive funding, each state must demonstrate that in the current year, it has met or exceeded the level of special education funding for the previous year. This requirement was formerly known as “maintenance of effort” and continues to be described as “MOE,” even though the technical term has changed to “maintenance of sufficient funding.” If a state fails to meet the MOE requirement in a specific year, the federal government may impose penalties that include fines and a decrease in future federal funding.

Prior to the economic downturn that began in 2008, the State assumed that if the overall education funding “pie” got bigger, the special education slice of that pie would automatically get bigger. Based on that assumption, the State certified to meeting the MOE requirement. However,

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in fiscal year 2010, the overall state budget decreased by 12% and the education portion of that budget also decreased. The State could no longer rely on a growth-based assumption. Consequently, the State did not meet the MOE requirement in fiscal year 2010, but the US Department of Education granted the State a one-year waiver from the MOE requirement.

In response to the State's failure to meet the MOE requirement again in fiscal year 2011, the federal government reduced federal funding for special education by \$34 million. While the State appealed that decision, the Office of the State Auditor designated a special audit of the Public Education Department's compliance with federal and state MOE requirements for fiscal years 2010 through 2012. On July 15, 2013, this Office posed several specific questions regarding fiscal years 2010, 2011 and 2012 to the audit firm, primarily to determine whether the State had maintained the required level of funding and how the Public Education Department addressed MOE compliance. After an RFP process, the Public Education Department (PED) engaged the independent public accounting firm of Atkinson & Co. to perform the Special Audit.

The following are among the most concerning items in the Special Audit:

- The potential cumulative shortfall in special education funding from Fiscal Years 2010 through Fiscal Year 2012, based on the Public Education Department's calculations, is \$110,872,925.
- From 2005 to 2010, the State of New Mexico certified that it complied with federal maintenance of effort requirements by checking the appropriate box on federal forms, without having performed any specific calculation to confirm that fact.
- PED adopted a maintenance of effort policy in 2007, but did not follow that policy.
- Despite awareness of problems with the calculation of maintenance of effort in 2009 and identification of maintenance of effort as an issue to be addressed in the transition of administrations in 2010, the Special Audit found "no communication with the Legislature in [fiscal year] 2010 or [fiscal year] 2011."
- The Special Audit states, "New Mexico gave positive assurance for years 2010, 2011 and 2012 related to State MOE 'check the box' reporting to the federal government. The positive assurances were based on an uncertain calculation methodology and were not ultimately accurate."
- The Special Audit concludes that the State continues to struggle to demonstrate that it is in compliance with MOE requirements without accurate and comprehensive documentation from stand-alone New Mexico schools, other state agencies and local education agencies, which is not currently available on a consistent basis statewide.

Further questions remain after review of this Special Audit. In contrast to many other states, the New Mexico Legislature does not appropriate a fixed amount of money to special education. The Public Education Department is currently in a legal dispute with the US Department of Education as to how to calculate our State's special education funding level, given the unique nature of New Mexico's funding formula for education. The Public Education Department is also working to strengthen internal controls so that when a methodology is finally established, data can be gathered and reviewed to produce an accurate calculation. In addition, the Public Education Department is seeking a waiver for certain years and asserting other legal arguments in support of its assertions regarding MOE. As a matter of independence, the Office of the State Auditor and this Special Audit take no position on the merits of the Public Education Department's arguments.

Furthermore, for fiscal years 2013 and 2014, the Legislature authorized special appropriations to help address a shortfall in MOE.

However, it is undisputed that during the audited period, our State failed to maintain a steady level of funding for special education under any method of calculation, even if that failure does not constitute a violation of federal laws or regulations.

<b>Fiscal Year</b>	<b>Amount of Shortfall based on Final NM PED unapproved methodology (under appeal)</b>
Fiscal Year 2010	\$ 46,305,917.00
Fiscal Year 2011	\$ 35,196,129.00
Fiscal Year 2012	\$ 29,370,879.00
Total for Special Audit Period Fiscal Years 2010-2012	\$ 110,872,925.00

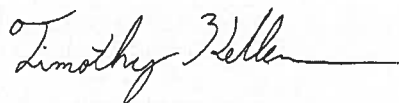
Furthermore, beyond the issues of legal and regulatory compliance, the findings of the Special Audit raise the question of whether the State has met its obligation to serve the special education population, who are some of the most vulnerable participants in our educational system.

Given the pending dispute with the US Department of Education, the Office of the State Auditor has determined that a follow-up audit would not be productive at this time. However, as positive next steps, the Office makes the following recommendations.

- The Office strongly encourages the Public Education Department and all local education agencies to modernize and systematize all reporting related to special education maintenance of effort. The Office will be testing these systems at the state and local level on an ongoing basis through the annual audit process.
- The Office strongly encourages the Legislature to continue close monitoring of special education funding in general, and maintenance of effort in particular. Furthermore, case studies and/or school by school and district-by-district impact would help connect the issues with these funding streams to outcomes at the local level.
- The Office strongly encourages state and local educational entities to foster an open dialogue with the families of special education students about the realities of funding and the impact funding may have on day-to-day services.


We look forward to working together to address these serious concerns.

Sincerely,



Timothy M. Keller  
State Auditor

cc: Tom Clifford, Secretary Department of Finance Administration  
David Abby, Director Legislative Finance Committee  
Frances Ramirez-Maestas, Director Legislative Education Study Committee



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HANNA SKANDERA,  
SECRETARY OF EDUCATION

EXAMINATION REPORT

State of New Mexico's Maintenance of Effort Requirements

CONTRACT #14-924-P527-00209

JULY 1, 2009 – JUNE 30, 2012

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atkinson

PRECISE. PERSONAL. PROACTIVE.

***For a Quicker Overview,  
Read these Sections:***

1. **Executive Summary/Timeline** – an overview of the questions we asked and the answers we found.  
(Pages 5-13)
2. **Findings and Recommendations** – are referenced in the Executive Summary. (Pages 14-23)
3. **Management Responses** – included with Findings and Recommendations.

## TABLE OF CONTENTS

	<u>Page</u>
INDEPENDENT ACCOUNTANTS' REPORT .....	1-2
BACKGROUND.....	3
PURPOSE AND SCOPE .....	3-4
EXECUTIVE SUMMARY OF RESULTS .....	5-11
TIMELINE .....	12-13
FINDINGS AND RECOMMENDATIONS .....	14-23
DETAILED SUMMARY OF TESTING AND RESULTS BY TOPIC.....	24
<i>First Awareness of Possible SEA MOE Non-Compliance</i> .....	25-27
<i>No State MOE Was Ever Calculated Before 2012</i> .....	27-28
<i>Assurances to DoED Concerning IDEA B MOE Compliance</i> .....	28
<i>Difficulties in Calculating State MOE - Interactions with OSEP and OSERS</i> ....	28-30
<i>Difficulties in Obtaining Information for Calculating MOE</i> .....	31
<i>State MOE Number Variances</i> .....	31-32
<i>34 CFR §300.230 and ARRA</i> .....	32-34
<i>Communications Externally to State Government</i> .....	34-35
<i>Review of Audited Financial Statements of PED for 2010, 2011 and 2012</i> .....	35-36
<i>Why the Agency Made Untimely Waiver Requests for Fiscal Years</i> <i>2010 and 2011</i> .....	36
<i>LEA MOE Requirements and Internal Controls</i> .....	37-39
<i>Why the 2011 Waiver Was Denied</i> .....	40
<i>FAPE</i> .....	40
<i>Internal Controls and COSO</i> .....	40-44
<i>Comments to Increase Effectiveness and Efficiency</i> .....	45
TABLES .....	46-50
SUBSEQUENT EVENTS AND CHANGES .....	51-52
EXIT CONFERENCE .....	53
APPENDICIES .....	54-65
<i>Glossary and Definitions</i>	
<i>PED and DoED Personnel Active During the Report Periods</i>	
<i>Audit Procedures Performed</i>	
<i>What Type of Data is Included</i>	
<i>15 Month Process for Allocations SEG</i>	





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## INDEPENDENT ACCOUNTANTS' REPORT

To the Management  
New Mexico Public Education Department  
and  
To the Office of the State Auditor  
State of New Mexico

As a contractor for the Office of the State Auditor, we have examined the records of the State of New Mexico Public Education Department (PED) with respect to compliance related to the State of New Mexico's (Federal and State) Maintenance of Effort (MOE) requirements for fiscal years 2010 through 2012 pursuant to 20 U.S.C. §1412 and 34 CFR §300.163 and 34 CFR §300.230 for the period of July 1, 2009 through June 30, 2012. We have also examined the adequacy of the relevant internal control over compliance in relation to PED ensuring compliance with the State of New Mexico's Maintenance of Effort (MOE) for both State Education Agency (SEA) MOE and Local Educational Agency (LEA) MOE. The PED's management is responsible for the specified accounting records, control processes, and compliance with relevant regulations concerning ensuring compliance with the State of New Mexico's Maintenance of Effort for education. Our responsibility is to express an opinion based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants, the standards applicable to attestation engagements contained in Governments Auditing Standards and 2.2.2. NMAC (New Mexico State Audit Rule) and, accordingly, included examining, on a test basis, evidence supporting the MOE process, corresponding controls, and compliance with federal statutes, and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion. Our examination does not provide a legal determination on PED's compliance.

In our opinion, based on the purposes and objectives of the examination described in the report, the results of our examination of the subject matter showed there were instances of noncompliance and are described in the accompanying schedule of findings and recommendations as SEA MOE 001, SEA MOE 002, and SEA MOE 003. All subject matter findings are detailed in the Executive Summary of Results and Timeline on pages 5-13 and in the Findings and Recommendations on pages 14-22 and throughout the report.

### Internal Control

In planning and performing our examination, we considered PED's internal control over compliance with the requirements listed in the first paragraph of this report as a basis for designing our examination procedures for the purpose of expressing our opinion on compliance and to test and report on internal control over compliance in accordance with objectives issued by the New Mexico State Auditor, but not for the purpose of expressing an opinion on the effectiveness of PED's internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of PED's internal control over compliance.

A deficiency in an entity's internal control over compliance exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct noncompliance with the requirements listed in the first paragraph of this report on a timely basis. A *material weakness* in internal control over compliance is a deficiency, or combination of deficiencies, in internal control such that there is a reasonable possibility that a material noncompliance with a requirement listed in the first paragraph of this report will not be prevented, or detected and corrected on a timely basis.

Our consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over compliance that might be deficiencies, significant deficiencies, or material weaknesses. We did identify deficiencies in internal control over compliance that we consider to be material weaknesses, as defined above. They are identified as items SEA MOE 001 and SEA MOE 002. We also identified certain deficiencies in internal control over compliance that we consider to be significant deficiencies as described in the accompanying schedule of findings and recommendations as items SEA MOE 005, SEA MOE 006, SEA MOE 007, SEA MOE 008, and LEA MOE 010. A *significant deficiency* in internal control over compliance is a deficiency, or combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Additionally, the results of our procedures disclosed other matters involving internal control over compliance, which are required to be reported in accordance with criteria established by 2.2.2. NMAC New Mexico State Audit Rule and which are described in the accompanying schedule of findings as items SEA MOE 004 and LEA MOE 009.

The PED's responses to the findings identified in our examination are described in the accompanying Findings and Recommendations on pages 14-23. We did not examine PED's responses and, accordingly, we express no opinion on them.

This report is intended solely for the information and use of the New Mexico State Auditor's Office, Legislative Finance Committee (LFC), the New Mexico Legislature and its committees, other state government oversight agencies, and the PED and is not intended to be and should not be used by anyone other than those specified parties.



**Atkinson & Co., Ltd.**

Albuquerque, New Mexico  
August 11, 2015

## **BACKGROUND**

The State of New Mexico (State) receives federal funding in connection with its special education programs (k-12) each year. As part of this funding, the Federal Government requires Maintenance of Effort funding levels from New Mexico (SEA or State MOE) to ensure that federal funds supplement but do not supplant (replace) State funding for special education. A main purpose of requiring the maintenance of State funding levels is to provide for relatively constant resources for special education from year to year. Should State funding drop below the required maintenance level in a year, the federal government funding portion would be reduced in response in future years. There are also federal maintenance of effort requirements for school districts and charter schools or Local Educational Agencies (LEA or Local MOE) that are very similar to those that apply to the State. The statutory basis for federal special education support is the Individuals with Disabilities Education Act, Part B (IDEA B).

The economic downturn the nation experienced beginning in 2008 impacted New Mexico's finances as well. Revenue levels for New Mexico dropped 12% in FY 2010 requiring special legislative action and corresponding budgetary adjustments. The State's funding for education is a significant part of the total budget and was decreased in FY 2010 proportionately for the decrease in total revenue. Special education funding is part of the overall education budget and it also decreased in FY 2010. The decrease in special education funding for FY 2010 resulted in the State did not meet its maintenance of effort requirement for that year.

The State received a waiver for FY 2010 due to unforeseen economic circumstances that all states experienced. It did not receive a waiver for FY 2011. For FY 2011, it was determined by the federal government that New Mexico did not meet its maintenance of effort funding requirement by \$34 million. Pending appeals, the State's special education federal funding levels were going to be reduced by \$34 million for FY 2011.

## **PURPOSE AND SCOPE**

In a Risk Assessment Report of the State of New Mexico Public Education Department (PED), compiled by the State of New Mexico Office of the State Auditor (OSA), dated July 15, 2013, the OSA identified that certain risks existed within the PED that needed to be addressed through a special examination by an Independent Public Accountant (IPA) under OSA direction. This report required that an investigation of the facts and circumstances surrounding the potential loss of over \$34 million in federal funding for special education in New Mexico be completed. The special examination was required to determine which government agencies were responsible for ensuring compliance and examined the compliance requirements and internal controls related to the State's MOE requirements for fiscal years 2010 through 2012. In response, the PED entered into a contract with Atkinson & Co., Ltd. (the IPA or contractor), contract number 14-924-P527-00209, to perform an examination of PED's compliance and controls related to Maintenance of Effort from July 1, 2009 through June 30, 2012.

### **The main questions the examination was to answer were the following:**

To determine if the PED submitted assurances to the United States Department of Education for meeting federal grant requirements, especially that the State will not reduce the amount of State support for Special Education below the amount of that support for the preceding fiscal year.

To determine what parties were responsible for authorizing or causing the State's reduction in funding in the required amount of funding of financial support for special education for the years 2010, 2011, and 2012.

To identify and examine the facts and circumstances relating to the determination that the State failed to meet its MOE requirements for 2010, 2011, and 2012 including:

1. Who was responsible for monitoring MOE requirements and compliance?
2. Whether the PED determined that it met MOE requirements each year.
3. What point in time did the individual or individuals know that the State had failed to meet MOE requirements each fiscal year?
4. Once MOE non-compliance was determined, what did the parties do with the information?
5. Whether the responsible parties took appropriate action once they had knowledge of MOE noncompliance.
6. Who should have notified appropriate stakeholders, including the New Mexico Legislature, the DoED and the Agency's independent IPA about the failure to meet MOE requirements for each fiscal year?
7. At what point in time were appropriate stakeholders, including the New Mexico Legislature, the DoED and the Agency's IPA, notified about the failure to meet MOE requirements for each fiscal year?
8. Why the Agency made untimely waiver requests for the DoED regarding the States failure to meet MOE requirements for fiscal years 2010 and 2011?
9. To identify and document the Agency's internal controls specifically related to compliance with MOE requirements for fiscal years 2010 through 2012, what data is needed for the calculation and whether it is used consistently and whether the controls are adequate?
10. Regarding LEAs, to determine whether the Agency has adequate controls in place for monitoring LEA compliance with Federal Requirements and whether the Agency verifies the accuracy of the LEA's calculation of local level maintenance of effort.
11. Identify and report noncompliance with applicable laws, standards and related guidance.
12. Recommendations based on the results of the examination should help improve controls and management of special education for children with disabilities.

## EXECUTIVE SUMMARY OF RESULTS

### **PED's State MOE policy was not followed after its origination in calendar 2007.**

PED provided a State MOE policy to us during the review of controls. This policy was generated as a response to an oversight visit by the Federal Office of Special Education Programs (OSEP) in 2007. The policy includes a calculation methodology for State MOE which is central to effective compliance with IDEA B State MOE requirements. The policy's approval by PED management, its' subsequent implementation, and the date of drafting and completion could not be verified by us based on lack of associated documentation. The policy itself did not contain any content in relation to its approval, adoption, or implementation. Looking back, this policy had no process infrastructure connected to it to enable it to operate on an annual basis and succeed in its objective. Hence, the policy was not followed subsequent to its origination. **See Finding SEA MOE 002 on pages 15 and 16.**

### **Compliance concerns with State's Maintenance of Effort (State MOE) funding levels for special education were communicated in 2009 by PED management. These communications lacked a specific State MOE analysis and amount of shortfall.**

There was a first awareness of potential problems with the State's compliance with MOE during 2009 by PED management as a result of the national economic downturn in 2008 and 2009. This economic downturn became most evident in New Mexico by the reduction of the State's revenue of 12% in FY 2010. The State's level of MOE is largely determined by the annually adjusted Unit Value and associated factors contained in the education funding formula which because of the revenue reductions State MOE was also reduced in FY 2010. This drop in Unit Value was recognized by PED management as a signal that the State's MOE compliance was uncertain. Concerning this early recognition, the following are noted:

Communications of MOE noncompliance concerns took place internally at PED in FY 2009 and it appears on several occasions externally to State officials. These communications were documented in emails to another State Agency. Based on interviews, further communications may have been made in December 2009 to Senate and House Education Committees or to the Legislative Finance Committee during meetings to reduce and balance the State's FY 2010 budget. We were not able to verify this as there were no published minutes for these committees. All communications internally and external emails were general in nature due to the lack of a specific State MOE analysis or specific State MOE variance amounts. These early communications did not gain traction for the same reasons, and were not made in a form or time frame needed to generate recognition and response by external stakeholders. There was no specific awareness of the possibility of State MOE not being met before FY 2009.

### **There was no State MOE calculation performed by PED at any time until a dedicated process was begun in the fall of 2011. See Finding SEA MOE 001 on pages 14 and 15. The factors for this are as follows:**

1. No specific responsibility for the calculation of State MOE was made either externally by any State agency or internally by PED.
2. Federal Individuals with Disabilities Education Act (IDEA B) legislation was reauthorized in 2004. From 2005 through 2010, the sole reporting by the State of New Mexico to the federal government was a "check the box" assurance annual application report whereby New Mexico asserted that it had complied with State MOE. Nothing more was required for federal reporting until 2013 when specific numerical reporting was required. New Mexico provided positive assurances for part II, criteria 18 of the annual application for New Mexico for IDEA B to the DoED for FYs 2010, 2011, and 2012.

3. The State's Unit Value which is central to the SEG funding formula calculation increased for eight consecutive years until 2010 thereby ensuring that New Mexico's funding of State MOE had also increased based on how the formula worked. Rising Unit Values each year created a general awareness that State MOE was being met.
4. State MOE as currently calculated in FY 2014 involves receiving information from other state agencies providing special education services on a timely basis. PED must also receive information about state wide data needed for input into the funding formula, and considerations of approval from the Federal education office as to methodology used. Timely communication and monitoring both internally with appropriate State agencies and the Legislature are needed to supplement this process. None of these related factors were fully functioning in 2010 except for availability of State wide data to calculate the SEG each year. **See Finding SEA MOE 007 on page 20.**
5. No prior calculations were previously performed or methods developed. This was a significant obstacle. The related issues, "*How to prepare the waiver? Who should prepare the waiver?*", and "*How much to request as waiver?*" were questions for PED as administrator of IDEA B funds. Our audit determined that there was no infrastructure in place to let the 2007 policy operate on an annual basis. Hence there were no internal controls in place to ensure State MOE was calculated in accordance with PED's 2007 policy.

**Changes in State level administration at the end of 2010 and associated governance turnover may have impeded compliance efforts.**

There was a change in State level administration and governance at the end of 2010 and the responsibilities for dealing with this issue were transferred to a new management and staff. The Deputy Secretary for Education, at that time, who first communicated the State MOE concerns in FY 2009 left to take another job in the summer of 2010. The Secretary of Education resigned in the summer of 2010 after 8 years in office. The new Cabinet Secretary was appointed in January 2011. The new Deputy Secretary of Education did not assume duties until February of 2011.

