RTI, MOE and Other Complex Fiscal IDEA Issues

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Agenda
- Allowability
- Significant Disproportionality, CEIS and RTI
- Time and Effort Reporting
- Maintenance of Effort
- Excess Cost

IDEA Allowability Rules
Allowable Uses of Funds under IDEA (examples)

- Child Find Obligation
- Staff Trainings
- Evaluations
- IEP Services
  - Special Education Coordinator
  - Service Providers
  - Special Education Teachers
  - Equipment and Supplies
- Coordinated Early Intervening Services
  - 34 CFR 300.208

NOT: Attorney’s Fees!!!
Significant Disproportionality

- Each State must collect and examine data to determine if significant disproportionality based on race and ethnicity is occurring with respect to:
  - The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment;
  - The placement in particular educational settings of these children; and
  - The incidence, duration, and type of disciplinary actions, including suspensions and expulsion.

34 CFR 300.646

Coordinated Early Intervening Services (CEIS)

- Set-aside up to 15% of Part B allocation to develop & implement coordinated CEIS:
  - 15% Required if Significantly Disproportionate!! (Defined by the SEA)

- Eligibility:
  - Students who are NOT currently identified, and
  - Who need additional academic and behavioral support to succeed in a general education environment
  - For students in kindergarten through Grade 12 (focus on K-3rd Grade)
  - May be used in RTI system (depending on level)

34 CFR 300.226

CEIS

- Activities:
  - Professional development for teachers/staff
  - Providing education and behavioral evaluations, services, and supports
  - Includes scientifically based literacy instruction

- No right to FAPE!!

- Reporting:
  - Report the number of children receiving CEIS
  - Track students that received CEIS for two years

34 CFR 300.226
CEIS and Supplement Not Supplant

- CEIS must supplement any ESEA activities or services. 34 CFR 300.226(e)

- Model example:
  1. CEIS and local funds serve total population – EIS for eligible EIS students
  2. Title I provides Response to Intervention to Title I students and CEIS supplements

Response to Intervention (RTI)

- RTI strategies are tools that enable educators to target instructional interventions to children’s areas of specific need as those needs become apparent.
- To assist in the identification of students with specific learning disabilities (SLD)
- Predicts At Risk students
- Designed to avoid identification of “disabled” students
- Provides a tiered system of individualized scientific research based interventions

RTI (cont.)

- If you use RTI strategies, LEAs must promptly request parental consent to evaluate a child if the child has not made adequate progress after an appropriate period of time.
- However, the regulations do not specify a timeline for using RTI or define “adequate progress.”
- ED says it varies on the specific circumstances
- Generally not acceptable to wait several months
- A State may choose to establish a specific timeline
- Parent may request an evaluation at any time!
Response to Intervention (RTI)

TIER 3: Specialized Highly Individualized Intervention (Instruction)

TIER 2: At Risk - More Intense Support Identifies Students who do not respond to intervention of Tier 2 and refers to Tier 3

TIER 1: General Education Program predicts At Risk Students - Supplant Alert!

Federal Cost Principles

43 Specific Items of Costs detailed (alphabetical order)

• Example: Salaries and Wages
  • Allowable if proper time distribution records
    • Single Cost Objective: Semi-annual certification
    • Multiple Cost Objectives: PAR Report
Personnel Costs

- Type of documentation depends on how many “cost objectives” the employee worked on
- These cost objectives must be connected to the employee’s salary source
- What is a cost objective?
  - A specific grant award, or other category of costs, that requires the grantee to track specific cost information

Personnel Costs (cont.)

Examples of IDEA Cost Objectives:
- IDEA Part B program
- IDEA Part C program
- IDEA Part B State-level Administration for Part B
- IDEA Part C State Administration (charged to either Part B or C)!
- Coordinated Early Intervening Services (CEIS)
- Equitable Services Proportionate Share

Time and Effort Examples

- A special education teacher spends 100% of her time working with students with disabilities but is paid 50% with IDEA, Part B funds and 50% with State funds.
  
  - Semi-annual or PAR??

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Time and Effort Examples

• A general education teacher provides coordinated early intervening services in 3 out of her 7 classes this year.

• Semi-annual or PAR??

Time and Effort Examples

• A general education teacher provides coordinated early intervening services one day when the CEIS teacher is absent.

• Semi-annual or PAR??

Time and Effort Examples

• A school counselor spends 25% of her time providing general counseling services and 75% of her time providing counseling services under IEPs.

• Semi-annual or PAR??
Time and Effort Examples from ED’s Kay Ringling

- A preschool special education teacher is funded with 50% IDEA section 619 funds and 50% with IDEA section 611 funds.
  - Semi-Annual or PAR???

Time and Effort Examples from ED’s Kay Ringling

- A teacher works with low-achieving students and is supported with 60% Title I, Part A funds and 40% CEIS funds from IDEA, Part B.
  - Semi-Annual or PAR???

IDEA, Part B State and Local Maintenance of Effort

What???

Keep It Up!
State Maintenance of Effort (MOE)

- A State must not reduce the amount of State financial support for special education and related services for children with disabilities below the amount of that support for the preceding fiscal year.

- **Must use ALL State funds!!**

- May be able to use ARRA Stabilization and Ed Jobs funds towards SEA MOE requirements!

- May not use Medicaid reimbursements towards SEA MOE requirements.

