

June 30, 2004

**VIA FACSIMILE AND FIRST CLASS MAIL**

Mr. Troy Justesen  
Acting Assistant Secretary  
Office of Special Education and Rehabilitative Services  
U.S. Department of Education  
330 C St. SW  
Washington D.C. 20202

Mr. Raymond J. Simon  
Assistant Secretary  
Office of Elementary and Secondary Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202

Dear Assistant Secretary Simon and Acting Assistant Secretary Justesen:

I am writing to obtain clarification on questions concerning application of the cap on IDEA Part B funds to schoolwide schools which do not combine their IDEA funds in their schoolwide plans. In light of this situation, your guidance on the following questions would be of immense assistance:

- Does the LEA schoolwide cap, established by 20 USC §1413(a)(2)(D), apply to schoolwide programs that elect not to combine Part B funds in their schoolwide plan.

We are specifically inquiring about the situation where a schoolwide school does not combine its Part B funds in a schoolwide program. Under these circumstances the schoolwide school receives Part B funds and uses them only to deliver services to eligible children with disabilities. The Part B funds are used exclusively for eligible students with disabilities to provide IDEA services and are not combined or used to carry out the schoolwide program itself.

20 USC §1413(a)(2)(D) of the IDEA states:

Notwithstanding subparagraph (A) or any other provision of this part, a local education agency may use funds received under this part for any fiscal year to carry out a schoolwide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount so used in any such program shall not exceed –

- (i) the number of children with disabilities participating in the schoolwide program; multiplied by

- (ii) (I) the amount received by the local education agency under this part for that fiscal year; divided by (II) the number of children with disabilities in the jurisdiction of that agency.

NCLB sets out the requirements for schoolwide programs in Section 1114 of the Act. If IDEA Part B funds are used in a schoolwide program and used to carry out the schoolwide plan, then the cap will clearly apply. However, the statutory language also limits application of the cap only to those funds that are used in any such “schoolwide program.” The question is whether the Part B cap is triggered if Part B funds are used in a schoolwide school but not included in the schoolwide program, not combined with other schoolwide funds and used exclusively to provide IDEA services to eligible disabled children.

When an LEA allocates IDEA Part B funds to a targeted assistance school, the school may only use the funds for allowable IDEA activities for identified children with disabilities. Provision of FAPE, implicitly limits the amount that can go to the school based on needs of eligible children with disabilities. In a schoolwide program which combines the IDEA funds, the only requirement regarding IDEA Part funds is that the school must ensure eligible students with disabilities participating in the schoolwide program receive a FAPE. Thus, theoretically unlimited funds could go to this school with Part B funding not specifically tied to benefiting eligible students with disabilities. Therefore, the allocation cap in the schoolwide school that combines IDEA funds assures that unlimited IDEA funds do not flow to a schoolwide program, thus depriving non schoolwide schools of those funds.

When the funds are not combined, the basic requirement under the IDEA that the funds are only expended for allowable IDEA expenditures on eligible students with disabilities will provide the same implicit limitation as in the targeted assistance school. Thus, the schoolwide program that does not combine has the same status as the targeted assistance program. Accordingly we would appreciate your guidance on the question stated above.

I greatly appreciate your attention to this question. Thank you in advance for your prompt assistance.

Sincerely,

Leigh M. Manasevit