Additionally, as a result of a 25% reduction in general fund appropriations, 33 PED employees were terminated (out of 233) on June 12, 2011 in a reduction in workforce. It was undetermined if any of the 33 terminated employees had compliance responsibilities in relation to State MOE.

We observed through an internal email that State MOE issues were identified as having been included on a transition list to forward to the new administration. We also reviewed a transition document which indicated that State MOE was calculated each year for compliance. This change in administration, the timing of executive staff resignations and associated turnover may have contributed to a lack of full identification of risk or may have hindered a more concentrated remedial effort.

**New Mexico gave positive assurance for years 2010, 2011, and 2012 in relation to State MOE “check the box” reporting to the federal government. The positive assurances were based on an uncertain calculation methodology and were not ultimately accurate.**

New Mexico gave positive assurance to the federal government in annual reports for years 2010, 2011 and 2012. For the years from 2005 to 2010, the only reporting to the federal Department of Education concerning State MOE compliance required by IDEA B was a “check the box” assurance representation contained in the annual application of the State to the DoED for IDEA B funding. The assurance given is a **yes** or **no** answer as to whether the State will meet State MOE. These assurances were given against a backdrop of strong concerns about State MOE compliance, but no actual variance methodology or amounts were available. The positive assurances given for FY 2010, based on an uncertain calculation methodology was not ultimately accurate. FY 2011 and FY 2012 are in appeal. **See Finding SEA MOE 003 on pages 16 and 17.**

**There was no communication with the Legislature in FY 2010 or FY 2011. Complex continuous discussions with US Department of Education (DoED) began in fall 2011.**

There does not appear to be any substantive communications with the Legislature during the fall of 2010 or 2011 leading to the respective regular sessions. PED was deep into discussions with DoED beginning in the fall of 2011 continuing through the filing of waivers for 2010 and 2011 on August 12, 2012. There is email evidence that The Federal Office of Special Education Programs (OSEP) accepted a PED proposed methodology early in 2012, but the approval that was later rescinded. Hence there was no approved State MOE calculation methodology before the filing of the waiver (State MOE methodology was ultimately approved by OSEP in July 2013). The methodology and amounts of shortfall corresponding to State MOE noncompliance were in flux continuously through August 2012.

The Legislature became alarmed in January 2013 upon notification by DFA and the NM Legislative Education Study Committee (LESC) who discovered New Mexico’s State MOE shortfall during a web search on another matter. The discovery launched briefings, response letters and information and other communications by individuals in the Legislature, the LFC and New Mexico’s congressional delegation. **See finding SEA MOE 6 on page 19.**

**The development of a State MOE calculation was a first time through process that faced obstacles to its completion.**

1. Once the need for a State MOE calculation was resolutely recognized and begun, traction was difficult to gain for PED due to the informational needs for such a complex calculation which included spending by stand-alone New Mexico schools which include New Mexico School for the Blind and Visually Impaired, the New Mexico School for the Deaf, CYFD Head Start, New Mexico Corrections Department and Division of Vocational Rehabilitation. The receipt of such information proved difficult to obtain as there was no system in place for receiving such information.
2. The State MOE formula was developed for the first time in a back and forth process with OSEP in which both sides discussed what factors should be included or not included. There was extensive communications between PED and OSEP during this process. The communications by OSEP appeared to be mostly review and feedback to New Mexico’s process but also included changes to previous communications with PED.
3. OSEP constantly held that the State was responsible for establishing the methodology used in determining State MOE yet OSEP held the power of approval over this process. Details on changes found in several sections of this report demonstrate that the “first time through” development of a State MOE support calculation was extremely difficult. This process took place over an approximate ten month period beginning in November 2011 through the filing of the waiver in August 2012.

4. The OSEP for its part reported it had received different data from New Mexico and then in 2013 from the New Mexico Legislature. The variance in data received on different occasions from PED or other bodies in the State and from previously published data made federal officials ask for additional clarification. OSEP under statute needed valid and reliable data on which to determine compliance.
5. The lack of an available, reliable State MOE funding amount by New Mexico compared to the immediate prior year impeded the filing of a waiver earlier than when it was filed in August 2012. At least 6 other states filed earlier than New Mexico for waiver consideration. It should be noted that all six states filing earlier had a specific appropriation line item in their general appropriation act for special education. New Mexico's funding formula is unique among the states and the process of determining funding "made available" is much more complex. The calculation itself is still to be settled and is not a final at the time of this report due to PED's desire to appeal the intent to deny ruling.

**During FY 2010, ARRA funding of \$91 million added complexity and initiated disagreements between PED and the Federal Government as to State MOE determinations.**

ARRA funding was provided to New Mexico in FY 2009 in the amount of \$91 million dollars on a one time basis. The ARRA funding was in addition to the regular IDEA B funding received that year. These ARRA funds were available to the State in the form of State Financial Support (SFSF) stabilization funds that were intended to stabilize State budgets in areas where they might experience shortfalls such as school funding. The ARRA funds and their possible availability to count as non federal maintenance funds for State MOE purposes proved to be an additional complexity to be sorted out. New Mexico eventually filed appeals with DoED. New Mexico's disagreements with DoED had three aspects.

1. The calculation of the State MOE utilizing a portion of ARRA funds as non federal maintenance funds was submitted by New Mexico but disagreed to by DoED. Such funds ultimately did not provide a benefit for State MOE purposes.
2. Additionally, increased Federal funding may favorably affect the State's MOE requirements if New Mexico qualified under 34 CFR §300.230. New Mexico did elect application of 34 CFR §300.230 flexibility. 34 CFR §300.230 provides for a decrease in required State funding for special education when there is an increase in federal funding. Certain qualifications must be met to exercise this option.
3. A third question regarding 34 CFR §300.230 is what happens to the State MOE required baseline amount when special education funding by a state decreases below the previous required baseline. New Mexico has received notice that an appeals judge within DoED has recommended a denial of State MOE baseline adjustments that might result from exercise of 34 CFR §300.230 flexibility. A final decision has not been rendered by the U. S. Secretary of Education as of the date of this report.

**PED filed waivers for 2010 and 2011 in August 2012 due to the information and methods that needed to be developed to file the waivers. It does not appear that the timing of the filing of the waivers became an issue with DoED.**

Waivers were an emerging development on the Federal IDEA B administration landscape beginning in spring 2009. The economic events of calendar 2008 and 2009 were impacting various States' finances and the impact reached threshold levels requiring the filing of waivers. Kansas, South Carolina, and four others filed waivers before New Mexico. By calendar 2010, the DoED had set up a web site of filed waivers for the information to be available to other states and stakeholders. There was no waiver deadline published in federal materials. The waiver forms and instructions ask for information from the current and immediate prior year for



SEA MOE and State revenue levels. Therefore, the earliest date that a State could file a waiver would be a reasonable time after the current fiscal year end of the State.

The extended period of determining the State's level of MOE directly with OSEP delayed the filing of the waivers. There was no indication that the timing of filing waivers became an issue.

**During the year in 2010, 2011 and 2012, it appears that consistent diligent efforts were made by responsible PED staff to identify a possible State MOE issue, timely communicate with OSEP staff, determine and obtain information to calculate the SEA MOE, obtain the information needed for the waiver, file the waiver, evaluate the emerging issues, participate with OSEP in ongoing communications and conduct appeals. The PED considered this process and issue to be their primary responsibility.**

There was communication with other agencies and departments of the State of New Mexico to obtain information and there was communication with certain employees of NM Department of Finance and Administration (DFA) in order to obtain information needed for waivers and then for replies to waiver rulings. Such information as aggregate State budget totals, State revenue levels, State reserve levels and decreases or increase in such by years and assistance with the actual calculation of State MOE were provided by a few individuals within DFA during calendar 2012.

**A review of internal controls over State Maintenance of Effort compliance using a COSO reporting framework revealed various control deficiencies over the State MOE compliance process. See Findings and Recommendations Section of this Report on pages 14 to 23. There were also internal control findings for the LEA compliance process.**

COSO internal control elements consist of Control Activities, Control Environment, Risk Assessment, Information and Communications, and Monitoring. The primary causes of deficiencies in internal control indentified as material weaknesses and significant deficiencies include:

- No clear assignment of responsibility for the calculation of State MOE.
- The lack of an actual calculation of the State's MOE funding amounts in violation of policy.
- No policy or procedure to communicate issues outside the organization.
- No monitoring of the process to ensure compliance.
- No reviews or approvals for final reports filed.

**Please review all findings on pages 14 to 23.**

**New Mexico's State MOE revenue funding by year reports decreases from the required 2009 base level. There are disagreements to the actual components of the calculation between PED and DoED.**

The tables presented on pages 45 to 49 report the State MOE levels each year using different data inputs.

Table 1 on page 46 reports the total special educational funding using Final Funded Unit Value times Total Program Units each year for FY 2009 through FY 2014. The special education MOE funding levels decreased in 2010 – 2012 and in subsequent years compared to 2009. The State provided Additional Legislative Appropriation Laws to increase the funding amounts provided were \$40,000,000 and \$26,000,000 for 2013 and 2014, respectively, compared to 2009 to meet State MOE.

Table 2 on page 47 reports the State's MOE calculations for FY 2009 through FY 2014 and computes a potential cumulative difference below the required baseline funding (FY 2009). In comparison the DoED amounts are presented with certain changes in the calculation method when compared to PED's calculation. Both calculations report decreases when compared to 2009.

Table 3 on page 48 reports the initial Maintenance of Effort funding amounts as reported in the FY 2012 audit report. A cumulative amount of shortfall of \$62,677,530 is computed for the years 2010-2012 was reported.

Table 4 on page 49 reports PEDs total SEG request each year, the LFC recommendation and final SEG made available for the FY 2009 – FY 2014. PED did request public school support in FY 2010 of \$2,428,667 (000's) that exceeded the FY 2009 level of \$2,223,983 (000's) which included an increased SEG request for funding. LFC did not approve the request. Hence, PED had no control over the general fund appropriation it eventually received from the State for the years 2010-2012.

Table 5 on page 50 presents a graph of the State's education formula and detail the factors that can vary each year.

The funding levels reported by year for each table show that MOE decreased below the recognized base amount after 2009. In each case, appeals made by PED would not affect this conclusion except if the required baseline funding for New Mexico was decreased in response to a decrease in funding in a year by a State below that required to be maintained in all prior years. An administrative judge within the DoED ruled against this position on May 8, 2014.

**External audits for FY 2010 were performed by one CPA firm and for FY 2011 and FY 2012 by another CPA firm. Audit reports were silent for the 2010 and 2011 audit years as to State MOE noncompliance for IDEA B.**

In 2010, American Reinvestment and Recovery Act (ARRA) & Special Education grants to states, CFDA Nos. 84.027 and 84.391A were identified as major programs tested as part of the single audit over federal funding. There was no finding of noncompliance reported in the audit.

In 2011, the IDEA B cluster was identified as a major program tested. There was no finding of noncompliance in the audit report. State and Local MOE criteria both constituted significant compliance requirements for the single audit for 2010 - 2012. State MOE was apparently not identified or tested in 2010 or 2011. The 2011 and 2012 auditor work papers showed that Local MOE was tested for adequacy and results were documented as satisfactory.

In 2012, State MOE noncompliance was reported as a material weakness in the external audit for that year. There was no indication that PED notified external auditors during 2010 or 2011. An email documents notification to external audit staff in June 2012.

**Some school district and charter schools depend on PED to determine Local MOE compliance annually. There are no interim calculations of Local MOE compliance. Certain Tier I and Tier II agreed upon procedure engagements were performed for PED or by the Special Education Bureau in relation to charter school compliance in 2011 and 2012.**

IDEA requires maintenance of effort at the LEA level as well as the State level. One main purpose of MOE is to assure LEAs level funding each year. The measure of MOE for LEAs is an "expenditure" driven computation while the State MOE is funds "available".

All schools submit data to upload into OBMS software which is how SEB gets its preliminary information. The SEB takes the information out of OBMS and compares it to the previous year. This comparison was performed in an Excel spreadsheet, but is being automated.

In general, there are 140-150 LEAs that receive notification letters in relation to LEA MOE compliance. PED is very involved with this process on an annual basis. Perhaps 40-60 LEAs do not initially meet compliance requirements with the first notification and prior to the consideration of exceptions. In general, not meeting exceptions under CFR 34 CFR 300.204 are the reasons LEAs did not meet requirements. After working through exceptions, the list of possible noncompliant LEAs decreases significantly. A final outcome is that certain schools might owe smaller amounts back to PED, estimated to be no more than a few thousand dollars.

Certain LEAs depend on PED to determine their compliance for LEA MOE annually. **See Finding LEA MOE 010 on page 23.**

There was an incentive for LEAs to overstate their units reported for special education as such units directly affect the level of special education funding. This incentive pointed to the need for special audits validating the units of special education reported. Special agreed upon procedures were performed in the period of June 30, 2011 to June 2012 in response to increased special education units reported by certain LEAs. The Tier II procedures were performed by an external CPA firm and concluded with adjustments to reported units and repayments by LEAs in some cases. Tier I agreed upon procedure engagements were conducted by the Special Education Bureau.

#### **Free Appropriate Public Education (FAPE) option is precluded annually.**

We note that the federal office OSEP suggested in its waiver conclusion letter dated June 3, 2013 that FAPE is available as an alternative option for waiver for SEA MOE noncompliance but further states that New Mexico did not apply for waiver under FAPE. The LFC in its published report dated August 21, 2013 recommends that the FAPE option should be considered. FAPE has statutory basis in IDEA B. Federal regulations contain requirements that in order to be eligible to claim a waiver based on FAPE, the State must certify that 100% of students statewide have received FAPE. The practical rule has been that if only one student did not receive FAPE in a given year, this provision is not available.

PED points out that annually a number of students request due process hearings claiming that they did not receive FAPE. When students are successful in their claim (which does occur) and granted compensatory services to achieve FAPE then the compensatory services may not be fully provided in the same school year. This would cause a determination that FAPE was denied for purposes of SEA MOE compliance. This issue of students not achieving FAPE annually precludes the State from being able to request a waiver based on FAPE.

## TIMELINE

DATE	STATE MOE EVENTS
September 2007	In response to a 2007 visit by OSEP, PED adopts a State MOE policy requiring annual calculation of State MOE and provides other assurances.
February 3 and 5, 2009	Minute notes from two meetings in early February 2009 show that there was concern about compliance with State MOE at PED and with others at DFA.
April and November 2009	The State is awarded \$91 million ARRA funds in a one time award for State Education Stabilization purposes. One half paid in April 2009 and the other in November 2009.
September 9, 2009	Email request from DFA to PED to provide effects of a cut in the Public School Education Budget.
December 2009	Possible discussion of State MOE funding with Legislative Education Committees during meetings before a special session. Mentioned to LFC that State MOE issues could arise from cuts in education funding.
April 2010	PED staff observed that the Unit Value decreased for the first time in fiscal year 2010.
April 28, 2010	PED strongly suspects that it has a State MOE problem beyond general concerns.
May 2010	Former Deputy Secretary was briefed by PED employees of concern of State MOE –The Deputy Secretary indicated he reported the risk to LFC in May or June 2010.
May 6, 2010	Positive assurance of compliance of New Mexico’s State MOE given to the federal government for FY 2010.
June 2010	Secretary of Education and Deputy Secretary of Education resigned their positions at PED.
November 2010	A State MOE website was created by the federal government and communicated to stakeholders through email. This was disseminated to certain PED employees. Six states had filed waivers by November 22, 2010.
January 2011	New Cabinet Secretary takes office.
February 14, 2011	New Deputy Secretary for Finance and Operations takes office.

March 3, 2011	Special education support funding provided by other State agencies requested by PED---first request.
May 4, 2011	Positive assurance of New Mexico's compliance with State MOE given to the federal government for FY 2011.
August 19, 2011	Follow-up email to State agencies requesting their special education support funding information.
Mid 2011 to end of year	Various communications between OSEP and PED about methodology of State MOE funding.
First 6 months of 2012	Continuing conversations about State MOE calculations. OSEP becomes aware that New Mexico failed to maintain State MOE for FY 2010.
May 8, 2012	Positive assurance of New Mexico's compliance with State MOE given to the federal government for FY 2012.
July 3, 2012	Email from OSEP approving State's methodology (but rescinded later on).
August 12, 2012	Waivers submitted for FY 2010 and FY 2011 for New Mexico for State MOE.
Last 6 months of 2012 through May 2013	Various information provided to OSEP was intended to finalize the components of State MOE and gain OSERS approval. Seven component factors discussed and reviewed. OSERS had received different State MOE data from PED and the Legislature.
February 3, 2013	New Mexico informs OSEP that it intends to exercise 34 CFR 300.230 flexibility. Subsequent to February 3, DoED denied New Mexico's claim. New Mexico sought appeal hearings for 3 different aspects of 34 CFR 300.230 procedure.
June 3, 2013	"Intent to Deny Letter" for FY 2011 Waiver was issued to PED. The waiver for FY 2010 was accepted.
June 3, 2013	The intent to deny letter also contained OSER's final approvals for the seven component factors that had been discussed previously. This is also called the "second approval letter".
May 8, 2014	Appeals judge within DoED rules against PED on one aspect. The Secretary of the Federal Department of Education must affirm the decision of the judge.

## FINDINGS AND RECOMMENDATIONS

### State Education Agency (SEA) Maintenance of Effort (MOE) Calculation – Controls over Compliance

We identified deficiencies in the controls over the State MOE calculation as follows:

#### **SEA MOE 001 STATE MOE PROCESS AND PROCEDURE (Material Weakness)**

*Condition:* There was no process in place regarding the calculation of annual required support for special education for IDEA B federal funding. Although the State's total educational funding including the portion for special education rose for eight consecutive years assuring that New Mexico met required State MOE, there were no controls to calculate the State MOE amount and the process necessary to produce the calculation was not identified. The State's educational funding including special education was then reduced in 2010 and 2011 causing noncompliance with federal law. Annual calculations would have reported variances between current maintenance and required maintenance funding for management's information and action.

*Criteria:* The Manual of Model Accounting Practices (authority §6-5-1 through §6-5-6 NMSA 1978) issued by the Department of Finance and Administration requires State agencies to implement internal accounting controls designed to prevent accounting errors and violations of federal law and rules in relation to financial matters.

Per Federal Law IDEA B 34 CFR 300.163(2), a state must not reduce the level of financial support for special education and related services for children with disabilities below the amount received in the preceding fiscal year.

*Cause:* Due to the State's unique funding formula for education and growth of education funding for eight consecutive years prior to 2010 there had been no specific awareness of any State MOE concerns that would have been impetus to monitor the compliance requirements for State MOE.

*Effect:* There were no information frameworks in place for monitoring and management of State MOE compliance requirements increasing the possibility of noncompliance. Noncompliance did occur in 2010 and 2011.

*Recommendation:* Now that these calculations are understood, the documentation of this process, controls, and corresponding information should be a priority. The documentation of the process should be comprehensive to include the nature of data inputs, their purpose and their sources, how frequently and when the data inputs are calculated and who should review the calculation.

*Management's Response:* The Department understands the importance of maintaining state financial support for special education, both under federal special education statutes and for the good of all students in our state. It is important to set the record straight with regard to the idea of funding "made available" to our districts and the amount of funding actually spent on meeting the individual needs of special education students. The federal government requires that a state make available, annually, an amount that is equal to or greater than the previous high-water mark of funding, independent of almost any circumstance, including the amount of funding needed to meet the needs of students outlined in their Individual Education Program (IEP). An example of this is the amount of state funding "made available" through the New Mexico Public School Funding Formula in fiscal year 2010, about \$397.6 million; and the amount spent by school districts and charter schools, about \$342.9 million, a difference of \$54.7 million. Despite the fact that school districts did not need all of the funds generated by the funding formula, New Mexico did not meet the "made available" test and as such did not meet its maintenance of

## **SEA MOE 001 STATE MOE PROCESS AND PROCEDURE (Material Weakness) – CONTINUED**

effort (MOE) in 2010. The Public Education Department (PED) has had an MOE policy in place since 2007. The PED calculates State MOE each fiscal year in accordance with the requirements of Part B of the Individuals with Disabilities Education Act, codified at 20 U.S.C. §1412(a)(18) (hereafter “IDEA Part B”), and the Rules and Regulations issued by the United States Department of Education (USDE), codified at Title 34 of the Code of Federal Regulations. IDEA Part B does not set forth a calculation methodology though PED has a clear methodology it uses to calculate MOE. The calculation methodology developed by PED is presently part of the appeal of the denial of a waiver for FY 2011 that is pending before the USDE.