New Grant Application MOE Section

- Compute how much is spent each year on special education and related services

- Monitor spending for children with IEPs by other state agencies

- Include a grand total for the application

- Currently, States only affirm that they are in compliance with MOE requirements

State MOE Waiver

- IDEA Waiver **ONLY** applies to State MOE! (not LEA MOE)

- ED may waive SEA MOE (for one FY at a time) if ED determines that a waiver would be equitable due to:
  - Exceptional or **uncontrollable** circumstances such as a natural disaster or a precipitous & **unforeseen** decline in State financial resources; or
  - The SEA meets Supplement Not Supplant Waiver Requirements. IDEA Regs §§300.165(c) and 300.164

- Does not reduce State MOE for subsequent years
State MOE Waiver (cont.)

- ED wants to make sure any reduction in State SPED funds is not greater than the % reduction in revenues experienced by the State (SPED treated equitably).
- Factors considered:
  - State's revenues and extent of decrease based on exceptional or uncontrollable circumstances
  - State's total appropriations for current versus prior year
  - State's appropriations for other agencies
  - State's compliance with Implementing IDEA, Part B and performance record
  - Other available funds to mitigate effects of waiver

Failure to Meet State MOE

- Consequences for failure to maintain support:
  - ED reduces allocation for any FY following the FY in which the State fails to comply.
  - Reduction is the same amount by which the State fails to meet the requirement.
  - Following year reverts back to previous level of effort.
- Ability of SEA to reduce its MOE is VERY RARE!

Local-level Maintenance of Effort (MOE)

- An LEA may not use its Part B funds to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

(IDEA Regs Section 300.203(a))
Local-level MOE (cont.)

- Four ways to calculate Local MOE:
  1. Comparison of total expenditures using local funds only,
  2. Comparison of total expenditures using state and local funds,
  3. Comparison of the per pupil amount using local funds only, or
  4. Comparison of the per pupil amount using state and local funds.

(IDEA Regs Section 300.203(b))

Local-level MOE Reductions

Allowable reductions:

1. Voluntary departure of special education or related services personnel
2. A decrease in the enrollment of children with disabilities
3. The assumption of cost by the SEA's high cost fund
4. An exceptionally costly child has left the agency's jurisdiction, aged out of the eligibility age-range, or no longer needs the program of special education, or
5. The termination of costly expenditures for long-term purchases, such as the acquisition of equipment. 34 C.F.R. § 300.204.

Local-level MOE - Optional Flexibility

- If there is an increase in the LEA's allocation, compared to the previous FY allocation,
- Then the LEA may reduce the level of expenditures otherwise required by not more than 50% of the amount of excess in allocation,
- But the LEA must use an amount of local funds equal to the MOE reduction to carry out activities that could be supported with ESEA funds, regardless of whether the LEA is using ESEA funds for those activities. (IDEA Regs Section 300.205)
- This will reduce next year’s MOE as well!
Local-level MOE - Optional Flexibility (cont.)

• Flexibility may be unavailable if:
  ◦ SEA determines that LEA is unable to establish and maintain programs of FAPE that comply with Part B and § 613(a); or
  ◦ The SEA took action against an LEA under § 613(a) of IDEA;
  ◦ SEA has taken action against an LEA under § 616 and subpart F of regulations; or
  ◦ LEA is identified as "significantly disproportionate".

Local-level MOE - Optional Flexibility & CEIS

• The amount of LEA MOE reduction that an LEA can take is affected by an LEA’s use of Part B funds for coordinated early intervening services (CEIS).

• Therefore, must subtract any CEIS set-aside from any potential LEA MOE reduction!

Local-level MOE (cont.)

Consequences for violation:
• SEA can not reduce an LEA’s current or future allocation.

• ED would handle an LEA MOE violation by seeking a recovery of funds from the SEA.
  ◦ The level of recovery would depend on the degree to which the LEA failed to maintain effort, but would not exceed the amount of the LEA’s subgrant for the year in question. (See OSEP policy letter, July 26, 2006, to Carol Ann Baglin on www.bruman.com)

• Up to SEA to recover funds from LEA.
Local-level MOE (cont.)

Consequences for violation:

• The LEA's MOE requirement reverts to the level set the last time the LEA met MOE!

• NEW GUIDANCE FROM OSEP! See Letter to the Center for Law and Education, Kathleen Boundy, dated April 4, 2012 on [www.bruman.com](http://www.bruman.com).

• Rescinds previous Letter to NASDSE Executive Director Bill East, dated June 16, 2011.

IDEA, Part C MOE/SNS

• Under Part C, the lead agency meets the Supplement Not Supplant requirement if:
  • The total amount of State and local funds budgeted for expenditure in the current fiscal year for early intervention services must be at least equal to the total amount of state and local funds actually expended for early intervention services in the most recent preceding fiscal year for which information is available.
  • No Waiver Authority.
  • Notice of Proposed Rulemaking to address Part C MOE/SNS flexibility??

Excess Cost
Excess Cost

- Spending threshold – calculation methodology in Appendix A of regulations
- Calculate separately for elementary schools and for secondary schools
- Thresholds will establish cutoff for determining what's an excess cost of providing special education and related services.
- LEA must spend minimum average amount on education of children with disabilities before it can use Part B funds.

Excess Costs (cont.)

- To calculate whether excess costs have been met:
  - Amounts are not limited to expenditures for education – can include “total expenditures for students”
  - May include the allocable portion (based on the # of students with disabilities), of shared general education costs, as long as it can be reasonably attributed to the education of children with disabilities
  - For example, if a general education teacher has a class of 20 and 10 are special education students, 50% of that teacher's salary (assuming the teacher is paid with general funds) could be used towards meeting the excess cost requirement


Questions?
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