



OSEP's Role in the South Carolina MFS Story

CIFR and IDC in collaboration
with the NCSI Fiscal Support Team



Why is the MFS Requirement Important?

Children with disabilities are entitled to a free appropriate public education under IDEA (FAPE).

States provide financial support to LEAs to support the provision of FAPE.

The MFS requirement is designed to ensure that LEAs have the resources they need to provide special education and related services for children with disabilities.

The MFS Requirement



A State must not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

IDEA section 612(a)(18)(A), 34 CFR section 300.163(a).

MFS Basics



Amounts made available, not amounts expended.

Funds made available by the State, not just SEA, including any other State agency making funds available for special education and related services:

- Vocational Rehabilitation
- Corrections
- Mental Health

May be met on total or per capita basis.

Consequence of Failure



The Secretary shall reduce the allocation of funds under section 611 of the Act for any fiscal year following the fiscal year in which the State fails to comply with the MFS requirement by the same amount by which the State fails to meet the requirement.

IDEA section 612(a)(18)(B), 34 CFR section 300.163(b).

2015 & 2016 Appropriations Language



Reduction by amount of failure of future grant award (may be spread out up to 5 consecutive years).

For failures occurring in 2015-2016 and 2016-2017, Department may recover funds under the General Education Provisions Act (GEPA) as alternative remedy.

- Provision used for recovery for most IDEA noncompliance.
- Allows for more flexibility in application of mandatory penalty.

State must take penalty proportionally from flow through and State set-aside funds.

Waivers



The Secretary may waive the requirement at 34 CFR §300.163(a), for one fiscal year at a time if the Secretary determines that granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State.

IDEA section 612(a)(18)(C)(i), 34 CFR section 300.163(c)(1).

Waiver Decisions



The Department has posted all the waiver requests and our responses on:
<http://www2.ed.gov/policy/speced/guid/idea/monitor/smfs-partb-waivers.html>.

On this website you will find:

- Basic criteria.
- Waiver requests.
- Department's responses.

The Challenge of MFS



Resolving MFS issues is challenging.

Stakes are high.

Every State's system for funding special education is different.

This means that there is no one methodology that applies to all States.

Working with States



When we learn of potential failures, we start an intensive, collaborative process.

Pull in not just OSEP, but Budget Service and Office of the General Counsel.

First step is to notify States informally that we have identified apparent/potential failure.

State has opportunity to provide additional information and have conversations with ED.

Determining Accurate Data



Multiple calls discussing data to make sure it accurately captures amounts made available.

Sometimes may include on-site work (less common now with CIFR).

CIFR is a resource to help States with their MFS calculations, among other fiscal issues.

Typically a State will send in multiple versions of data prior to arriving at data that is comprehensive and consistent with IDEA.

Waivers and Determinations



If data show failure, State then has option to submit waiver request(s).

Department review to see if it is equitable to grant waiver in full or partially.

If there is a failure, and a full waiver was not granted, issue proposed determination to reduce grant.

State may request a hearing regarding proposed determination.

Examples of What We Look For in Reviewing Waiver Requests

Is there a precipitous and unforeseen decline in financial resources of the State?

Were any cuts to special education equitable, i.e., State programs as a whole were cut the same or more.

Are there other “pots” of funds (reserve, rainy day fund) that could have been accessed?

South Carolina Example



In the midst of recession, South Carolina requested waivers for State fiscal years (SFYs) 2009, 2010, and 2011.

The Department:

- Granted a waiver for SFY 2009 in full.
- Granted a partial waiver for SFY 2010.
- Denied the waiver request for SFY 2011.

Working with South Carolina



Like all States, lots of collaboration to determine accurate data:

- Multiple calls.
- On-site visit.
- Exchange of information.
- Later on CIFR provided TA.

From Proposed Reduction to Settlement

South Carolina requested a hearing on the Department's proposed determination to reduce South Carolina's grant.

Preliminary issues were litigated.

The Department's Counsel consulted with Department of Justice (DOJ) on possibility of negotiating a settlement under its authority.

Consultation with DOJ



Department's Counsel determined that this settlement was in the best interests of the United States.

Department's Counsel then recommended to DOJ that the case be approved for settlement.

DOJ determined that settlement was in the best interests of the United States and approved the settlement.

Basis of the South Carolina Settlement

Significant factors in determining whether this settlement was in the best interests of the United States:

- Ensured compliance with IDEA.
- Maintained funding levels in South Carolina.
- Directed additional funds toward improving results for children with disabilities.

Shared interest with South Carolina in improving results for children with disabilities.

Terms of the South Carolina Settlement

Department will not reduce future grant for MFS failures in SFYs 2010, 2011, 2012, and 2013.

South Carolina will appropriate additional \$51 million in State funds.

Additional funds will be used to improve results, largely in accordance with Results Driven Accountability and State Systemic Improvement Plan (RDA/SSIP) goal of improving reading proficiency.

Funds to be appropriated over 3-year period.

Additional funds will not increase MFS base.

Result of Settlement Agreement



Complicated process, but positive result going forward.

More funds being directed to improve results.

Kids get what they need.

IDEA compliance is maintained.

South Carolina has path forward to meet MFS.

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CIFR and IDC are grateful to our collaborator



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