The PED is currently using this methodology to determine whether the State is meeting the MOE requirements and the Deputy Secretary of Finance and Operation has testified to the House Appropriation Finance Committee and Senate Finance Committee and provided the MOE projections for FY 2015 and FY 2016 using the best data made available as of January 2015.

*Auditors’ Response:* The PED policy for State MOE requires an annual calculation that was not operating for most of the audit period (2010-2012). We saw no evidence of calculations of State MOE until a developmental process began in fall 2011 that was not concluded until August 2012. The Federal requirements for State MOE based on funds “made available” do not directly recognize changes in special education student needs and demographics.

## **SEA MOE 002: VIOLATION OF PED’S 2007 POLICY (Material Weakness)**

*Condition:* PED formulated a policy in relation to State MOE compliance in 2007. The policy was designed to provide assurances to the federal government that New Mexico meets the conditions specified in the IDEA B statutes for federal funding of special education. The policy assurances were not implemented based on:

- The lack of annual reviews of other State agencies expenditures of special education funding.
- The lack of monitoring State MOE funding levels.
- The lack of a determination of correctness of assurances in the State application.
- The lack of determination of need for waiver.
- The policy had no evidence of approval or adoption in its content.

*Criteria:* PED’s policies are issued to accomplish specific objectives. The lack of adherence to internal policy increased the risk of noncompliance with State MOE requirements.

The COSO framework for internal control contained in the Model Accounting Practices (authority §6-5-1 through §6-5-6 NMSA) adopted by the State of New Mexico specifies the monitoring function directed to the ongoing effectiveness of relevant controls as a key element of an internal control system.

34 CFR 300.100(b) specifies that a State is eligible for assistance under IDEA B for a fiscal year if the State submits a plan that provides assurances to the Federal Secretary of Education that the State has in effect policies and procedures to ensure that the State meets the conditions specified in the law.

*Cause:* The lack of a State MOE calculation occurred in part due to the lack of monitoring either within PED or by an external agency to PED. PED had the primary responsibility for State MOE compliance for New Mexico.

## **SEA MOE 002: VIOLATION OF PED'S 2007 POLICY (Material Weakness) – CONTINUED**

*Effect:* The State did not support its assurance given to the federal government through its policy document in several respects. Noncompliance did occur in 2010.

*Recommendation:* PED should strengthen internal monitoring procedures for State MOE. Monitoring frameworks can be considered for State MOE and other high risk programs that depend on significant external funding in the State of New Mexico. Such frameworks would address risk assessment for the State of New Mexico and provide monitoring for successful compliance.

*Management's Response:* PED's methodology for State MOE utilizes the unit value, which steadily increased up through 2010 and resulted in PED making available more funds for special education and related services than the prior year. Therefore, PED met the State MOE until the per unit value decreased, which required PED to calculate the amount of the deficiency and impact of the decreased per unit value on the State MOE. USDE never required prior year calculations before FY 2010.

## **SEA MOE 003 NEW MEXICO CERTIFICATION OF COMPLIANCE WITH SEA MOE FOR 2010 WAS INCORRECT (Compliance – Other)**

*Condition:* New Mexico gave positive affirmation to the Federal Government in relation to its compliance with State MOE funding levels for FY 2010, FY 2011, and FY 2012. State MOE funding levels for FY 2010, FY 2011, and FY 2012 were all below the FY 2009 baseline amount. This positive affirmation for 2010 was ultimately incorrect. The positive affirmations for 2011 and 2012 are on appeal. There were no supporting calculations for the positive assurances given to the federal government each year.

*Criteria:* Federal Regulations required states to make assurances that it has policies and procedures in place as required by the individuals with Disabilities Education Act 34 CFR 300.100 – 300.174. The objective of the reporting was to determine states' compliance with Federal statutes for IDEA B special education funding.

*Cause:* Check the Box reporting did not require the reporting of amounts of SEA MOE provided by a State before 2011. Calculations in support of New Mexico's affirmative compliance reports submitted should have been done but were not.

*Effect:* The State erroneously reported its SEA MOE compliance for 2010, and possibly 2011 and 2012.

*Recommendation:* PED should update its policies and reaffirm its procedures regarding reporting its compliance to DoED annually. An assertion of compliance that is not correct should be detected and corrected through effective review and approval control procedures.

*Management's Response:* The New Mexico Public School Funding Formula is unique in the United States in that it distributes funding based on the individual needs of each student, independent of geographical location or local wealth. As such, changes in individual student characteristics over time will result in changes in the distribution of funding. This is particularly evident in the special education components of the funding formula where changes in the level of service can result in dramatic changes in the funding generated by individual students. As special education students grow developmentally, respond to their individualized program, and require less intense interventions, the level of service may change, resulting in the student generating less funding year over year. While this reduction in funding remains sufficient to meet the needs of this student, federal regulators do not recognize this and subsequently require the state to allocate funding that is not needed. By implementing a need-based formula,



**SEA MOE 003 NEW MEXICO CERTIFICATION OF COMPLIANCE WITH SEA MOE FOR 2010 WAS INCORRECT (Compliance – Other) – CONTINUED**

New Mexico is ensuring that students with special needs in similar circumstances are generating the same or more funding from year to year. Focusing on an overall dollar value, without regard to student demographics, student populations, or student needs, misses the mark. While laudable in its goal, the federal mandate has failed in its execution; instead rewarding arbitrary funding mechanisms and creating undue and unnecessary burdens on states that have made the decision to base educational funding on student need. The result of this is a de facto incentive to keep students in more intense programs that are not appropriate to meet their needs, but generate the level of funding needed to meet MOE. Put in practical terms, the state could double the number of students with special needs and increase its funding by a dollar and meet the federal mandate. This contradiction between the stated desire of the Individuals with Disabilities Education Act (IDEA) and the MOE regulations is concerning and, in our opinion, not reconcilable. PED recognizes that the State erroneously reported its SEA MOE compliance in 2010. PED will update its policy as soon as the calculation methodology it is using is either affirmed or reversed in the pending appeal to USDE. The policy will address the MOE calculation process thus ensuring reporting the SEA MOE is accurate.

**SEA MOE 004 PED's 2007 POLICY SHOULD BE UPDATED (Other)**

*Condition:* PED's 2007 State MOE published policy was reviewed for conformity to current PED procedure. There were certain inconsistencies noted between the policy published in the ISEAS manual and current procedure. The published policy also indicates that ASD is responsible for performing the calculation.

*Criteria:* Policies are a means to accomplish objectives and provide authority for appropriate action. An updated policy would provide clarity and specifics on current compliance requirements. Additionally, the updated policy would document intentions for compliance with all stakeholders including the federal government.

*Cause:* The policy was not initially referenced after its creation and has not been updated. A final methodology that would be part of a new policy is still in flux due to appeal proceedings with the Department of Education.

*Effect:* An updated policy is not available to meet government objectives. The current policy is not correct in all aspects.

*Recommendation:* PED's 2007 policy for State MOE should be updated to accurately reflect current practice and department responsibilities for calculation. The completion of the redrafting and subsequent adherence to the policy should be a priority for PED.

*Management's Response:* PED will update its policy if needed as soon as the calculation methodology it is using is either affirmed or reversed in the pending appeal to USDE. As noted above, the changes in individual student characteristics over time will result in changes in the distribution of funding, this is referred to as workload. This is particularly evident in the special education components of the funding formula where changes in the level of service can result in dramatic changes in the funding generated by individual students. As special education students grow developmentally, respond to their individualized program, and require less intense interventions, the level of service may change, resulting in the student generating less funding year over year. While this reduction in funding remains sufficient to meet the needs of this student, federal regulators do not recognize this and subsequently require the state to allocate funding that is not needed. By implementing a need-based formula, New Mexico is ensuring that students with special needs in similar circumstances are generating the same or more funding from year to year. Further, in certain fiscal years, legislative actions that affect

## **SEA MOE 004 PED's 2007 POLICY SHOULD BE UPDATED (Other) – CONTINUED**

appropriations are enacted. In the FY10- FY12 timeframe, the legislature enacted changes to the two state pension programs shifting additional costs from the state to the employees. This shift in liability had the effect of reducing general fund appropriations, causing a drop in funding for education. As a result of the way the funding formula distributes funding this swap would effectuate a reduction in funds available for special education services although this shift has no effect on students. Until then, PED intends to use the methodology which includes the workload and retirement swap calculations.

## **SEA MOE 005 DOCUMENT REVIEW AND APPROVAL OF STATE MOE (Significant Deficiency)**

*Condition:* There is no documentary evidence that the State MOE calculation is reviewed and approved before during or after period of examination

*Criteria:* The Manual of Model Accounting Practices (authority §6-5-1 through §6-5-6 NMSA 1978) issued by the Department of Finance and Administration requires State agencies to implement internal accounting controls designed to prevent accounting errors and violations of federal law and rules in relation to financial matters. Review and approval of key information and transactions are fundamental to governmental internal control procedures. Documentation of such review and approval would strengthen effectiveness of the State MOE compliance process each year.

*Cause:* The State MOE calculation was not performed before 2012 nor was it a concern before 2010. Approvals are documented by the signature of responsible officials on report filings.

*Effect:* A more comprehensive documentation of review and approvals being performed are not included in the record of the State MOE reporting process. In the absence of such documentation an external party might question what procedures were performed.

*Recommendation:* Management should document the review of the calculation and retain such documentation to make a record of review procedures performed. Such documentation would strengthen the effectiveness of controls over State MOE reporting.

*Management's Response:* As previously stated, PED has had a State MOE policy in effect since 2007 that is based on the public school funding formula and the unit value. The IDEA Part B does not mandate that any specific methodology be used to meet State MOE and leaves the methodology up to each state. It was not until FY 2010 that the per unit value decreased, which affected PED's ability to meet the State MOE for the first time.

The current methodology used is the subject of an appeal in accordance with IDEA Part B's procedures. There is no regulation or statutory requirement as to what must be included or excluded from the State MOE calculation other than that it includes State funds for special education and related services. Therefore, any updates or changes to PED's State MOE policy must wait until the outcome of the appeal. IDEA Part B does not require that any agency approve its calculation and PED continues to believe its policy is appropriate and aligned with the IDEA Part B requirements.

The State's annual IDEA-B application requires that State MOE for the current year and proceeding year is validated by PED and the Department of Finance and Administration.

*Auditors' Response:* The validation of State MOE by the Department of Finance and Administration was not in place during FY 2010 and FY 2011. We agree that this change increase controls over compliance in connection with accurate reporting of State MOE.

**SEA MOE 006 COMMUNICATIONS TO PARTIES EXTERNAL TO PED  
(Significant Deficiency)**

*Condition:* There was no formal communication to the Legislature regarding potential shortfall in State MOE in 2010 and 2011. On a go forward basis, the Legislature needs to be informed of reliable State MOE status before the Legislative session each year.

*Criteria:* Information and Communication is a COSO internal control framework element incorporated into the Manual of Model Accounting Practices handbook for New Mexico.

The Green book, *Standards for Internal Control in the Federal Government* notes the following:

Information should be recorded and communicated to management and others who need it and in a form and within a time frame that enables them to carry out their internal control and other responsibilities.

*Cause:* PED did not communicate in any formal way with the Legislative branch. PED considered this their issue and responsibility. There was a feeling that appeals may provide relief for possible noncompliance.

*Effect:* The Legislature and its committees were surprised by the possible need for a special appropriation for one or more years before the legislative session in 2012. Appropriation decisions had to be considered with short notice.

*Recommendation:* Public law has been passed to provide for a formal communication to the Legislature each year to address this need. We recommend that possible funding deficiencies or noncompliance in other significant risk programs be reported according to a policy.

*Management's Response:* PED in fact communicated with the Legislature during the budgeting process in FY 2010 and subsequent years. For FY 2013, FY 2014, and FY 2015 appropriations have been made to cover any shortfall in MOE. The process established requires that PED provide MOE calculations to the DFA and LFC for review and notification is made to DFA and the Legislature as to whether the appropriations proposed during the legislative session are sufficient to meet MOE for the year appropriated. Because of the way New Mexico funds education, it would be impossible to provide the Legislature with a definite minimum amount of funding sufficient to meet State level MOE during the budgeting process. SEG funding is allocated through the funding formula, and the exact distribution of funds, including the amounts generated by factors within the formula, cannot be known until the final distribution of funds. While other states have chosen to appropriate a specific dollar amount for special education, New Mexico has chosen to distribute educational funding based upon need, as set forth in the statutory funding formula. Without significant legislative changes to the way educational funding is allocated in New Mexico, it would be impossible to communicate a minimum amount of funding sufficient to meet MOE to the legislature during the budgeting process. PED provides the legislature with the best information available, projecting the distribution of SEG and amounts generated within the formula by special education.

*Auditors' Response:* The communication that we reviewed for FY 2010 did not include any information or concerns in relation to State MOE that were forwarded to the Legislature. The Legislature became alarmed in January 2013 by this issue as is described in the report.

**SEA MOE 007 INFORMATION NEEDED FROM OTHER STATE AGENCIES  
(Significant Deficiency)**

*Condition:* Special education funding data was needed from other state agencies providing such services for the initial calculation of State MOE in calendar 2011. The information was first requested in March 2011. The receipt of the needed information was delayed based on the date of the first request. Some agencies responded much later than other agencies.

*Criteria:* Information and Communication is a COSO internal control framework element incorporated into the Manual of Model Accounting Practices handbook for New Mexico.

The Green book, *Standards for Internal Control in the Federal Government* notes the following:

Information should be recorded and communicated to management and others within the entity who need it and in a form and within a time frame that enables them to carry out their internal control and other responsibilities.

*Cause:* The first time through calculation in 2011 required information from other state agencies never before requested. There was no previous experience to reference for what data was needed.

*Effect:* The gathering of needed information from these agencies was completed later than desired.

*Recommendation:* The MOE calculation should be finalized and timetables set for the type of information and the timing for receipt of such information. Delays in receiving ancillary information from other state agencies can be attributed in part to “first time through” but a strengthened framework should continue to be set up to monitor the progress of the receipt of needed information.

*Management’s Response:* PED continues to work with the other state agencies involved in aspects of special education to refine the information gathering process. PED has determined the funding streams needed to establish funding made available from the other state agencies. This information has been standardized and communicated to the agencies. Data collection is now smooth and accurate since PED knows what to obtain and now receives the information in a timely manner.

**SEA MOE 008 STANDARDIZED APPROACH FOR SEA MOE (Significant Deficiency)**

*Condition:* We noted an extended process to calculate State MOE the first time through that included many revisions and changes. Certain aspects are still subject to determination through an ongoing appeals process. This MOE calculation in the near future should be standardized to the greatest extent possible to improve controls over compliance. PED needs a reliable method to calculate or estimate MOE before the Legislative session each year. The difficulty of producing a reliable on time State MOE is acknowledged based on various inputs and variables inherent in the complexity of the formula. However, overall expectations appear to be open to estimation based on past trends and the original base year MOE amounts.

*Criteria:* Controls over State MOE compliance will be enhanced by a standardized approach. The control objective for State MOE compliance activity is to determine State MOE funding status in advance of the Legislative Session.

## **SEA MOE 008 STANDARDIZED APPROACH FOR SEA MOE (Significant Deficiency) – COTNINUED**

*Cause:* There are still aspects of the SEA MOE that are still uncertain. The State's funding formula and resultant unit value is dependent on information, including information submitted by other state agencies that historically has not been fully available by mid January of each year.

*Effect:* State MOE compliance requirements are harder to manage and to fund each year. The risk of noncompliance is increased.

*Recommendation:* A standard calculation or estimate should be developed with the objective to increase the reliability and the timeliness of usable State MOE information. Estimates, high and low ranges of data or estimates, sensitivity of error, look back and correction of prior data approaches may assist the process. The State's funding formula is unique and it exists as part of the annual reporting process of the entire state. A 2010 report prepared for the National Association of State Directors of Special Education (NASDSE) grouped New Mexico with 11 other states in relation to its special education funding approach. The group's special education funding is generally based on multiples of general education funding which is then allocated to students varying by disability, placement or specific need (multiple student weights). These other states approaches may offer some usable information or confirm current needs.

*Management's Response:* In many of the other states, their Legislatures appropriate a specific amount for special education and related services. In New Mexico, the Legislature does not appropriate an amount for special education but rather appropriates amounts for public school support, a part of which is the SEG appropriation. As a result, the calculation methodology is much more complicated than in most states where the amounts appropriated for special education can be compared from year to year. Moreover, because the amount of funding generated and made available through the funding formula from special education cannot be determined until the final SEG distribution, it would be impossible to act in a manner similar to other states. In order to make New Mexico's MOE determination process approximate to other states, the Legislature would have to change the present funding formula in a substantial way, and abandon New Mexico's approach to equalized educational funding based upon programmatic needs. While compliance with IDEA Part B is necessary, it does not require legislative overhaul to longstanding policy decisions. New Mexico's funding formula enacted nearly 50 years ago in part to make the quality of education available to our students not depend on the neighborhood in which he or she was born. New Mexico has appealed to DoED for an interpretation of IDEA Part B that does not arbitrarily punish a state who has made the difficult decision to base educational funding on need rather than local revenue.

### **Local Education Agency (LEA) Maintenance of Effort Calculation – Controls over Compliance**

We identified deficiencies in the controls over the LEA MOE calculation as follows:

#### **LEA MOE 009 DOCUMENTATION OF LEA MOE PROCESS (Other)**

*Condition:* We examined a four page ISEAS report and certain other information from other sources documenting general policies and procedures of the LEA MOE compliance process. Additionally, certain other factors are necessary to produce the relevant MOE amounts for each LEA. The ISEAS report and other information did not contain sufficient information in relation to LEA MOE compliance to serve as a comprehensive policy and control document.

No formal documentation of the LEA MOE calculation process and procedures was noted for the period under examination. The process currently requires significant computer and manual effort from PED individuals and is not fully documented.

## LEA MOE 009 DOCUMENTATION OF LEA MOE PROCESS (Other) – CONTINUED

*Criteria:* The Manual of Model Accounting Practices (authority §6-5-1 through §6-5-6 NMSA 1978) issued by the Department of Finance and Administration requires State agencies to implement internal accounting controls designed to prevent accounting errors and violations of federal law and rules in relation to financial matters. Documentation of process could increase clarity of procedures, provide a reference for staff, protect in the event of turnover and increase the record of procedures performed to ensure federal compliance.

Per 34 CFR 300.201, the LEA, in providing for the education of children with disabilities must have in effect policies, procedures, and programs that are consistent with State policies and procedures.

*Cause:* The LEA MOE process is very complex with 100+ LEAs participating in the data base. Part of the process is computerized and part is manual. LEA MOE processes and procedures to ensure compliance requirements are a complex task and, as such, accurate and complete compliance with monitoring requirements has been affected by turnover of staff. Computerization is being extended to other parts of the process to improve effectiveness and efficiency. The computerization project by its nature requires changes and documentation.

*Effect:* The State cannot demonstrate that it is in compliance with 34 CFR 300.101-165 without complete and comprehensive documentation of LEA MOE policies, procedures, and calculations.

*Recommendation:* The Agency should prepare a detailed procedure for the calculation which should include the inputs and their source, how frequently the calculation is to be performed, and who should review the calculation. The documentation should be updated as needed and should be standardized as much as possible.

*Management's Response:* The Local Education Agencies Maintenance of Effort (LEA MOE) calculation procedure is described in the Integrated Special Education Accountability System (ISEAS).

The ISEAS was first developed in 2011 as part of the State's General Supervision System. The ISEAS describes when (before the end of the 2<sup>nd</sup> fiscal quarter) calculations, from the previous fiscal year, (actual expenditures and per capita expenditures) are calculated including which data (40<sup>th</sup> day) and which funding object codes are utilized in the calculation.

Operating Budget Management System (OBMS) POD HOC reports have been developed by the Agency. These reports compile LEA expenditure data, by fund and object code, and assist PED and Special Education Bureau (SEB) staff with LEA MOE calculations. This data and information is pulled directly from OBMS; therefore reducing the amount of manual labor and possibility of human error.

