



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

DEC 17 2014

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DEC 30 2014 #1
State Superintendent's
Office

Honorable Christopher Koch
State Superintendent of Education
Illinois State Board of Education
100 North First Street
Springfield, Illinois 62777-0001

Dear Superintendent Koch:

This letter responds to your June 20, 2014 letter in which the Illinois State Board of Education (ISBE) asked the Office of Special Education Programs (OSEP) to provide formal guidance concerning language being considered for the State of Illinois' annual appropriations for education. Specifically, you seek guidance on whether the proposed language is consistent with the provisions related to maintenance of State financial support for special education and related services in the Individuals with Disabilities Education Act (IDEA) in 20 U.S.C. §1412(a)(18)(A) and 34 CFR §300.163(a).

The State is considering the following language:

The State Board of Education shall calculate for each school district and state charter school a minimum sum of \$200,000,000 or additional amount as needed from the total net General State Aid funding provided to each school district and state charter school that shall be deemed attributable to the provision of special educational facilities and services, as defined in Section 14-1.08 of this Code, in a manner that ensures compliance with maintenance of State financial support requirements under the federal Individuals with Disabilities Education Act. A school district must use such funds only for the provision of special educational facilities and services, as defined in Section 14-1.08 of this Code, and must comply with any expenditure verification procedures adopted by the State Board of Education.

You asked whether this language is adequate to meet the requirements in 20 U.S.C. §1412(a)(18)(A), and if so, "would the State be penalized in not meeting these requirements if a district or state-authorized charter school fails to actually expend the amount calculated or is it sufficient that ISBE dictates the amount of unrestricted education funds that must be made available for special education?" Your question assumes that local educational agencies (LEAs) will comply with IDEA LEA maintenance of effort requirements.

In the 1997 reauthorization of the IDEA, Congress added, to the list of requirements that States must meet in order to receive IDEA Part B section 611 formula grants, the maintenance of State financial support (MFS) requirement (also known as the maintenance of effort requirement), now codified at 20 U.S.C. §1412(a)(18) and 34 CFR §300.163. The purpose of the IDEA Part B State MFS requirement is to ensure that States do not reduce their own State appropriations for special education and related services from year to year. Without the MFS requirement (*i.e.*, if States were permitted to reduce their own appropriations from year to year), LEAs would struggle to plan for, or otherwise cope with, losses in State appropriations, jeopardizing the efforts of school districts to provide a free appropriate public education to children with disabilities.

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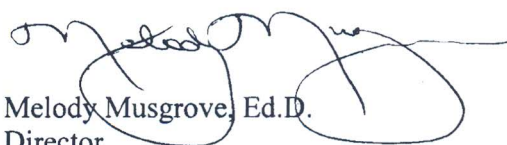
As your letter suggests, State financial support “made available” generally refers to State appropriations and not expenditures. Therefore, when determining the amount of State financial support “made available” for special education and related services, the State includes the amount of State funds that it has appropriated for this purpose, and not the amount expended by the State or its LEAs. For example, a State may appropriate, often through the State educational agency (SEA), for distribution to its LEAs \$200,000,000 for special education and related services, but determine that its LEAs only expended \$190,000,000 of those State funds for that purpose. In that instance, the State includes in its calculation \$200,000,000 in State funds, and not \$190,000,000.

However, as you referenced in your letter, States must also include in their MFS calculation appropriations or other distributions of State funds made to agencies other than the SEA for special education and related services. This is because, in some States, State agencies, such as a juvenile justice agency, are responsible for providing, and paying for, special education and related services for some children with disabilities. If States do not have specific amounts made available to agencies other than the SEA, which have been made available for this purpose, they must have a mechanism for including that financial support when calculating the level of financial support for special education and related services provided by the State in any given fiscal year. In those limited circumstances, States may include expenditures in their MFS calculation. See OSEP Memorandum 10-05, December 2, 2009, entitled *Maintenance of State Financial Support under the Individuals with Disabilities Education Act* (copy enclosed).

Accordingly, based on the information provided in your letter and subject to the clarifications regarding MFS calculations included herein, we believe that the proposed language is consistent with the requirements in the IDEA. Moreover, if the ISBE distributes a portion of State General Aid to an LEA with the proviso that the funds may only be used for special education and related services, the State must include those funds in its MFS calculation, regardless of the manner in which an LEA actually spends these State funds.

We appreciate your ongoing commitment to the provision of quality educational services to children with disabilities.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melody Musgrove', written over a circular stamp or seal.

Melody Musgrove, Ed.D.
Director
Office of Special Education Programs

Enclosure