The Agency has developed guidelines that include a more detailed procedure for the LEA MOE calculation (actual expenditures and per capita expenditures). The guidelines also include specific procedures and required documentation when exceptions under 34 CFR §300.204 are considered, accepted or rejected. The proposed guidelines are currently under review.

*Auditors' Response:* We developed our understating of the LEA MOE oversight procedure followed by PED through reading ISEAS and other reports and most significantly through staff interviews described in this report in the LEA MOE requirements and internal controls section. POD HOC reports were not available during the audit period 2010-2012 but appear to increase information and controls over LEA MOE compliance. We continue to recommend additional detailed information to be added to the ISEAS report or equivalent to document a complex process in one place.

**LEA MOE 010 DOCUMENTATION AND ASSUMPTION OF RESPONSIBILITIES FOR  
LEA MOE COMPLIANCE FOR SOME CHARTER SCHOOLS  
(Significant Deficiency)**

*Condition:* PED as a recipient of federal funds that is in turn distributed to LEAs has the overall responsibility for LEA MOE compliance. PED administers a concentrated process to determine and facilitate a successful compliance for each LEA each year. Per our work, the LEA MOE oversight process is ultimately effective. However, some LEAs need significant help with MOE compliance determinations, exception reporting and resolution and quantifying adjustments to become compliant. These LEAs are not assuming sufficient responsibility for their LEA MOE compliance outcomes and their acceptance and approval of final MOE determinations that apply to their LEA are not documented.

*Criteria:* The Manual of Model Accounting Policies specifies that primary controls to be relied upon in any transaction and process should reside at the agency level as well as the DFA level. The Manual further requires internal accounting controls be implemented to prevent errors and violations of federal laws and rules.

Federal Circular A-133 and the corresponding compliance supplement for FYs 2010, 2011, and 2012 provides for requirements that apply to recipients and sub recipients of federal funds including Local MOE for special education.

*Cause:* The LEA MOE compliance requirements apply to a large number of LEAs. There may not be the skills knowledge or experience available to sufficiently evaluate LEA MOE compliance within some LEAs. Additionally, PED did not document the LEA's acceptance and approval of final LEA MOE outcome for the years 2010-2012.

*Effect:* PED, as the central oversight body, has a significant responsibility to monitor all LEAs and must provide management assistance to minimize LEA MOE noncompliance in certain cases.

*Recommendation:* Certain LEAs should be assuming sufficient responsibilities over LEA MOE compliance outcomes. Ongoing communications with and monitoring of LEAs by PED and implementation of a system generated report currently underway will assist LEAs in determining their MOE status.

*Management's Response:* PED, as the central oversight body, has a significant responsibility to monitor all LEAs and must provide management assistance to minimize LEA MOE noncompliance in certain cases. The updated ISEAS procedures including "Estimated LEA MOE" will assist LEAs in monitoring their level expenditures and make any necessary adjustments, if needed and allowable. However, it is still PED's responsibility to make the final determination as to whether or not the LEA is in compliance with the MOE requirement.

The Department issues preliminary and final determination MOE letters. This affords LEA the opportunity to review the calculations and agree or disagree or request that the department consider exceptions. The Department is now requiring Superintendents to certify their MOE calculations.

**DETAILED SUMMARY OF TESTING AND RESULTS BY TOPIC**

**Page**

*First Awareness of Possible SEA MOE Non-Compliance* ..... 25-27  
*No State MOE Was Ever Calculated Before 2012* ..... 27-28  
*Assurances to DoED Concerning IDEA B MOE Compliance*.....28  
*Difficulties in Calculating State MOE - Interactions with OSEP and OSERS* ..... 28-30  
*Difficulties in Obtaining Information for Calculating MOE*.....31  
*State MOE Number Variances* ..... 31-32  
*34 CFR §300.230 and ARRA* ..... 32-34  
*Communications Externally to State Government* ..... 34-35  
*Review of Audited Financial Statements of PED for 2010, 2011 and 2012*..... 35-36  
*Why the Agency Made Untimely Waiver Requests for Fiscal Years  
2010 and 2011*.....36  
*LEA MOE Requirements and Internal Controls*..... 37-39  
*Why the 2011 Waiver Was Denied*.....40  
*FAPE* .....40  
*Internal Controls and COSO* ..... 40-44  
*Comments to Increase Effectiveness and Efficiency*.....45



## First Awareness of Possible SEA MOE Non-Compliance

### 2007

PED was aware of the State level MOE requirement based on the September 2007 OSEP verification visit. The OSEP visit verification letter was stamped received on April 21, 2008 by PED. The letter focused on LEA internal controls over compliance and certain compliance requirements for IDEA and other programs. Only one paragraph in the 2007 OSEP visit verification letter addressed State Level MOE. This paragraph stated that PED *“reported that it has developed policies and procedures to ensure that IDEA Part B funds are not used to reduce the State level of expenditures for providing special education and related services for children with disabilities, or State funds otherwise made available to pay the excess cost of providing special education services for children with disabilities below the amount of support for the preceding year.”* As discussed further below, this verification visit was a driver to PED actions during and after the verification visit whereby developed a MOE policy document.

### February 2009

Meeting notes retained and provided by the former Deputy Secretary of Finance and Operations of PED (from November 2002 to June 30, 2010) showed that in a February 5, 2009 meeting including PED’s external counsel, an agenda topic was the need to maintain the State’s 2009 level of MOE in 2010 in which budget cuts were expected. Meeting minutes dated February 3, 2009 with the Cabinet Secretary of DFA and PED staff discussed the immediate need to balance the State’s books with the knowledge that SEG will be cut. There is mention in these notes that *“provisions in the bill will require MOE”*.

### September 2009

An email request by the Cabinet Secretary of DFA on September 21, 2009 to the PED Deputy Secretary asked the Secretary to provide bullets of the effects on New Mexico’s schools operations on Title I or IDEA B should the PSS budget be cut at the same percentage as State agencies. The email reply indicated that.....” *with SEG cuts in place we are on the brink. I don’t think we have wiggle room at this point”*.

### May/November 2009

In November 2009, the former Deputy Secretary of Finance and Operations of PED (from November 2002 to June 30, 2010) spoke to the LESC on at least two occasions concerning public school finance issues including the need to allocate State education funds received to ensure compliance with MOE. Per a review of November 2009 LESC meeting minutes there is some reference to the workings of IDEA and MOE but we did NOT see a specific reference to MOE noncompliance due to economic issues or State SEG funding problems due to a decrease in revenues or the education Unit Value.

### Fall 2009

A special Legislative session was held in fall 2009 to address the budget crises in preparation for the upcoming legislative session to begin in late January 2010. Interviews disclosed that the Deputy Secretary of PED may have made mention of MOE noncompliance concerns to the House Education committee or the Senate Education committee during the special session that fall. There are no published minutes for these committees and we were unable to verify such possible communications.

In December 2009, PED was before the LFC with the current Deputy Secretary present, and there was a discussion regarding cutting budgets. The current Deputy Secretary remembers the former Secretary standing up without making a big deal and saying “I need to caution the committee as they consider cutting the general funding of education that it may cause State MOE issues” but nothing further.

The current Deputy Secretary was the LFC Analyst for Public Education from 2007 until May 2010. Then from May 2010 – February 2011, he served as the Higher Education Analyst for LFC. He noted in an interview that other than the comment made to the LFC by the previous Deputy Secretary, he had never been informed of this matter prior to his arrival at PED on February 14, 2011.

#### April 2010

The Assistant General Counsel of PED (who subsequently became Deputy General Counsel), the fiscal analyst, the Director of Special Education Bureau (who subsequently became the Director of Federal Programs in November 2011) together were requested to work on gathering numbers for monitoring State MOE and Local MOE compliance. PED staff observed that the Unit Value decreased for the first time in FY 2010 as a result of revenue shortfalls resulting from the financial crisis of 2008/2009.

The decrease in the Unit Value was very significant because it changed the funding that went to each school district as it reduced the number of dollars available for operational purposes. The final Unit Value was not known until March 2010, which is significant because it decreased funding that would be apportioned to each school district since it would reduce the number of dollars available. Finally, April 28, 2010 was a recognizable point in time that PED strongly suspected that it may have a problem with State MOE beyond general concerns. This is documented in an email on that date.

During April or May 2010, the previous Budget Director (who became the Interim Deputy Secretary of Finance and Operations from July 2010 to February 2011) in his interview indicated that he accompanied the Deputy Secretary when he stood in front of either the LFC or LESC committees in public forum and told them words to the effect “if we don’t get this funding restored that we are going to have issues in meeting the MOE”.

#### May 2010

Three PED employees met with the former Deputy Secretary of Finance and Operations to inform him of their concern over State MOE. The former Deputy Secretary of Finance and Operations indicated he reported the risk and informed the LFC in May or June in 2010 prior to leaving employment with PED. There is no record as to the level of detail included in his report to the LFC at this time. To corroborate, while serving as a budget analyst for LFC, the current Deputy Secretary of Finance and Operations of PED stated he recalled the former Deputy Secretary of Finance and Operations of PED mentioning to the LFC committee members that PED would face an MOE shortfall if the SEG appropriation was reduced due to the anticipated budget reductions (December 2009) . The Unit Value calculation under consideration at this time would have been the FY 2010 Final Unit Value and the Initial Unit Value for the upcoming fiscal year ending June 30, 2011.

## June 2010

The former Deputy Secretary of Finance and Operations of PED resigned employment with PED in July 2010. The Secretary of Education also resigned employment with PED in June 2010. During the interim period, several Assistant Secretaries for Instructional Support and Vocational Education were appointed. At that time, the special education bureau was a part of that division. The current Secretary of Education was appointed in January 2011.

Between July 2010 and February 2011, the Acting Interim Deputy Secretary of Finance and Operations did not report this matter in the 2011 budget cycle to the Legislature because the MOE calculation methodology was still being developed and the data had not been collected.

## November 22, 2010

A State MOE waiver website was created by the federal government and communicated to stakeholders through email. Denise Koscielniak disseminated this information to several key PED employees on this date. Six states had filed waivers by November 22, 2010---Alabama, Iowa, West Virginia, Kansas, South Carolina, and New Jersey. The State and staff members were aware of other states requiring and filing waivers earlier in the year.

## **No State MOE Was Ever Calculated Before 2012**

The State's highest level of SEG funding in the amount of \$435,197,328 was for FY 2009. This represented State MOE baseline. The SEG Unit Value had increased each year before FY 2009 for a minimum of eight preceding years. Before FY 2009, no calculation had ever been performed or even seemed necessary because the SEG funding had always increased. SEG funding had gone up each year as the State's budget had increased as had the Unit Value. Since special education funding was included within the SEG funding as an aggregate total, it was the opinion of the former Deputy Secretary of Finance and Operation that not even a preliminary calculation could have been made at June 30, 2010 when he left. The identified risk was an educated guess based on the Unit Value decrease and budgetary reduction expectations and experience and knowledge of the federal requirements for IDEA B. The specific need for a waiver was noted in an April 28, 2010 internal email and the specific need for an amount to request on the waiver was noted in an October 26, 2010 internal email. The October email also reports that "*we are open to any and all suggestions*" (...about how to proceed).

The State's SEG distribution is based on an aggregate calculation of weighted factors and membership units for all LEAs. The total available for program cost is divided by the statewide total program units to determine the Unit Value for the year. Factors relevant to the funding of special education and children with disabilities are included in the aggregate calculation. This relationship yielded the general result that when the State's revenues increased then the State SEG would increase as well unless there are significant decreases in members needing special education. In all subsequent calculations of the State MOE generated subsequent to 2011, the relationship held true for making a general assessment of State MOE compliance.

The direct cause of the State's reduction in funding necessary to meet State MOE was the reduced appropriation for education made in 2010 when compared to the previous year. The Legislature was uninformed about MOE noncompliance consequences and faced additional hurdles during an extremely challenging budget year. Constitutionally the Legislature cannot appropriate more than it receives to achieve a balanced budget. When revenues went down in 2010 the Legislature had no choice but to cut general fund appropriations for *education and other budget categories*. It is important to note that the percentage decrease for education was approximately the same as the average decrease for all state agencies. In 2011 compared to 2010, appropriations for public education funding increased more than all other budget categories. PED requested an additional amount of education funding in 2010 compared to the

prior year but this request was not appropriated at the requested amount. The agency did request sufficient money to meet State MOE as PED did request public school support in FY 2010 of \$2,428,667 (000's) which exceeded the FY 2009 final amount of \$2,323,983 (000's).

A waiver was ultimately granted for 2010 by the DoED as a result of an unforeseen and precipitous decline in the State's finances. This is a recognized valid reason for waiver and is incorporated into IDEA B rules. It is on this basis DoED granted the waiver in 2010 to New Mexico and was also granted to certain other states experiencing revenue level decreased due from economic hardship.

### **Assurances to DoED Concerning IDEA B MOE Compliance**

The reauthorized Individuals with Disabilities Education Act (IDEA B) was signed into law on December 3, 2004, by President George W. Bush. The provisions of the act became effective on July 1, 2005.

We reviewed the State's application for 2010, 2011 and 2012 all of which gave positive assurances to the DoED that the State will not reduce State MOE for the year of application---- assurance question No 18. The only reporting options available was to either check the box yes or no. This positive assurance was made each year against a backdrop of PED awareness that there was a concern with the State MOE compliance but no actual variance amounts were available nor a methodology in place to calculate such amounts. In addition, the State MOE determination process was subject to uncertainty as to content and was very extended as this was a "first time through" calculation.

The DoED has since changed its requirements by requesting results of actual State MOE data in 2012. Starting in October 31, 2013 (federal fiscal year end which funds the FY 2013/FY 2014 school year), reporting included dollars from FY 2011 and FY 2012. The criteria specified by OSEP for states to use in applying for waivers principally involves the states' level of funding made available for special education for primary and secondary education totals for the waiver year and the immediate preceding year. Additionally, the waiver now requests the State's revenue level for the current and the immediate prior year. These amounts were not previously requested and constitute the basis for determination of whether an unforeseen and precipitous decline in financial resources has occurred. This information was the basis for approval of the waiver in 2010 and denial in 2011.

### **Difficulties in Calculating State MOE—Interactions with OSEP and OSERS**

The new Deputy Secretary of Finance and Operations (Deputy Secretary) of PED's first day was February 14, 2011. Certain employees approached the Deputy Secretary within days after he began his tenure. State MOE noncompliance concerns had been in the air for some time but not much had been done in terms of constructing an actual waiver requirement. A January 19, 2011 email from DoED to all states announced a verification visit schedule and the intention of DoED to look at State MOE compliance during the visit. New Mexico's visit was to take place on October 3, 2011. At that time, it was apparent that a calculation was required and so discussions began between the responsible PED staff. A March 3, 2011 email from the Deputy Secretary requested that special education funding information be obtained for FY 2009 and subsequent from other state agencies that provide special education services. This data would be needed for the calculation.

Per interviews, PED began speaking to the DoED in order to determine how to make the calculation to determine SEA MOE. The Federal register indicates that a state determines how to calculate its level of MOE. Accordingly, the DoED would not indicate the methodology but rather participated in a review, change, and approval methodology in a concentrated process over the last part of 2011 and into 2012. The State of New Mexico's funding formula is unique whereby special education level of effort is derived from various factors and sources as

embedded in the State SEG funding formula and Unit Value. Comparison to some other states shows that the level of special education funding in other states is a single number appropriated annually and may be obtained from the State's general ledger(s) in a straight forward fashion.

We reviewed various emails in the fall of 2011 into early 2012 from OSEP to PED. The emails were mostly questions or requests for information relating to New Mexico's funding formula. Various conference calls took place. It appears that OSEP was performing a buildup of its understanding of New Mexico's education funding in order to monitor New Mexico's compliance with State MOE.

By early 2012, it became apparent that the tone of communications with the federal government were of a more serious nature. OSEP began a series of calls with PED to discuss the State methodology for calculating State MOE. In the course of these calls, it became apparent that the State had failed to maintain State MOE for FY 2010 and FY 2011. Communications continued through the filing of the waivers on August 10, 2012 and the filing of support information on August 17, 2012 for the 2010 and 2011 waivers. Per correspondence as of February 12, 2013, the OSEP did not have the data and information needed to determine the amount that by which the State has failed to maintain effort in FY 2010 and FY 2011. PED requested and OSEP granted several extensions to submit final data to OSEP. A current extension at February 12, 2013 was in effect.

During a preliminary period through filing of the waiver and subsequent to February 2013, PED provided the DoED with information related to the following issues or claims as they may relate to the State's final determination of MOE levels:

- (1) flexibility in 20 U.S.C §1413 (j); 34 CFR §300.230;
- (2) "workload reductions",
- (3) "retirement swaps";
- (4) State's program for 3- and 4-year-old developmentally disabled students;
- (5) Training and Experience Index (T&E Index); and
- (6) treatment of funds made available under the State Fiscal Stabilization Fund (ARRA) program and the Education Jobs program.
- (7) discussion of wage benefits not included in MOE support

The above responses by OSERS were provided in a June 3, 2013 (second approval) letter that gave rise to the approved State MOE calculation methodology.

PED sought to include workload reduction and retirement swap as factors to include in the State MOE calculation. In the June 3, 2013 letter OSERS disallowed inclusion of both of these factors which would have reduced the State MOE shortfall by increasing the total State MOE funding for that year. In May 2013, PED sought to exclude base units contained in the funding formula for developmentally disabled 3 year- and 4-year-olds in the State's IDEA B program. OSERS considered the sole purpose of the program for 3 year- and 4-year-old developmentally disabled students was to provide special education services and/or meet the requirements of those students' individualized education programs and moreover, the program was operated under the State's IDEA B program. Therefore, OSERS included the full amount of State financial support for special education and related services for 3 year- and 4-year-olds in its calculation of PED's State financial support.

PED requested not to include the Training and Experience (T&E) Index in the MOE calculation because they were based on a wide array of teacher credentials and the qualifications were not limited to those for special education teachers. There is a point in the funding formula where other factors are multiplied by this T&E. It gives credit for credentials and time and service. The federal government agreed that this should not be included in the MOE calculation.

Conceptually, PED wanted the federal government to include all pieces of the funding formula that are influenced by units generated by special education students. If the funding formula determines special education funding amounts then a calculation of State MOE should also reflect such factors. PED's position was that it would only be fair that OSERS rely upon all the funding formula inputs/outcomes as a basis to calculate SEA MOE with all of its variability – up or down. PED wanted OSERS to account for the variable workload adjustments as an example. PED wanted inclusion of the variable workload adjustments due to different levels of intervention, but OSERS did not approve. The consideration and analysis of all seven factors (see above 1-7) added complexity to the process of determination of MOE computation for New Mexico.

During December 2012, the DoED noted apparent discrepancies between PED's prior submissions regarding the amounts made available through the SEG funding formula and the amounts described in publicly available documents published by PED. Later the State Legislature provided certain data that was different from that provided by PED. Additionally, per OSEP, certain concerns were communicated directly by the Legislature concerning State MOE noncompliance for future years. DoED felt they must consider any information coming from the Legislature as credible based on its source.

On April 22, 2013, a follow up request from the DoED to PED was made for the purpose of determining if it had complete and reliable data and information. One email reported the various levels of SEA MOE funding that DoED had received.

A corresponding email from PED presented various aspects and changes required as a result of the process of developing State MOE with OSEP. This email was dated June 5, 2013, just days after the letter from OSEP approving the waiver for 2010 but denying it for 2011.

Finally, PED notified OSEP in a letter dated in February 2013 that it intended to exercise flexibility in connection with 34 CFR §300.230. This statute provided that for any year in which the allotment received by a State exceeded the amount the State received for the previous fiscal year and if the State pays or reimburses all LEAs within the State from State revenue 100% of the non-Federal share of the costs of special education and related services, the SEA may reduce the level of expenditures for the education of children with disabilities by not more than 50% of such excess.

However, the DoED Secretary can prohibit the State from exercising the authority if determined that the State is unable to establish, maintain, or oversee programs of FAPE that meet the requirements of IDEA B, or that the State needs assistance or intervention. In response to PED's request to exercise the flexibility of 34 CFR §300.230, the DoED prohibited PED from exercising the authority for FY 2010 because the DoED determined in June 2009 and June 2010 that the State did not meet the requirements of IDEA B. PED sought to rely on a determination of "meets requirements" for 2011. DoED stated that PED had not established that it "paid or reimbursed all LEAs within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services". PED has pursued legal remedies against this determination from DoED. PED and DoED are in a conflict resolution process through the current date.

Various factors contained in the State's SEG formula relevant to special education were proposed to OSEP during the course of formulating the State's SEA MOE. The consideration of these factors added complexity and extended the time needed to arrive at a final determination.

### **Difficulties in Obtaining Information for Calculating MOE**

In a letter received December 2, 2009 by PED, DoED provided clarification of various provisions of IDEA B in conjunction with OSEP's focus on the fiscal requirements begun in 2007.

The letter discusses at length the State's calculations or factors affecting the calculation of a State's MOE. It states in part, *The reference to State Financial support in 34 CFR 300.163 is not limited to only the financial support provided to or through the SEA, but encompasses the financial support of all State agencies that provide or pay for special education and related services, to children with disabilities.*

In the case of New Mexico, other state agencies have an integral part in providing support and services to children with disabilities. These entities are identified as follows:

Children Youth and Family Department, Head Start, CYFD  
Division of Vocational Rehabilitation (DVR)  
New Mexico School for the Deaf (NMSD)  
New Mexico School for the Blind and Visually Impaired (NMSBVI)  
New Mexico Department of Corrections (NMCD)

Information from other agencies was first formally requested on March 3, 2011 through internal memo. A letter was prepared by the Cabinet Secretary to request the information through written correspondence to the respective cabinet secretaries. A follow-up email as of August 19, 2011 marked URGENT indicated which agencies had not yet replied. Another email dated September 7, 2011 showed small progress. The verification visit from OSEP was scheduled for October 3, 2011 and State MOE compliance was to be reviewed. And as it turned out, the verification visit did take place but the State MOE review was pushed back to spring 2012.

We reviewed numerous emails and responses as follow-up to respective agencies and then back again working to obtain all needed information. Various clarifications, repeats and fine tuning were needed. Besides funding, special education member headcount information was determined to be needed during the process because PED information was aggregated.

There was some delay and a difference in the timing and accuracy of information provided by the other reporting state agencies and just as in the case of the overall State MOE calculation, the "first time through" in gathering need information proved difficult and required much effort.

### **State MOE Number Variances**

The objective for all years 2010-2012 was to produce a State MOE calculation to determine the level of available funding by year so as to evaluate compliance and the amount of variance. Reliable input data was needed to accurately prepare the State MOE calculation to make these assessments.

State MOE numbers by year changed over time for a variety of reasons.

- (1) An initial error was corrected in submitted waivers.
- (2) The State submitted State MOE information that was initially approved by OSEP and subsequently denied by OSEP and had to be recast.
- (3) There were various factors that were a part of SEA MOE that had to be evaluated on its merits.
- (4) State MOE support came from various state agencies.
- (5) The NM Legislature submitted data in 2013 to DoED based on its own independent analysis.
- (6) The State sought to apply SFSF ARRA funds received in 2010 to be credited as non-federal funds.

The State applied for waivers for 2010 and 2011 on August 12, 2012, and also sent supporting information in support of the 2010 waiver on August 17, 2012. The requested waiver amount for 2011 in those documents was \$12,900,568. In a September 11, 2012 email for DoED to PED, DoED indicated that its calculation of MOE variance was \$28,187,998. Upon review the State amended its waiver request for 2011 to the higher amount.

Through correspondence, the Cabinet Secretary provided an explanation to DoED that reduction in the State's funding for 2010 and 2011 was because of the operation of the State's funding formula. The formula assigned a particular amount for each child with a disability based on the amount of services required by that child. For FY 2010 and FY 2011, the amount of services needed by children with disabilities decreased and therefore, the State provided fewer State dollars for special education and related services. Each special needs child had an Individual Education Program (IEP) which involved teachers and counselors at a school who participated in the special needs child's education. Decisions about what levels of services to provide were made at the LEA level which caused change to the unit differential and therefore the total program units. Level of service adjustments were controlled by the IEP team, which includes the student's parents at the school level. DoED replied that this argument is expenditure based and is not supported by statute.

In seeking to understand the State's explanation that changes in student needs were a main driver, the DoED sought out publicly available documents on the New Mexico Department of Education's website outlining student membership and other data related to the State's categories for special education funding. In analyzing online information, discrepancies appeared to exist between the State's submissions to DoED. This primary discrepancy was later reconciled and was due principally to inclusion of gifted children's data in the stat books.

The Legislative Education Study Committee analyzed PED responses to DoED for State MOE and relayed its analysis to DoED. Questions were raised about the data or interpretation of the data being requested. One interpretation showed a noncompliance amount increase for 2010 but a slightly positive MOE compliance amount for 2011.

### **34 CFR §300.230 and ARRA**

Certain effects resulted from increased federal funding received by New Mexico for education due to ARRA. The normal federal funding received by New Mexico annually was \$90 million. For FY 2010, ARRA money received was an additional \$91 million which came in two parts. The first installment of ARRA funds was in April 2009 in advance of the start of FY 2010 and the second installment came in during the fall of 2009.

The FY 2010 \$91 million ARRA award was a one-time award, but represented an increase in federal funding for education. This turned attention to federal regulation 34 CFR §300.230. This regulation provided to the States who qualify the ability to decrease their level of special education support by up to 50% of the amount of an increase in federal funding. Could this provision benefit New Mexico? Additionally, the question arose on whether ARRA funds could be counted as State funds for the purpose of meeting maintenance of effort under IDEA B.

34 CFR §300.230 flexibility is described by law as:

**(a) Adjustment to State fiscal effort in certain fiscal years.** For any fiscal year for which the allotment received by a State under § 34 CFR 300.703 exceeds the amount the State received for the previous fiscal year and if the State pays or reimburses all Local Educational Agencies (LEA) within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services, the State notwithstanding § 34 CFR 300.162 through § 34 CFR 300.163 (related to State-level nonsupplanting and maintenance of effort), and § 34 CFR 300.175 (related to direct services by the MOE) may reduce the level of expenditures from



State sources for the education of children with disabilities by not more than 50 percent of the amount of such excess.

**(b) Limitation.**

- (1) Notwithstanding the above paragraph, a State may not reduce the level of expenditures if any LEA in the State would, as a result of such reduction, receive less than 100 percent of the amount necessary to ensure that all children with disabilities served by the LEA receive FAPE from the combination of Federal funds received under Part B of the Act and State funds received from the SEA.
- (2) If an SEA exercises the authority under this section, LEAs in the State may not reduce local effort under § 300.205 by more than the reduction in the State funds they receive.

Can ARRA funds be used as non federal funds for meeting SEA MOE

Under ARRA guidance Question C-7 OSERS, the question is posed as follows:

*Q--To what extent may a state or LEA use Stabilization funds to meet the MOE requirements of the IDEA, Part B program?*

*A--Upon prior approval from the Secretary, a state or LEA may treat Stabilization funds.....as non Federal funds for the purpose of any requirement to maintain fiscal effort under any program that the Department administers.*

This appears to be promising guidance for the purpose of increasing State MOE amounts credited to a state, but it is further noted by OSERS that the Secretary will permit a state or an LEA to treat Stabilization funds as non Federal Funds for SEA MOE purposes of other Federal programs only if certain criteria are met.

*The State first demonstrates to the DoED, on the basis of auditable data that it is complying with the Stabilization program SEA MOE requirements. It further should have auditable data demonstrating that its use of the funds as non federal funds would otherwise qualify as State MOE.*

The emphasis on the need for prior approval and also on having available auditable data were significant in relation to PED's possible application of such funds for State MOE purposes. Most fundamental of all was the distinction between ARRA funds for meeting State MOE purposes and for using them for State stabilization purposes. Stabilization funding under ARRA totaled \$48.6 billion nationwide for education. These funds were intended to stabilize State budgetary needs of education so as to avert budgetary cuts, retain teachers and support essential education services.

As of March, 2010 New Mexico thought that it could meet requirements to use stabilization funds as State funds for meeting the IDEA B State MOE requirement. It was thought that as long as New Mexico could demonstrate that the percentage of total State revenue available to the State used to support education for children with disabilities and elementary, secondary and higher education combined did not decrease from one year to the next, PED should be able to meet the required criteria (even if total dollars of education funding went down). Further, New Mexico thought that prior approval was met due to the receipt of "meets requirements" determination (for LEAs) from DoED in other correspondence for FY 2011.

There were considerable efforts made discussing whether prior approval occurred, whether there were deliberations on whether New Mexico had auditable data and whether there was clarification type discussion as to the applicability of these funds for the purpose of meeting State MOE. Ultimately, there was no application of ARRA Stabilization funds for meeting State MOE allowed by DoED.

## Does Increased ARRA Funding Trigger 34 CFR §300.230?

The second issue for ARRA funds received by New Mexico proved to be the possibility of reducing State MOE support up to 50% of the increased federal funding received. 34 CFR §300.230 provided that for any year the allotment received by a State exceeded the amount the State received for the previous fiscal year and if the State pays or reimburses all LEAs within the State from State revenue 100% of the non-Federal share of the costs of special education and related services, the SEA may reduce the level of expenditures for the education of children with disabilities by not more than 50% of such excess.

However there was criterion to be met to exercise this reduction option. The DoED Secretary could prohibit the SEA from exercising the authority if the Secretary determined that the State was unable to establish, maintain, or oversee programs of FAPE that met the requirements of IDEA B, or that the State needed assistance or intervention. In response to PED's request to exercise the flexibility of 34 CFR §300.230, the DoED prohibited PED from exercising the authority for FY 2010 because the DoED determined in June 2009 and June 2010 that the State did not meet the requirements of IDEA B. PED sought to rely on a determination of "meets requirements" for 2011 since it applied to the federal FY 2009 which overlaps the State's FY 2010. Consultations with an educational resource specialist indicated that all LEA special education expenditures must come from State money and no local money could be used. DoED stated that PED had not established that it "paid or reimbursed all LEAs within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services". In summary, 34 CFR §300.230 application was denied by DoED.

The third issue for New Mexico in the discussion about ARRA funds and 34 CFR §300.230 was *what would happen to the highest year base amount that a State must maintain under the SEA MOE should a State decrease its support provided by CFR 300.230?* New Mexico PED pursued this question through research, consultation and ultimately through legal resolution and appeal. New Mexico's interpretation was stated in its legal brief whereby the State noted to the effect that a waiver simply provided penalty relief in any year but statutory relief provided by the exercise of 34 CFR §300.230 in effect reset the baseline reference (decreased it) for State MOE support. It further noted that the operation of 34 CFR §300.205 applicable to LEA MOE support and more commonly utilized by States for LEA support was drafted very closely to the State MOE regulation.

On May 8, 2014, Judge Richard F O'Hair an appeals judge within the Education Department ruled that he was not persuaded by PED's arguments and ruled against PED. US Department of Education Secretary Arne Duncan will review the decision and per a spokesman, Duncan said he will only overturn the decision if clearly erroneous. PED has recourse to the US Court of Appeals. PED is continuing to pursue a waiver for 2011. As of the date of this report, a final decision has not been rendered by the US Secretary of Education.

## **Communications Externally to State Government**

Per the Green Book, *Standards for Internal Control in the Federal Government*, the overall objective of the COSO element Information and Communications is:

Information should be recorded and communicated to management and others within the entity who need it and in **a form and within a time frame** that enables them to carry out their internal control and other responsibilities.

Various communications from PED to individuals external to PED with the State or to other State agencies were made beginning in 2009 and are noted throughout the body of this report. Such communications were verbal, or through emails, correspondence or were task oriented, i.e. gathering information. Most were not meant to formally communicate to other branches of government about risk of State MOE shortfall.

The State of New Mexico Legislature and the House Education Committee and the Legislative Education Services Committee (LESC) received news of the State MOE noncompliance issue with great concern and alarm. The first communication to the Legislature happened when the Cabinet Secretary from DFA called the LFC in early January 2013 to inform them that a special appropriation may be necessary for State MOE purposes. The LESC also became aware of the noncompliance through web navigating. The LESC made a comprehensive presentation to the Education committees on January 28, 2013. The issue was not so much was there time for a special appropriation in the legislative session just beginning but what could the Legislature have done earlier to strengthen New Mexico's response to the issue or make such response more comprehensive. Starting in January 2013 the House Education Committee, the LFC and the LESC made direct communications to OSEP. The LESC analysis of the State MOE issues and its components lead to some stated differences in some of the numbers and certain concerns were communicated to the federal government. In one case, a bill was introduced in the Legislature to simplify the State MOE calculation.

We could not determine the impact of these legislative communications, if any. The ideal situation would have been timely communications and coordinated efforts between State agencies and the Legislature to assure compliance with State MOE. A reporting framework between relevant State agencies independent of the appropriations cycle was not in place. **See Finding SEA MOE 006 on page 19.**

### **Review of Audited Financials Statements of PED for 2010, 2011 and 2012**

An external audit performed during FY 2010 by a predecessor CPA firm was silent as to State MOE noncompliance for IDEA B. In FY 2010, ARRA & Special Education grants to states, CFDA Nos. 84.027A and 84.391A were identified as major programs tested as part of the single audit over federal funding. Both State and Local MOE were significant compliance requirements for the single audit. For 2010, there was no reporting of findings in connection with State MOE.

In FY 2011, a successor CPA firm performed the audit. The IDEA B cluster was identified as a major program tested. The FY 2011 audit was released on February 22, 2012 and the issuance date of the report was December 12, 2011. There was nothing specific in the representation letter on the State MOE matter for the 2011 audit. PED represented to the IPA "we are in compliance with federal programs" in its management representation letter to the IPA for the FY 2011. There was no reporting of findings in connection with State MOE.

Per email, it was during June 2012, that the possible State MOE noncompliance was first communicated by PED to the successor CPA firm's manager. Per interviews, certain verbal discussions may have happened a few months earlier. In June 2012, the FY 2012 audit was being planned in part through email communication. At this time, PED did not yet have full guidance or a calculation completed nor was the methodology ready and approved by DoED. The manager who was told of noncompliance with State MOE then moved to another part of the country.

During the 2012 audit, the PED Accounting and Audit Bureau was short staffed. Per interview with the external CPA firm they had experienced personnel turnover and also transitioned partners on the engagement towards the latter part of the engagement. However the audit was completed and turned in by the CPA firm without a finding for State MOE. During FY 2012 audit fieldwork, PED did not communicate to the IPA what the quantification of the shortfall was until January 2013 because the Deputy Secretary of Finance and Operations did not yet fully believe there was a liability. Upon disclosure to the IPA, the 2012 audit report was recalled and reissued much later in 2013 with disclosures and associated findings. The IPA stated to PED that the matter was a material weakness finding.

Within the 2012 management representation letter; one management representation with respect to the letter from OSERS dated June 3, 2013 stated, "we plan to provide additional

support for the FY 2011 request for a waiver. Additionally, we plan to provide additional support to exercise our right to reduce the SEA MOE under 34 CFR 300.230".

It appears that LEA MOE was tested in the 2011 and 2012 audit engagements based on interviews and review of IPA audit work papers. Auditor test results were noted as without exception.

External audits for 2010 and 2011 were silent in relation to identification of State MOE noncompliance. For 2012, PED had a material weakness finding 2012-07 in its FY 2012 audit report which described the failure in internal control over compliance to calculate State MOE. We concur with this assessment which signifies a lack of control structure to monitor and report compliance information on SEA MOE.

### **Why the Agency Made Untimely Waiver Requests for Fiscal Years 2010 and 2011**

Waivers were an emerging development on the Federal IDEA B administration landscape beginning in calendar 2009. The economic events of calendar 2008 and 2009 were impacting various states' finances and the impact reached threshold levels requiring the filing of waivers. Kansas, South Carolina, and four others filed waivers before New Mexico. By calendar 2010, the DoED had set up a web site of filed waivers for the information to be available to other states and stakeholders. There was no waiver deadline published in federal materials. The waiver forms and instructions ask for information from the current and immediate prior year for State MOE and State revenue levels thereby making the earliest date that a State could file a waiver would be a reasonable time after the current fiscal year end of the State. New Mexico, for instance (if State MOE information were available) would have filed the 2010 waiver for the fiscal year end of June 30, 2010 by February 15, 2011 if no information obstacles were encountered. This allowed for State agency audits to be completed and the final State Unit Value to be calculated and approved which in turn permits the determination of State MOE.

For FY 2010 and FY 2011, the Deputy Secretary of Finance and Operations negotiated the State MOE methodology with DoED through June 2012. A July 3, 2012 email from OSEP to PED approved the State methodology used to calculate the amount of State financial support made available for special education and related services. This approval was later rescinded. The waivers were prepared within a month of this first agreement with DoED as to what methodology was acceptable, therefore as soon as PED knew what values to submit it provided the SEG values to DoED. Further changes were made after the filing of the waivers. Typically the Final Unit Value is set in January and the appropriation for ensuing fiscal year would have been finalized in February/March for the upcoming fiscal year.

It is important to note DoED's rescinding of the methodology submitted by PED is the cause for litigation over methodology. The methodology initially approved by OSEP reduced the State's calculated liability and was rescinded by DoED shortly after it was made.

Although the FY 2010 waiver letter was already late in terms of the year it pertained to, the DoED communicated to all the states that a waiver might be granted for FY 2010 upon recognizing the pervasiveness of the economic decline issue. PED applied for multiple time extensions and was granted approval for each extension. Based on content of formal correspondence issued by OSERS, it does not appear the date of filing of the waivers for FY 2010 and FY 2011 ever became an issue with DoED.

In addition, because New Mexico had a unique funding formula based on the State equalization formula that was variable each year, PED and DoED needed time to work through development of an acceptable State MOE calculation. The variable nature of the State's funding formula was the key issue for PED's appeal. For other states the calculations generally were not as complex because the State MOE funding level was readily available.

## **LEA MOE Requirements and Internal Controls**

IDEA requires maintenance of effort at the school district and charter school, Local Educational Agency (LEA or Local) level as well as the State level. One main purpose of MOE is to assure LEAs of level funding each year. The measure of MOE for LEAs is an “expenditure” driven computation while the State MOE is funds “available”.

Individual interviews in relation to reports and processes for LEA reporting and compliance was the basis for reviewing controls.

From 2009 and through the current period of our engagement, certain LEAs would not monitor their own Local compliance requirements. SEB was effectively functioning as the LEA’s monitor and therefore became part of the LEA’s internal control system. This had two effects, PED could be more certain of LEA MOE compliance, but this did not advance the LEA’s capacity to fully administer its own LEA MOE process.

The Management Analyst at the Special Education Bureau worked on LEA MOE for approximately four years, from the FY 2010 school year through the current period. Over a few years several folks assumed the role of Fiscal Manager until the current Fiscal Manager started in October 2012. There had been high turnover in the Special Education Bureau (SEB) the past several years.

An outside consultant with the Mountain Plains Regional Resource Center worked with SEB during the period of our examination and was part of the fiscal improvement team in this region of the country. He has been heavily involved with SEB in terms of developing good Local MOE understanding and reporting under the IDEA B program. We reviewed emails of the consultant to and from various PED staff. Such communications indicate that SEB was taking advantage of available authoritative resources for improved program compliance.

The actual calculation of the LEA MOE was described in interviews. The first part of calculation was to determine if there was a reduction of expenditure under 34 CFR 300.205, whereas SEB pulls the expenditures out of Operating Budget Management System (OBMS) (a PED software system) to develop the current year’s LEA MOE calculation.

All schools upload their data into OBMS. The SEB takes the information out of OBMS and compares it to the previous year. This comparison was performed in an Excel spreadsheet.

The spreadsheet calculation was prepared and validated by the Fiscal Manager of SEB. It is then reviewed by the Accounting and Audit Manager. Notification then went out to the schools to indicate if each passed or failed. Each school could provide more information or claim exceptions to clear its noncompliance. SEB made adjustments based on accepted changes. Big capital expenditures such as equipment ramp up for children or increased FTEs can increase IDEA B expenditures from year to year.

During the period of our engagement, the Management Analyst was getting information from OBMS. He would run the 4<sup>th</sup> quarter approved actual expenditure reports from the schools (from school budget analysts). The Operating Budget Management System (OBMS) includes BARs and transfers that each LEA uploads. The SEB approves the school budget reports by object codes and by classes. This was on a routine basis and ongoing throughout the year. At one point in time the annual assembly began which started as early as August of each year to as late as October. Each LEA has 30 days to submit after each quarter and SEB had 30 – 60 days to approve. So after 90 days the numbers are generally settled for each quarter. However, the 4<sup>th</sup> quarter final report numbers were not monitored by SEB for the purpose of evaluation of Local MOE by school.

The Management Analyst would determine if any year-end adjustments need to be made and process them and validate them. For instance, adjustments can result from teachers leaving employment, or levels of service can change such as level D to B.

The entire LEA MOE is based on uploaded data from schools. The Fiscal Manager could adjust the LEA MOE level for specific exceptions which is then validated by the Fiscal Manager after adjustments are made. The Audit and Accounting Manager reviewed the overall results.

If each school has not met its LEA MOE requirement then the State of NM is obligated to pay the Federal government back. This has happened one time and the payback was approximately \$20,000. PED as the grantee has to pay back with non-federal dollars the amount that was short. Practically, PED goes back to the school to recover money from the school's general fund.

There is an incentive for LEAs to overstate their units reported for special education as such units directly affect the level of special education funding. This incentive points to the need for special audits validating the units of special education reported. Special agreed upon procedures were performed in the period of June 30, 2011 to June 2012 in response to increased special education units reported by certain LEAs. The Tier II agreed upon procedures were performed by an external CPA firm and concluded with adjustments to reported units and repayments by LEAs in some cases. Per management, certain Tier I agreed upon procedures were conducted by the Special Education Bureau.

The letter issued to each LEA is comprehensive and details compliance status for LEA MOE. The issue of compliance is significant. A lot of LEAs do not know where they stand when they receive the letter. **See Finding LEA MOE 010 on page 23.** The combination of the budget process and PED's assistance to LEAs in monitoring LEA MOE has kept PED in compliance in recent years.

School Budget is approving general funding but not federal funding, which comes from program managers. Only two PED employees approve budget and expenditures at the program level as a centralized function. The Education Administrators and Business Operations Specialist assigned to the district approve the request for reimbursement.

OBMS has an available report that shows approved expenditures to date and can be exported to Excel. The Management Analyst runs a mail merge from the Excel spreadsheet that is used for the LEA MOE calculation to populate the letters to go to each LEA. The letter reports whether you are in compliance with LEA MOE.

LEA MOE calculation is a very manual process and runs the risk of human error. The driver used to build the LEA MOE reports were specific object codes and job codes. The chart of accounts is very specific for fund function and object code; for example Job Code 1412 Teachers – Special Education. In the past the gifted special education members were comingled with those with true disabilities.

The measurement that the Department uses for Local MOE calculation avoids using judgment. The specific object codes and job classification codes amounts are considered valid and delineated as policy.

The SEB is working with ASD to update OBMS to put in an automatic calculation for the purpose of schools having access to Local MOE compliance information. This is one of the areas of improvement PED is trying to implement. This is a fairly new process post-2012.

This tool also would help each school to know whether to spend money before the year is out. This means they can know to spend enough money to match previous year's expenditures compliance to meet the LEA MOE requirement.

In general, there are 140-150 LEAs that receive letters in relation to LEA MOE compliance and perhaps 40-60 LEAs do not initially meet compliance requirements with the first notification and prior to the consideration of exceptions. There is a follow up process to determine if a specific LEA meets exceptions in the case of noncompliance. In general, not meeting exceptions under 34 CFR 300.204 is the reason LEAs do not ultimately meet requirements.

During the years 2010-2012, ARRA money was available. PED received money in the general fund and in federal funds. Funds 25250 and 25255 (stimulus) and 24206 and 24212 (IDEA B funds) inflated the Local MOE base and were added together and used in the LEA calculations. This causes shortfall in future years when ARRA money is spent. A lot of LEAs did not want to use ARRA money for future budgeting because they knew money would not be available in the future.

#### Current Status at the Time of the Report:

School budget FY 2012 letters have all been issued to the LEAs, however not all LEAs have their potential liability resolved. There are still 12 LEAs under review that have submitted exceptions related to that year. There are 10 or 11 LEAs that have not responded and will owe PED some money back. This money is not significant such as a few hundred to a few thousand dollars. The School Budget FY 2013 calculations have not been processed yet and therefore the letters are not yet prepared.

#### Keys for compliance requirements for monitoring IDEA B under 34 CFR §300.203, 34 CFR §300.204 and 34 CFR §300.205 as follows:

34 CFR §300.203: The Local MOE requirement for LEAs is to the State and they are liable for any deficiency. This includes eligibility and compliance requirements. There are two ways to make Local MOE; 1) by expending the same amount of money each year in total or, 2) per capita (average per student) which is usually a lot less. The fluctuation of children with disabilities is huge and is the biggest variable in the calculation. SEB is not aware if there is the option to alternate between choices.

34 CFR §300.204: Five possible actual exceptions follow; 1) voluntary departure is the most common exception. 2) decrease in enrollment, 3) termination of a costly obligation (like one time equipment), 4) termination of a high cost student, and 5) the assumption of expenses through a set aside fund for a 3X the average pupil cost.

34 CFR §300.205: 50% reduction requirement that if the LEA receives an increase in its basic funding based on the 20 indicators (from the IC book) then it can reduce its share up to 50% of the increase. If there is no increase in basic funding then this is a non-event. Usually, increases are small like \$500 - \$1,000.

We noted that PED did not go back to compare the audited results to the reports because if schools have adjusting journal entries posted to expenditures that could change PED's past reporting, and PED would not be able to timely finish the Local MOE reporting. This could be a source of noncompliance if material.

Because the data is available in OBMS PED is trying to automate reporting on a quarterly reporting basis to track spending. This will eliminate the manual reporting currently utilized. PED has been working with the OBMS vendor to develop these reports. This started in early 2013. There will be a testing environment for OBMS test reports to ensure they will be accurate. The hope is to have this in place for the FY 2014/2015 school year.

### **Why the 2011 Waiver was Denied**

OSERS "intent to deny" letter dated June 3, 2013 granted the 2010 waiver and denied the 2011 waiver (which is currently under appeal). The OSERS intent to deny the FY 2011 waiver request is not equivalent to a formal denial letter.

The waiver was denied on the basis that an unforeseen financial loss of resources did not occur in 2011. From information the DoED cited, State revenue went up from 2010 to 2011 and that State reserves also went up from 2010 to 2011. This determination did not appear to be affected by the State of New Mexico arguments that the Legislature had a revenue forecast going into the Spring 2011 legislative session and the revenue levels for the State only improved toward the end of the year. New Mexico's Legislature is a citizen legislature that meets 60 days per year then 30 days on alternate sessions. There is no formal modification for changing revenue levels as the year closes.

### **FAPE**

FAPE is acronym for "Free Appropriate Public Education" and is included in the IDEA statute as a secondary waiver option for states. Its main provision reads as follows. *If a state provides clear and convincing evidence that all eligible children with disabilities throughout the State have FAPE available to them, the Secretary may waive for a period of one year, in whole or in part the requirement under 34 CFR §300.162 (regarding State level non-supplanting), if the Secretary concurs with the evidence provided by the State. See 34 CFR §300.163 (2) and §300.164 (b) for procedures to apply for waiver. The reference under IDEA is 612 (a)(17)(C).*

In its letter to PED dated June 3, 2013 which indicated the intent of the DoED to deny the waiver request, OSERS noted the FAPE alternative exists but notes that New Mexico has not applied under this option. The inclusion of this part in the letter might suggest that New Mexico should consider a FAPE optional. The Legislative Finance committee in its report on Special Education date August 21, 2013 discussed a shift to FAPE and calculated estimated FAPE waivers for 2011, 2012 and 2013 of 22 million based on a summary of due process hearings for children that LFC reviewed.

The PED indicated in that report that the burden of proof to receive the FAPE waiver is too high citing the due process hearing standards. Certainly, as we have seen in the development of the State MOE reporting including interaction and approval by the OSERS, the process of establishing and maintaining a FAPE reporting system might have complexity. As of the date of our report, PED has completed a FAPE compliance analysis including legal review. The conclusion is that FAPE cannot be met due to the workings of annual due process hearings which may result in direction to PED to provide additional resources or take specified actions to students for the State as a whole in any year. The number of hearings outstanding and the length of time needed to complete the hearing process ensures FAPE noncompliance. It was communicated to us that a FAPE waiver has never been granted to any state. We did not confirm this.

### **Internal Controls and COSO**

As part of our examination, we identified and documented the Agency's internal controls over compliance with the MOE requirements of the IDEA B grant received from the federal Department of Education for both the SEA (State) and LEA (Local) levels. We have summarized the controls below, for both the examination period (fiscal years 2010-2012) and current practice (after June 30, 2012), using the five components of the generally accepted COSO (Committee of Sponsoring Organizations of the Treadway Commission) format.

#### **State-level Controls**



## Control Environment

2010-2012 There was no clear assignment of authority for calculating SEA MOE or for determining that the statement made to the DoED in the annual grant applications was accurate. The result of this is that no calculation of MOE was performed during fiscal years 2010-2012.

Based on the lack of controls, the SEA MOE control environment had a material weakness in its design. **See Findings SEA MOE 001 and 002 on pages 14 through 16.**

Post-2012 The current policy lists the Director of School Budget as responsible for preparing the calculation in a spreadsheet based on the methodology developed by the Agency in July 2012. The Director of School Budget prepares the calculation and reviews it with several members of ASD (Director, Audit & Accounting Bureau Manager, and Fiscal Grants Management Bureau Chief) which is then submitted to the Deputy Secretary for Finance and Operations and the Cabinet Secretary for approval. There is no documentation of what specific steps are required to ensure accuracy and completeness by ASD and no direct evidence on the work product of approval by reviewers except for the approval implied by the Cabinet Secretary's signature on the annual grant applications. There is also no formal documentation of the procedure for preparing the calculation and retrieving and retaining evidence of the inputs.

Based on the deficiencies noted above, the SEA MOE control environment has deficiencies in its design and implementation. **See Findings SEA MOE 001 and SEA MOE 002 on pages 14 through 16.**

## Risk Assessment

2010-2012 The risk of non-compliance for SEA MOE is that State support could be reduced below the amount of support of the previous or base fiscal year and not be detected, prevented or corrected in the applicable fiscal period. As any reduction in State funding for public education would reduce State MOE, estimating State MOE based on budget requests and approved appropriations would be necessary to ensure that State MOE would be met for the fiscal year. The SEB Director and the former Deputy Secretary of Finance and Operations identified a potential shortfall in MOE as early as 2009; however, because there was no methodology in place to calculate MOE and no other evaluation of MOE was done during fiscal years 2010-2012 the Agency was not in compliance with SEA MOE requirements. Based on the lack of controls identified, the State MOE risk assessment component had a material weakness. **See Findings SEA MOE 001 on pages 14 and 15.**

Post-2012 Currently, School Budget is responsible for preparation of the final State MOE calculation and for monitoring SEA MOE at interim periods. Director of School Budget notifies the Deputy Secretary for Finance and Operations to review and approve the initial State MOE calculation after it has been prepared during October/November each year using the preliminary Unit Value.

## Information and Communication

2010-2012 In general, because State MOE is based on State general fund appropriations for education, whether or not State MOE will be met is based on requested legislative appropriations. State general fund appropriations are approved by the Legislature and Governor. PED submits an annual budget request to the Legislative Finance Committee (LFC) which then brings its recommendations to the Legislature as a whole. However, the budget request from PED may not be fully funded which could cause a shortfall in MOE unless the amount needed to cover the shortfall is clearly communicated to the Legislature. Except for limited communications of a potential shortfall to State committees in December 2009 during budget discussions for FY 2010, there is no evidence that significant budget reductions causing State MOE noncompliance were effectively communicated to the Legislature.

Additionally, internal communication of the requirement to those in Agency management who would have been able to resolve the issue was not made prior to February 2011 when a new Deputy Secretary for Finance and Operations joined the Agency.

Based on the lack of controls identified, the SEA MOE information and communication component has deficiencies in its design. **See Finding SEA MOE 006 on page 19.**

Post-2012 HB 628 was passed during the 2013 session that provided for special appropriations for meeting SEA MOE for 2013 and 2014 but on the condition that certain approvals and communications take place including documented communication.

## Control Activities

2010-2012 There was an approved, written policy over SEA MOE in place at PED during the periods under examination as a result of the 2007 OSEP verification visit; however, the policy is not accompanied by a procedure that specifies exactly what the formula and inputs for the calculation should be for State MOE, how frequently it should be prepared (for monitoring purposes), or what the review process is. A formal calculation of MOE was not done prior to February 2011 (when the MOE issue was first addressed with the new Deputy Cabinet Secretary shortly after he began working for PED) based on increasing or stable Unit Value (UV) and appropriations through FY 2009. The Director of the School Budget and Finance Bureau (School Budget) is responsible for the unit value calculation that is finalized and approved by the Secretary by the end of January of the current fiscal year. The policy specifies that the ASD is responsible for the MOE calculation which is then to be approved by SEB. There is no evidence that a calculation was ever performed. The State did not support its assurances given to the federal respects.

Based on the lack of controls identified and the lack of adherence to the policy in place, the MOE control activities component has deficiencies in its design and implementation. **See Findings SEA MOE 001 and SEA MOE 002 on pages 14 through 16.**

Post-2012 See Control Environment.

## Monitoring

- 2010-2012 No controls were noted in this area. Based on this, the MOE monitoring SEA MOE component has deficiencies in its design. **See Findings SEA MOE 001 and SEA MOE 002 on pages 14 through 16.**
- Post-2012 See Control Environment and Risk Assessment controls related to interim calculations.

## LEA (local-level) Controls

### Control Environment

- 2010-2012 The Agency's responsibility for LEA MOE is to verify each LEAs calculation of MOE; however, for many LEAs, the Agency calculates MOE for them, informs them of compliance or the lack thereof, and is the LEA's resource for determining any adjustments to expenditures that would bring them into compliance or reduce any shortfall. There are two effects from this condition. First, PED may be better able to assess LEA MOE compliance due to its high involvement with this process during the year. Secondly, the current process does not increase the capacity of LEAs to directly assess their own MOE compliance status on an ongoing basis for those that do not know how to prepare it themselves. **See Findings LEA MOE 010 on page 23.**

Recommendations: We recommend that PED establish certain minimum objectives as compliance requirements imposed on all LEAs to participate in the MOE compliance process through affirmative reliable submissions during the year.

- Post-2012 There is no significant change in controls for this period.

### Risk Assessment

- 2010-2012 LEAs as sub-recipients of federal funds are required to maintain internal controls over compliance in accordance with the program requirements, just as PED as grantor is required to monitor the LEAs for compliance. LEAs do not perform their own MOE calculations and instead rely on the SEB to perform these calculations annually along with assistance with determining any exceptions that may apply. Attempts have been made by the Agency to train LEAs to do the calculation themselves; however, no action was taken to formally transfer this responsibility onto the LEAs.

Based on the inadequate design of controls identified, the LEA MOE risk assessment component has significant deficiencies in its design. **See LEA MOE 010 on page 23.**

- Post-2012 The Agency is currently in the process of testing and implementing a report in the OBMS (Operating Budget Management System) system to allow LEAs to calculate and monitor Local MOE which is expected to be in place for FY 2015.

No control deficiencies were noted in this area for 2012 and subsequent.

## Information and Communication

2010-2012 LEA MOE is calculated on either a straight dollar or per capita basis from information that comes out of the OBMS that is maintained by the Agency. The information in OBMS is based on data that is input by the LEA and is validated by School Budget via reasonableness and period-to-period comparisons.

Compliance or the lack thereof with Local MOE requirements that is identified as a result of the calculation is communicated to LEAs in the second quarter of the subsequent year.

No control deficiencies were noted in this area.

Post-2012 There is no significant change in controls for this period.

## Control Activities

2010-2012 There is no formal documentation of the specific process for calculating LEA MOE which is performed by the SEB; however, the general guidelines used are documented in the State's Integrated Special Education Accountability System (ISEAS) manual. An SEB Management Analyst prepares LEA MOE calculation in Excel which is then reviewed by the SEB Fiscal Manager and Audit & Accounting Bureau Manager.

Compliance or the lack thereof with Local MOE requirements identified as a result of the calculation is communicated to LEAs in the second quarter of the subsequent year. At that time, LEAs that did not meet the MOE requirement should communicate with SEB regarding any exceptions that may exist that would cause the LEA to be in compliance or reduce the calculated shortfall. SEB assists LEAs with identifying any exceptions at this time if the LEA does not do so on its own.

Final determinations of whether or not LEAs have met the MOE requirements for the year are sent to the SEB Director, SEB Fiscal Manager and the Audit & Accounting Bureau Manager. Any LEAs that have not met MOE requirements must repay any shortfall to PED which is in turn repaid to the federal government. Based on the inadequate documentation of procedures for calculating LEA MOE, the MOE control activities component has deficiencies in its design. **See Finding LEA MOE 009 on pages 21 and 22.**

Post-2012 See Risk Assessment.

## Monitoring

2010-2012 If an LEA is not in compliance with MOE, the Agency has to refund the calculated shortfall to the federal government and seek reimbursement from the LEA. Each LEA should do its own calculation during the year and the Agency has given training to LEAs to do it; however, there is no evidence that LEAs are doing their own interim or final calculations, though LEAs sign an assurance that they are monitoring MOE throughout the year.

Based on this, the MOE monitoring component has deficiencies in its design. **See Finding LEA MOE 010 on page 23.**

Post-2012 See Risk Assessment.

## **Comments to Increase Effectiveness and Efficiency**

### **LEA EE 001 INTERIM MONITORING OF LEA MOE COMPLIANCE (Other)**

*Condition:* No calculation of LEA MOE is performed at interim dates to determine whether or not LEAs will meet the requirement. An extended annual process of review and processing exception may be made more efficient with interim work.

*Criteria:* Interim monitoring and review may present an opportunity to reduce year end workload if such procedures prove to be practical and cost beneficial. The objectives of internal control systems should include effectiveness and efficiency criteria. Increased computerization capacity for LEA MOE compliance reporting may provide the ability to analyze LEA MOE at interim as well as increase efficiency.

*Cause:* The LEA MOE compliance review process is very complex and is performed at year end by PED. The process involves initial data gathering, identification of exceptions, resolutions of exceptions and final reporting for 100+ LEAs. The LEAs in certain cases may depend on PED for an unusual amount of assistance in determining compliance.

*Effect:* Local MOE compliance monitoring is a year end process that may not allow PED to do other procedures for LEAs.

*Recommendation:* LEA MOE calculations should be performed at interim dates in an attempt to prevent non-compliance. The Agency is currently in the process of testing and implementing a report in the OBMS system to allow LEAs to do this for FY 2015. The implementation of this report is considered to be sufficient to address the noted deficiency.

*Management's Response:* There is no requirement under IDEA Part B that the State have interim LEA MOE calculation requirements to ensure compliance with IDEA. Local educational agencies are required to ensure they are meeting this requirement. That being said, the ISEAS will be updated to include a procedure for the calculation of "Estimated LEA MOE". This will allow LEAs to review expenditure information to date, after the second quarter. This information will be compared to the previous year's LEA MOE level and allow LEAs to make any necessary adjustments prior to the fiscal year ending or compile the necessary documentation for possible exceptions.

TABLE 1

NM Public Education Department

Special Examination Report 2010 - 2012

State MOE Calculation for Special Education using Final Funded Unit Value times Total Program Units

State MOE Calculation based on Final Funded Unit Value - Excludes Workload Reduction or Retirement Swap

	FY09	FY10	FY11	FY12	FY13	FY14
Total program units	102,977.85	101,679.80	101,368.45	102,201.01	99,491.31	98,816.15
Unit value	\$ 3,871.79	\$ 3,458.06	\$ 3,572.34	\$ 3,598.87	\$ 3,673.54	\$ 3,817.55
PED State MOE	398,708,610	351,614,849	362,122,569	367,808,149	365,485,307	377,235,593
Other	(581)	-	1,608	36	-	-
Additional Legislative Appropriations Laws 2013, Chapter 227, Section 4	-	-	-	-	-	10,000,000
Additional Legislative Appropriations Laws 2013, Chapter 227, Section 5	-	-	-	-	20,000,000	-
Additional Legislative Appropriations Laws 2013, Chapter 191, HB 628	-	-	-	-	20,000,000 *	16,000,000 *
State Agencies	36,488,718	37,276,562	37,878,631	38,018,300	44,452,885	44,452,885 estimate
Total State MOE	435,196,747	388,891,411	400,002,808	405,826,485	449,938,192	447,688,478

Note: Total program units = MEM Count times Unit Differential. The current year budget request for SEG was based on the prior year funded run and current year Unit Value.

\* Conditional appropriation in the event other appropriations are insufficient to meet MOE or the State's proposal for funding is denied with DoED. Prior to transfer of any conditional appropriation for FY13 or FY14, the PED shall 1) satisfy to the State Board of Finance that all means and efforts to meet MOE were taken and the respective general appropriations were insufficient and 2) review its certification with the State Board of Finance with the Legislative Education Study Committee and Legislative Finance Committee.

**TABLE 2**

NM Public Education Department  
 Special Examination Report 2010 - 2012  
 Maintenance of Effort Calculation Methods

**Final NM PED Unapproved Methodology (under appeal):**  
 SEA MOE Calculation based on Final Funded Unit Value

	(Base Year) FY09	FY10	FY11	FY12	FY13	FY14
PED Special Education Funding	398,708,610	351,614,849	362,122,568	367,808,149	365,485,307	377,235,593
- Excludes Gifted Students	-	-	-	-	-	10,000,000
Additional Legislative Appropriations Laws 2013, Chapter 227, Section 4	-	-	-	-	20,000,000	-
Additional Legislative Appropriations Laws 2013, Chapter 227, Section 5	-	-	-	-	-	-
Additional Legislative Appropriations Laws 2013, Chapter 191, HB 628 (See Table 1)	-	-	-	-	20,000,000 *	16,000,000 *
State Agencies	36,488,718	37,276,562	37,878,631	38,018,300	44,452,885	44,452,885
Excludes Workload Reduction or Retirement Swap	435,197,328	388,891,411	400,001,200	405,826,449	449,938,192	447,688,478
Workload	-	4,488,735	5,749,324	2,795,746	12,807,944	15,887,498
Retirement Swap	-	4,176,000	4,176,000	8,730,000	4,176,000	-
Includes Workload Reduction or Retirement Swap	435,197,328	397,556,146	409,926,524	417,352,195	466,922,136	463,575,976
Potential MOE Difference Without Workload Reduction or Retirement Swap	-	(46,305,917)	(35,196,129)	(29,370,879)	(14,740,863)	(12,491,150)
Potential cumulative maximum shortfall 2010 - 2012 as currently calculated (waiver obtained for FY10)				(110,872,925)		

Note: In a letter from the Assistant Secretary for Special Education and Rehabilitative Services on June 3, 2013 to PED, the workload and retirement swap was not permitted to be included for calculating the amount of State financial support. However, OSERS approved use of 3Y and 4Y in the calculation and PED does not include.

**US DOE Approved Methodology:**  
 SEA MOE Calculation based on Final Funded Unit Value

	(Base Year) FY09	FY10	FY11	FY12	FY13	FY14
PED Special Education Funding	398,708,610	351,614,849	362,122,568	367,808,149	365,485,307	377,235,593
- Excludes Gifted Students	-	-	-	-	-	10,000,000
Additional Legislative Appropriations Laws 2013, Chapter 227, Section 4	-	-	-	-	20,000,000	-
Additional Legislative Appropriations Laws 2013, Chapter 227, Section 5	-	-	-	-	-	-
Additional Legislative Appropriations Laws 2013, Chapter 191, HB 628 (See Table 1)	-	-	-	-	20,000,000 *	16,000,000 *
State Agencies	36,488,718	37,276,562	37,878,631	38,018,300	44,452,885	44,452,885
Excludes Workload Reduction or Retirement Swap	435,197,328	388,891,411	400,001,200	405,826,449	449,938,192	447,688,478
3Y/4Y Base Units	26,800,840	25,012,563	27,876,255	29,726,090	22,794,769	22,216,520
Workload	-	-	-	-	-	-
Retirement Swap	-	-	-	-	-	-
Includes 3Y/4Y Base Units	461,998,168	413,903,974	427,877,455	435,552,539	472,732,361	469,904,998
Potential MOE Difference Without Workload Reduction or Retirement Swap	-	(48,094,194)	(34,120,714)	(26,445,629)	(10,734,192)	(7,906,830)
Potential cumulative maximum shortfall 2010 - 2012 as currently calculated (waiver obtained for FY10)				(108,660,537)		

**TABLE 3**

**Initial NIM PED Unapproved Methodology (under appeal):**

	(Base Year) FY09	FY10	FY11	FY12	FY13
MOE Calculation based on Final Funded Unit Value As Reported in the FY12 Audit Report as Finding 12-07					
PED Special Education Funding	398,708,610	385,635,893	376,296,919	367,808,149	362,762,442
- Excludes Gifted Students	-	-	-	-	20,000,000
Additional Legislative Appropriations Laws 2013, Chapter 227, Section 5	-	-	-	-	20,000,000
Additional Legislative Appropriations Laws 2013, Chapter 227, Section 6	-	-	-	-	20,000,000
State Agencies	36,488,718	37,276,562	37,878,631	38,018,300	38,018,300
Excludes Workload Reduction or Retirement Swap	435,197,328	422,912,456	414,175,550	405,826,449	440,780,742
Workload	-	4,923,049	5,974,366	2,795,746	15,530,809
Retirement Swap	-	4,176,000	4,176,000	8,730,000	4,176,000
Includes Workload Reduction or Retirement Swap	435,197,328	432,011,505	424,325,916	417,352,195	460,487,551
Potential MOE Difference Without Workload Reduction or Retirement Swap	-	(12,284,873)	(21,021,778)	(29,370,879)	
Potential cumulative maximum shortfall 2010 - 2012 as reported in Finding 12-07 (waiver obtained for FY10)				(62,677,530)	

Note 1: The change between what was reported to the IPA for the FY12 Audit Report to what was finalized and reported to OSERS is a timing difference caused by the process of interim reporting with 40 and 80/120 average day data, and the collection data from the Other State Agencies.



TABLE 4

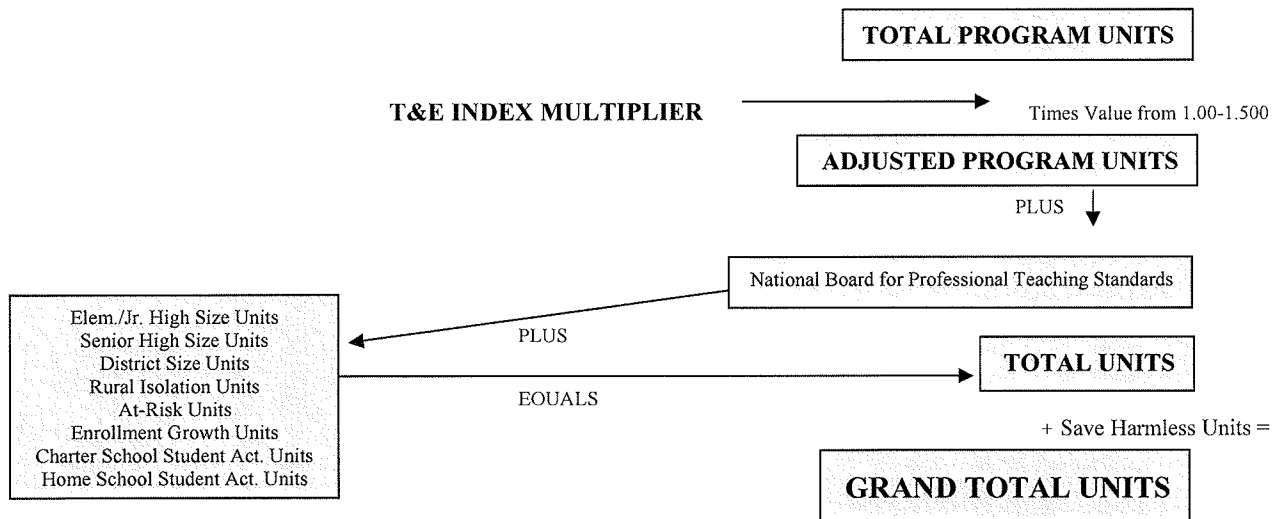
	FY09	FY10	FY11	FY12	FY13	FY14
<b>PUBLIC EDUCATION DEPARTMENT'S REQUEST</b>						
State Equalization Guarantee Request	2,230,362.8	2,428,667.5	2,397,584.9	2,336,857.5	2,248,311.9	2,341,300.8
<b>LEGISLATIVE FINANCE COMMITTEE RECOMMENDATION</b>						
State Equalization Guarantee Request from the Report of the LFC for fiscal year to the Legislature	-	2,379,259.3	2,252,720.7	2,235,521.9	2,276,086.2	2,351,152.1
<b>SEG made available*</b>						
PED	2,323,983.9	2,105,762.2	** 2,194,800.1	2,225,491.4	2,273,588.9	2,361,895.8
PED - supplemental appropriation for MOE	-	-	-	-	40,000.0	26,000.0
<b>*Data from LESC published PSS spreadsheets</b>						
	2,323,983.9	2,105,762.2	2,194,800.1	2,225,491.4	2,313,588.9	2,387,895.8
<b>** FY10 included a \$45,500 emergency reduction in PED's SEG under HAFCHB 17&amp;33 due to discrepancies between anticipated revenues and appropriations, which during the 2009 special session act required the state equalization guarantee distribution to be further reduced.</b>						
<b>Funding requested over (under) previous year's final PED SEG general fund appropriation in HB2</b>						
	-	(104,683.6)	(291,822.7)	(142,057.4)	(22,820.5)	(67,711.9)

The Public Education submits the Public School Support Request to the Department of Finance & Administration (DFA) and to the Legislative Finance Committee (LFC) on or before November 30. Both the DFA and LFC accept the request which is submitted via a packet, however the packet does not contain an official submission letter, the PSS Spreadsheets is the official request. The LFC publishes an Appropriation Recommendation document annually which contains the PED's request for PSS. Below is the link to the LFC's Appropriation Request documents which lists the PED's PSS request.

<http://www.nmlegis.gov/lcs/lfc/lfcapprec.aspx>

**STATE EQUALIZATION GUARANTEE COMPUTATION**

<u>MEMBERSHIP/PROGRAM</u>		<u>TIME</u>		<u>DIFFERENTIAL=UNITS</u>	S U M O F U N I T S
Kindergarten &					
3- & 4-Year-Old DD	FTE	×		1.440	
Grade 1	MEM	×		1.200	
Grades 2-3	MEM	×		1.180	
Grades 4-6	MEM	×		1.045	
Grades 7-12	MEM	×		1.250	
<b><u>SPECIAL EDUCATION</u></b>					
Ancillary	FTE	×		25.000	
A/B Level	MEM	×		0.700	
C/D Level	MEM	×		1.000	
D Level	MEM	×		2.000	
3- & 4-Year-Old DD	MEM	×		2.000	
<b><u>BILINGUAL</u></b>					
	FTE	×		0.500	
<b><u>FINE ARTS EDUCATION</u></b>					
	FTE	×		0.050	
<b><u>ELEMENTARY P.E. PROG</u></b>					
	FTE	×		0.060	



**Grand Total Units × Unit Value = Program Cost**

**Program Cost**  
 -75% (Noncategorical Revenue Credits)  
-Utility Conservation Program Contract Payments  
**State Equalization Guarantee**

updated 04-11

## SUBSEQUENT EVENTS AND CHANGES

### Appropriations passed to remedy MOE for 2013 and 2014

House bill 628 Laws of 2013 appropriated to PED certain funding for 2013 and 2014 in the event that MOE was not met for those years from general appropriations or that SEG transfers to MOE were rejected by the DoED.

For both fiscal years, the appropriation language requires PED to:

- Certify that the appropriations in CS/HB are insufficient
- Review the certification with the LESC and LFC
- Obtain SBF approval to transfer and distribute funds
- Distribute the amounts through the SEG and
- Reset the Unit Values accordingly.

One issue arising from the MOE requirement is the difficulty in separating State-level financial support for special education from the current total SEG appropriation. Changes in the number of special education program units and the final Unit Value allow for decreases in special education financial support even when the SEG appropriation has increased year over year.

We reviewed a letter from the Cabinet Secretary to the State Board of Finance complying with the legislation for 2013. This legislation may be a template of sorts for the process to be followed each year in determination and communication of MOE funding levels and their adequacy for compliance.

### Litigation process with DoED

New Mexico pursued flexibility under 34 CFR §300.230 for 2010, a year in which ARRA funding increased amounts of federal funding to the State for education purposes. Application of 34 CFR §300.230 in 2010 was then thought to impact 2011 levels of MOE needed and decrease such levels. DoED denied this claim and New Mexico sought hearings for several aspects arising from the election of 34 CFR §300.230 flexibility. A hearing took place on April 8, 2014 in relation to the first aspect of the effects on baseline adjustment resulting from election of 34 CFR §300.230 flexibility. The administrative judge ruled in favor of the DoED and against New Mexico as he was unpersuaded by New Mexico's argument. Other aspects connected to the exercise of 34 CFR §300.230 flexibility are pending. The Secretary of DoED is reviewing the decision for possible modification. A waiver for FY 2012 has not yet been submitted by PED because management wants to wait until the final outcome of FY 2011 waiver is determined.

### New Legislation

The **Continuing Resolution for FY 2013 (CR13)** passed US Congress and included an IDEA B penalty fix. CR13 made clear that any failure of a state to meet its MOE compliance requirements was to be deemed a one year failure only and did not affect the level of funding in future years. The CR13 was only effective through September 30, 2013. It is unclear whether MOE penalty provisions will remain. PED has indicated that their understanding is that any funding reductions that might occur due to noncompliance in a year would affect one year only.

The **Consolidated Appropriations Act of 2014** was signed by the President on January 17, 2014. That provision is related to the requirement in Part B of IDEA that LEAs maintain the level State and local expenditures for the education of children with disabilities. The relevant provision states:

"That the level of effort a local educational agency must meet under section 613(a)(2)(A)(iii) of IDEA in the year after it fails to maintain effort is the level of effort that would have been required in the absence of that failure and not the LEA's reduced level of expenditures."

This statute clarifies MOE requirements in the year following a failure to maintain level of efforts and appears related and responsive to what New Mexico's process resolution is all about with 34 CFR §300.230. The statute also does allow the level of effort required to be reset (reduced) in a year where the previous year level of effort was not maintained because of the exceptions and adjustments in 34 CFR §300.204 and 34 CFR §300.205 dealing with reduced levels of special education members or adjustments in teacher positions and salaries. These exceptions should be important to New Mexico on a go forward basis as these factors vary each year.

HB 459 was introduced in 2013 which makes it easier to show special education maintenance of effort in New Mexico's funding formula. This bill did not pass the session.

### **MOE Calculation and Controls Thereon**

For 2012 and subsequent, the MOE calculation is done in accordance with the methodology developed during 2012. The actual calculation is done by the Director of School Budget who prepares the calculation and then reviews it with several responsible members of ASD. Final approvals are given by the Deputy Secretary for Finance Operations and the Cabinet Secretary.

The processes were not in place prior to 2012. There is a three tiered process. The preparer, ASD review and Paul Aguilar is the second review. Now these procedures to calculate, review and approve were not adequately documented at the date of our report.

## **EXIT CONFERENCE**

An exit conference was held on Thursday, February 5, 2015 at the PED office in the Jerry Apodaca building in Santa Fe, New Mexico.

### **Attending for PED:**

Paul Aguilar, Deputy Secretary, Finance and Operations  
Dan Hill, General Counsel  
Molly Saiz, Audit and Accounting Bureau Chief  
Denise Koscielniak, Director of Special Education Bureau  
Eileen Marrujo-Gallegos, Director of Operations and School Budget

### **Attending for Atkinson & Co., Ltd.:**

Marty Mathisen, CPA, CGFM, Audit Director  
Clarke Cagle, CPA, CGFM, CCIFP, Audit Director

### **Attending for the Office of the State Auditor:**

Sarita Nair, OSA Chief Legal Counsel  
Lisa Jennings, OSA Senior Auditor

# APPENDICIES

**State of New Mexico  
Public Education Department**

**EXAMINATION REPORT**

**GLOSSARY AND DEFINITIONS**

**American Reinvestment and Recovery Act (ARRA)** – Special Federal funding designed to stimulate the economy after the economic downturn in 2008-2009. A portion of ARRA funds were allocated for education purposes.

**Budget Adjustment Request (BARs)** – Budget document and control whereby an agency requests approval for a change in its budget.

**Committee of Sponsoring Organizations (COSO)** – The committee who developed an internal control framework that has come to be widely adopted as an authoritative internal control reference. COSO is recognized as part of governmental audit standards and COSO components are recognized by the State of New Mexico.

**Free Appropriate Public Education (FAPE)** – Key conception of public education that all children are to be provided with an appropriate education at public expense. This definition is a critical component of special education to ensure students with disabilities receive an education program appropriate to meet their individual needs using specialized planning and general public education resources to achieve these objectives.

**FTEs – Full Time Equivalent Employees** – As opposed to part-time employees.

**Funding Formula** – Is the mechanism used to determine annual funding levels for school districts and charter schools statewide. Multiple components of the formula are necessary to compile in order to determine funding first and subsequently to calculate SEA MOE using the State's methodology. Formula factors are driven by student need and result in inputs used to calculate total program units that are multiplied by the Unit Value to determine the SEG distribution. The Unit Value and total program units both are complex calculations which involve obtaining data from several departments within PED, much of which was required to be collected from school districts across the State.

**House Bill (HB)** – Customary abbreviation for referring to statutes proposed and adopted in the New Mexico House of Representatives.

**Individualized Education Program (IEP)** – Key requirement of IDEA. An IEP defines the individualized academic objectives of a child with disabilities, details the interventions necessary for the child to achieve academic success and is intended to help children reach educational goals more easily.

**Individuals with Disabilities Education Act--Part B (IDEA B)** – Federal legislation dating from 1975 most recently reauthorized in 2004 to provide funding resources and requirements to achieve a free appropriate education for students with disabilities.

**Integrated Special Education Accountability System (ISEAS)** – The States documented policies and procedures for improving outcomes for students with disabilities.

**Legislative Education Study Committee (LESC)** – One of three permanent Interim Committees of the New Mexico Legislature. The LESC provides operating and support to the New Mexico State Legislature, Senate and House Education Committees.

**State of New Mexico  
Public Education Department**

**EXAMINATION REPORT – CONTINUED**

**Legislative Finance Committee (LFC)** – One of three permanent Interim Committees of the New Mexico Legislature. The purpose of the LFC is to provide the Legislature with objective fiscal and public policy analysis, recommendations, and oversight of State agencies to improve performance and ensure accountability.

**Local Education Agencies (LEAs)** – Refers to all school districts in New Mexico inclusive of State chartered charter schools as separate LEAs. PED monitors LEA MOE at the school district level.

**Maintenance of Effort (MOE)** – A federal compliance requirement that applies both to the State level or State Educational Agency (SEA) and the individual Local Educational Agency (LEA) level requiring that the State not reduce its available funds for special education purposes in any year so federal funds do not supplant, but supplement State funds. The State MOE is referred to as Maintenance of State financial support in the IDEA regulations. SEA MOE is measured on an “available funds” concept and LEA MOE is measured on “expenditures” concept. Consequence of a failure to meet SEA MOE is a corresponding reduction in the federal funds award under the Individual with Disabilities Education Act (IDEA) Part B.

**NM Public Education Department (PED)** – New Mexico cabinet level department charged with administration of Public School Education.

**Office of Special Education Programs (OSEP)** – A sub office to OSERS and serves as main administrator of \$5 billion plus appropriated for programs authorized by IDEA.

**Office of Special Educational and Rehabilitative Services (OSERS)** – Second largest Office in the US Department of Education and administers the IDEA program as well as other programs.

**Special Education Bureau (SEB)** – Bureau within PED charged with Special Education administration of IDEA funds and programs in New Mexico.

**State Educational Agency (SEA); i.e. PED as lead agency and the State of New Mexico for State MOE purposes.**

**State Equalization Guarantee (SEG)** – Is the amount of State funding guaranteed to school districts and charter schools in a school year, that when combined with 75% of Impact Aid payments, Federal Reserve payments and the local ½ mill levy, meets the district’s and charter school’s calculated program cost. The SEG is a one line appropriation by the State each year allocated to the various school districts by PED. Note: SEG is not the Funding Formula which determines Program Cost. SEG is generally considered Program Cost minus credits.

**State Financial Support Funds (SFSF) (Stabilization Funds)** – Incremental federal funding intended to stabilize school budgets where they might experience shortfall.

**Student Budget & Financial Analysis Bureau** – Separate division of PED known as “School Budget Bureau”, that is not a part of ASD, and is charged with public education budgetary matters.



**State of New Mexico  
Public Education Department**

**EXAMINATION REPORT – CONTINUED**

**Student Teacher Accountability Reporting System (STARS)** – Software system for public education in New Mexico. LEAs input student data into the system at regular reporting periods which is centralized at PED.

**Training and Experience Index (T&E Index)** – This is a compensation multiplier recognizing value of training and credentials for the individual.

**Unit Value (UV)** – Drives education funding as measured in dollars. The Unit Value is the dollar multiplier in the funding formula that when multiplied by the total number of units statewide results in the SEG distribution to districts and charters. The Unit Value is the total Program Cost made available divided by the total projected statewide units.

**U.S. Department of Education (DoED)** – Cabinet level department of the United States government. This department oversees Federal assistance to education and enforces federal education laws.

**State of New Mexico  
Public Education Department**

**EXAMINATION REPORT – CONTINUED**

**PED and DoED PERSONNEL ACTIVE DURING THE REPORT PERIODS**

Hipolito “Paul” Aguilar, Deputy Secretary, Finance and Operations (February 2011 – Present)

Don Moya, Deputy Secretary Finance and Operations (April 2004 – July 2010)

Albert Gonzales, Assistant General Counsel and then Deputy General Counsel PED (December 2005 - Present)

Denise Koscielniak, Director of Special Education Bureau and then Director of Federal Programs, Special Education Bureau (April 2005 – Present)

Tim Crum, Data Coordinator / Education Admin Specialist, Special Education Bureau (November 2013 – Present)

Patty Hawkins, Fiscal Manager, Special Education Bureau (October 2010 – Present)

Eileen Marrujo-Gallegos, School Budget Director, School Budget & Financial Analysis School Budget Bureau (April 2013 – July 2014)

Steve Burrell, School Budget Director, School Budget & Financial Analysis School Budget Bureau (November 2001 – March 2013)

Pashella Reynolds-Forte, Acting Director, Administrative Services Division, PED (September 2005 – June 2013)

Dan Hill, General Counsel, PED (September 2013 – Present)

Hillary Noskin, General Counsel, PED (September 2012 – August 2013)

Willie R. Brown, General Counsel , PED (October 2001 – August 2012)

Susanna Murphy, Secretary of Education, Interim until Dec 31, 2010

Hanna Skandera, Cabinet Secretary Designate of Education (January 2011 – Present)

Veronica Garcia, Cabinet Secretary of Education (November 2003 – June 2010)

Joann Chavez Support Manger with DFA as liaison to PED (May 2012 to Current)

Joey Martin, Accountability Data Manager for Special Education Bureau (October 2007 - July 2011)

Matt Schneer, Education Program Specialist at OSEP who monitors MOE compliance

Dannette Burch, Deputy Secretary for Budget and Policy at DFA (State Budget Director) (January 2003 – December 2010)

Catherine Cross Maple, Deputy Cabinet Secretary (March 2004 – May 2010)

Austin Buff, ASD Director (June 2009 – October 2010)

Michael Yudin, Assistant Secretary for the OSERS

Wayne Ball, Education consultant with Mountain Plains Regional Resource Center on contract for PED

Maria Fidalgo, Audit and Accounting Bureau Manager

**State of New Mexico  
Public Education Department**

**EXAMINATION REPORT – CONTINUED**

**AUDIT PROCEDURES PERFORMED**

Our audit of the PED as it pertains to its MOE compliance, as of July 1, 2009 through June 30, 2012 was conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States and in accordance with attestation standards established by the American Institute of Certified Public Accountants.

As part of our procedures, we interviewed 11 individuals involved in the processes regarding the administration and calculation of SEA MOE and LEA MOE on one or more occasions.

These individuals are:

Hipolito “Paul” Aguilar, Deputy Secretary of Education for Finance and Operations, PED  
Denise Koscielniak, Director of Federal Programs, PED  
Albert Gonzales, Deputy General Counsel, PED  
Maria Fidalgo, Accounting and Audit Manager, PED  
Don Moya, Current CFO of APS and Former Deputy Secretary of PED  
Patty Hawkins, Fiscal Manager, Special Education Bureau of PED  
Tim Crum, Data Coordinator / Education Administrator, Special Education Bureau of PED  
Steve Burrell, School Budget Director, School Budget & Financial Analysis School  
Budget Bureau  
Eileen Marrujo-Gallegos, School Budget Director, School Budget & Financial Analysis  
School Budget Bureau  
Scott Eliason, Former Partner Moss Adams

We made email inquiries and received information from Frances Maestas of the LESC for the limited purpose of verifying possible communications from PED to other State Government agencies/committees in 2009.

We reviewed the system of internal controls over SEA MOE and LEA MOE compliance as of February 2014 for adequacy in design as of 2010-2012 and then noted changes for the years 2012 and forward.

We reviewed external audit reports for 2010, 2011 and 2012 for PED conducted by two different CPA Firms. We reviewed audit relevant work papers for the 2011 and 2012 audit provided to us.

As part of our testing of procedures we reviewed approximately 1300 pages of documents provided to us by the PED. The documents consisted of emails, correspondence, informational reports, resource information on IDEA B, PED policies and procedures, meeting notes and various numerical data in relation to the SEA MOE and LEA MOE calculations. Emails, Correspondence, Reference Information and MOE calculations comprised the larger part of documents that we reviewed most closely.

**State of New Mexico  
Public Education Department**

**EXAMINATION REPORT – CONTINUED**

The tabs organizing the information from PED included:

**OSERS, OSEP documents  
Communications with OSEP  
State IDEA B applications  
Outside Communications with DoED  
Outside Documents RE MOE  
House Appropriations Bills  
Internal Communications RE MOE  
Communications with Other Agencies  
Information from Other States RE MOE Waivers**

The information provided to us was quite voluminous and it appears balanced, i.e. information that could be deemed detrimental to PED was provided as well as information that could be deemed beneficial. We were not able to verify the completeness assertion over such information. We obtained a representation from PED that the information provided was complete and no relevant information was excluded. We thank PED for making available such information.

We conducted meetings. An introductory meeting was held on October, 2013 and we conducted meetings attended by two or more responsible PED officials on at least six occasions during interim fieldwork. Each meeting consisted of at least two PED personnel or former PED personnel. PED had an opportunity to review preliminary drafts of our report and the report was discussed with them. The State Auditor (OSA) reviewed our draft report.

The OSA had the opportunity to attend a close out meeting with the PED in order to hear directly any concerns PED might have had. All such comments have been incorporated into the final report as appropriate.

**WHAT TYPE OF DATA IS INCLUDED**

New Mexico's funding formula does not provide a predetermined level of categorical funding for special education services but rather is determined by the funding formula using cost differential factors to reflect the costs associated with providing educational services to students with varying levels of need. Individual student education requirements are converted into a series of units using cost differential factors and units are then converted into dollars by multiplying the number of units by the current year Unit Value. Cost differential factors from all parts of the formula were compiled for each student in a district and the total number of units generated by students was then multiplied by the annual Unit Value to determine the total funding provided to each public school district and charter school.

Data is gathered for the funding formula at specific dates during the school year. There are three reporting periods where the LEA's report student data in STARS, of which two data points are used to calculate an average. By February each year PED was in the third reporting cycle and the legislative session was over. A key challenge to PED is to plan for a budget 18 months in advance.

**State of New Mexico  
Public Education Department**

**EXAMINATION REPORT – CONTINUED**

There are multiple components that go into calculating the Unit Value. The initial Unit Value is determined in March or April of the preceding year for the current fiscal year. The initial Unit Value used the upcoming fiscal year's appropriation as one component along with the current 80 day / 120 day average membership member units reported by LEA's. The total process to complete the funding formula requires 15 months to produce the final unit value. The funding request is a base line, however the year end final funded was calculated using the average of 80/120 day data from the prior year, so it is based on prior year funding, however it also included current year (40 day) adjustments. The final Unit Value is not known until the following January after the initial Unit Value for the upcoming fiscal was determined after legislative session for the current fiscal year.

Another adjustment to the total member unit (MEM) count requires the removal of the gifted students out of total MEM count used for the SEA MOE calculations for all years from the final funded spreadsheets.

State agency audits for special education related agencies are generally submitted by December 15<sup>th</sup> of each year, however the reports are typically not available until the following January or February so the immediate prior fiscal year SEA MOE calculation could not be completed until March as finalization of projections requires the values from the State agencies. For the years 2010 – 2012, this data was not collected before the end of each fiscal year.

There are special needs children served by other State agencies. The PED needed their numbers to ensure all funds that are made available to children with special needs are included in the SEA MOE calculation.

During 2013, the ASD Director and the Bureau Chief for Federal funds including IDEA B were both involved in the review of the School Budget Director's SEA MOE calculation before review by the Deputy Secretary of Finance and Operations. Also, the Accounting and Finance Manager reviewed the SEA MOE calculation for accuracy of the two tab Excel file, which has a supporting detail spreadsheet linked to a roll up spreadsheet.

During 2013, the School Budget Director responsible for preparing the SEA MOE calculation successfully obtained payroll data from Corrections Department, CYFD and DVR, etc. and obtained needed information from the issued financial statements of NMSD and NMSB to complete SEA MOE calculation.

Unit Value

A primary factor used to determine SEA MOE was the Unit Value. The Unit Value is calculated by the School Budget Bureau by the Budget Director based on multiple components to include "program cost". The Unit Value is a factor in the funding formula which results in the SEG distribution to districts and charters. The Unit Value is the total Program Cost divided by the total projected statewide units. The Initial Unit Value was determined around late February or early March each year when the SEG appropriation was passed. Collection of data is taken throughout the year periodically so the denominator was known in advance of the numerator or the appropriation.

**State of New Mexico  
Public Education Department**

**EXAMINATION REPORT – CONTINUED**

The SEG distribution is adjusted by "impact aid" and other credits. This information is available later in the spring in May.

There are different weights based on grades, etc., and then there are additional factors including special education, ancillary services (speech pathologists, other specialists), and different levels of service from A (min) to D (max) as adjustments to the factor on the member units (MEM) which multiply to arrive at total statewide program units. By January of each year the final Units Value is set. The total statewide program units are then multiplied by the Unit Value to arrive at the SEG disbursement. Credits are also a component in the calculation of the Unit Value. The Unit Value component of the SEA MOE is the largest factor and State agency funding is a much smaller factor.

34 CFR 300.163 is an IDEA B regulation and the PED Special Education Bureau (SEB) administer the IDEA B grant, therefore SEB was responsible to monitor LEA MOE, but SEB had no connection with SEG funding formula and the SEA MOE calculation. SEB had to work with ASD who is responsible for providing the SEG component to the Legislature, so it was a shared responsibility.

#### Member Units

The membership count (member or MEM) calculation is required by specific statutory law-NMSA 22-8-13. The reporting periods are as follows: 1<sup>st</sup> reporting period (40 day), second Wednesday in October; 2<sup>nd</sup> (80 day) reporting period, December 1<sup>st</sup>; 3<sup>rd</sup> reporting period (120 day), second Wednesday in February. PED uses the 40<sup>th</sup> day as the first date of fixed measurement, then as the data becomes available the MOE calculation is updated. When this one particular day was incorporated was not known by PED's management.

Each district and charter provides their student data to PED through Student Teacher Accountability Reporting System (STARS). The age is important but more so is the grade of the student for the calculation. Data collection happens on one day as per State statute. SEG cannot count private schools and excludes them from the SEA MOE calculation.

Membership (MEM = membership of a qualified student by kid for level of service) is validated by School Budget. It does not translate to a whole number head count, like a FTE for part time employment.

When schools ask for more service the Unit Value goes down. A "D" level kid is receiving service 100% of the time and needs the most money. The factor for A and B is 0.7, C is 1.0, and D is 2.0. The ancillary level is 25 (the biggie). A whole bunch of new ancillary service providers can reduce the Unit Value.

Subsection H of 6.29.1.9 NMAC specifies how the case loads are calculated. A maximum load for teachers for D level students are 8, Cs' are 15, B's are 24, and A's are 35 for special education teachers. An A level speech teacher can have 60 on their load because it only requires a few hours.

**State of New Mexico  
Public Education Department**

**EXAMINATION REPORT – CONTINUED**

Students that were not disabled or in private school must be excluded from the SEA MOE calculation. Also, students in the Department of Corrections do not get SEG dollars (they get State dollars from the Corrections Department).

Funding Formula

Multiple data points are necessary to determine the funding formula first and subsequently calculate SEA MOE using the State's methodology. Factors that come from the funding formula were used as inputs include the total program units times the Unit Value which is necessary to calculate the PED's SEG distribution. The Unit Value and total program units both are complex calculations which involve obtaining data from several departments within PED, much of which was required to be collected from school districts across the State.

Because of the complexity of PED's SEA MOE calculation, sources of data needed for PED's member units and Unit Values originate from various departments within PED, including the Special Education Bureau, the School Budget Bureau, as well as information from other State agencies.

Each student with disabilities has an Individualized Education Program (IEP) which involves all the school's staff which participates in education of the student. Cost variability is out of the State's control since it is controlled by the IEP team at each school. The number of units and the number of dollars change and most importantly can decrease year to year. Although the federal law states that SEA MOE cannot decrease, PED's position was that variability should allow for the Workload Adjustment.

The funding formula and its components are uniform, replicable and auditable and OSEP accepted the methodology. IDEA Part B only recognizes those students whose only exceptionality is being disabled. However, New Mexico uses the same statute which funds disabled children to fund those who are gifted. New Mexico is one of the only states that do this. The data used for calculating SEA MOE requires NM to take out the gifted only students. PED has to adjust the A/B, C and D membership lines to minus the gifted students from the final funded membership counts.

Additional data/components come from the Department of Vocational Rehabilitation (DVR), CYFD, Corrections, NMSD, NMSB which are also needed to add towards what the State of New Mexico makes available for special education to NM children. The DFA Bureau Chief for FY 2013 independently worked with the other four agencies to determine the FY 2009 – FY 2012 data collection for PED.

State Equalization Guarantee (SEG)

Above the line (SEG) funding resources (funds the school through the funding formula calculation) are not federal funding and below the line resources (purpose and category specific) does not relate to the calculation. Therefore, SEG is funding a specific total amount from appropriation and is not category specific. The SEG is then allocated to the various school districts through the funding formula by PED.

**State of New Mexico  
Public Education Department**

**EXAMINATION REPORT – CONTINUED**

There is a separate chart for separating the gifted students for the State MOE calculation and the local MOE calculation for LEA but it is still SEG dollars.

Special Education State SEG is how much is made available for funding expenditures, which is the State MOE calculation.

SEA Maintenance of Effort (SEA MOE)

The “funded run” or funding formula drives SEG as a budgetary line item. The funded run has the total membership of A-D plus ancillary members. The funded run is made up of all student membership for all pre-K to 12 (total students). A – B members are grouped together; C are members tracked separately and then D members are tracked separately, ancillary members are tracked separately, and 3Y + 4Y are tracked separately. The School Budget Director receives a report for members run by the IT Department out of STARS which reports which special education members to take out the total special education members (students with developmental disabilities versus gifted students). The School Budget Director segregated the gifted students by each group to arrive at a net number of gifted students as the result, which is the input to the MOE calculation. The funding formula uses the average of the 80<sup>th</sup> day and 120<sup>th</sup> day data, which is the same information used to develop the SEA MOE formula.

The Unit Value was determined annually (for FY 2010 it was \$3,458.06) which was also calculated by the School Budget Director. The Unit Value was also an input required to calculate SEA MOE. There is a specific series of inputs and steps to produce the SEA MOE calculation.

Additional steps include the Workload reduction. There are different levels of need for special education, Levels A-D, and the number of services provided can go up or down year to year. If services are reduced then PED takes credit for it. If services are increased each year then it is applied (added) to the MOE calculation.

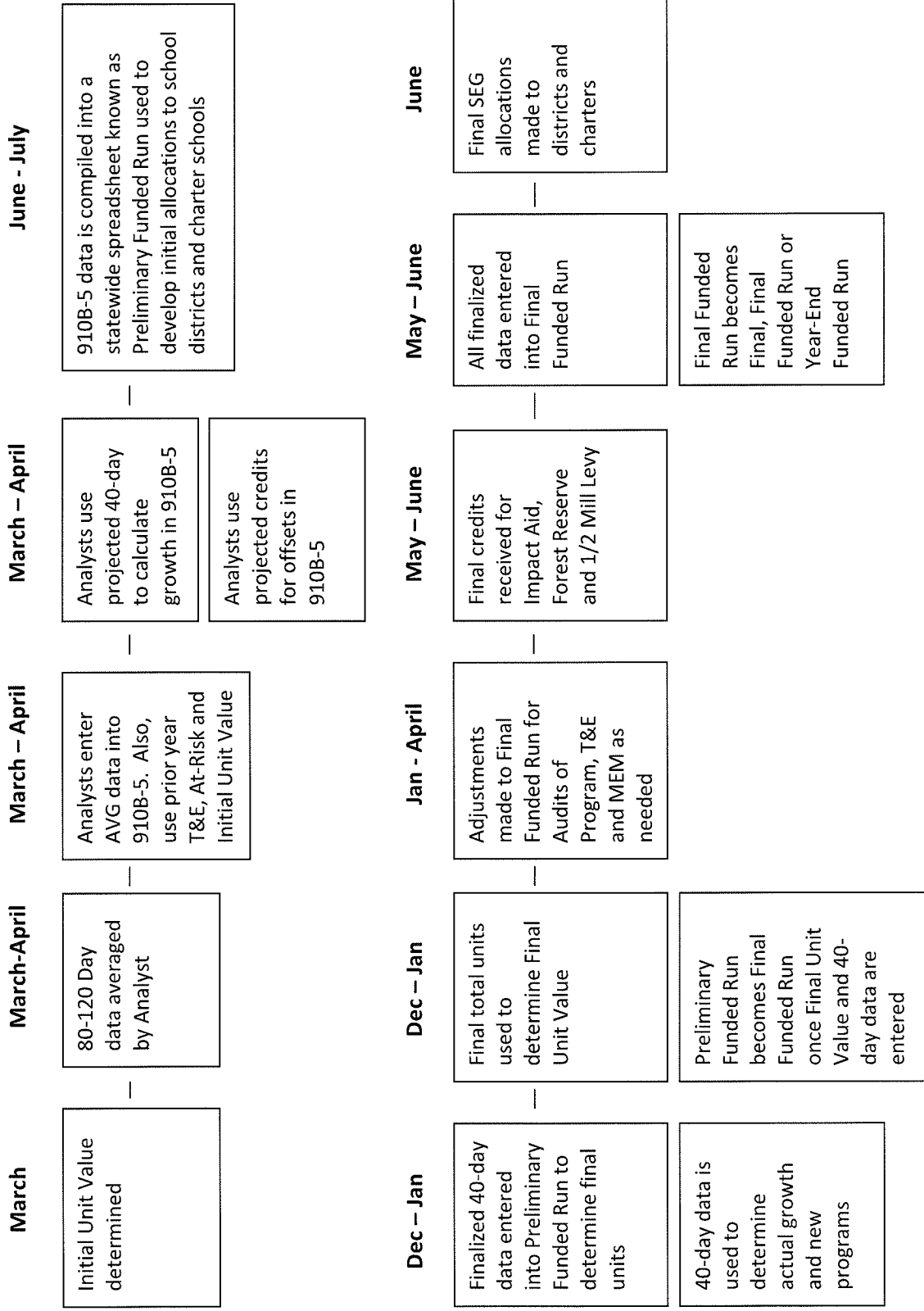
Data used for the MOE calculation includes the final Unit Value as published by the Cabinet Secretary of PED, the average data of the 80<sup>th</sup> day and 120<sup>th</sup> day for special education students to exclude students classified as gifted-only, and financial data from the other State agencies determined to expend funds for special education.

Based on the MOE calculations provided to us during the examination, the data is used consistently from one year to the next.



DRAFT –

**Overview**



Monthly allocations to districts and charters change as the funded run changes.

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