

Dated July 26, 2006

Carol Ann Baglin, Ed.D.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services
Maryland State Department of Education
200 West Baltimore Street
Baltimore, Maryland 21201-2595

Dear Dr. Baglin,

This is in response to your electronic mail transmission (e-mail) of May 24, 2006, to Martin Benton, a member of my staff in the United States Department of Education's (Department's) Office of Special Education Programs (OSEP). In your e-mail, you asked for clarification on several questions that you had concerning the maintenance of effort requirements in Part B of the Individuals with Disabilities Education Act. (Part B of IDEA), as amended, 1400 U.S.C. §1400 et. seq. See also: 34 CFR §§300.231-.233¹. Below are responses to each question contained in your e-mail.

Question: Is the State obligated to ensure that each LEA [local educational agency] meets the maintenance of effort (MOE)?

OSEP's Response: An LEA is eligible for a subgrant under IDEA if it provides its State educational agency (SEA) with a plan that assures that the LEA will, among other things, meet the maintenance of effort requirement set out in Section 613(a)(2)(A)(iii) of the IDEA. See: 20 U.S.C. §1413(a). Under Section 612(a)(11)(A)(i) of the IDEA, "the SEA is responsible for ensuring that . . . the requirements of this part are met." Consequently, the SEA is responsible for ensuring that LEAs receiving assistance under the IDEA comply with all applicable requirements of that statute, including the maintenance of effort requirement.

¹ Final regulations implementing the changes to the statute in 2004 have not yet been published and further clarification may be included in the final regulations when they become available. The citations contained in this letter are to the current regulations issued March 12, 1999 and may change when final regulations are published.

Question: If so, as there is a delay in the calculations in expenditures for the prior years, which year's funds are impacted? As an example, if the local did not meet MOE for the 2003-04 school year, do we require the return of the federal funds made available to the local for the 2003-04 school year, even though these are already spent?

OSEP's Response: The IDEA is a State-administered program under which the Department awards funds to an SEA. The SEA, in turn, as noted above, is responsible for ensuring that the requirements of the Act are met, both by the SEA and the LEAs to which it subgrants funds. Consequently, if an LEA fails to meet its obligation under the maintenance of effort requirement, the Department, because it awarded the IDEA grant to the State, will seek a recovery of funds directly from the State because of this violation. The level of recovery will depend on the degree to which the LEA failed to meet the maintenance of effort requirement, but would not, under any circumstances, exceed the amount of the LEA's IDEA subgrant for the year in question. An SEA cannot use IDEA funds to pay this liability. Instead, it must use non-Federal funds or Federal funds for which accountability to the Federal government is not required.

Question: Do we withhold any unawarded funds for the current year until these past years are resolved, even if we have become aware that the MOE issue covers several years?

OSEP's Response: Generally, if an LEA can provide a credible assurance that in the coming year it will meet the maintenance of effort requirement, it should receive an IDEA subgrant. In addition, an SEA is not authorized to reduce a current year IDEA subgrant as a means of resolving a prior year's maintenance of effort violation. Faced with a history of noncompliance with the MOE requirement, however, the SEA would need to carefully determine whether the LEA will meet the MOE requirement in the coming year (in which case a grant should be made), or whether the SEA should begin an administrative withholding action because it is not convinced that the LEA will meet the MOE requirement for the new year.

Question: What steps must the State take to ensure administrative due process?

OSEP's Response: Section 613(c) and (d) of the IDEA sets forth the requirements SEAs must follow where it is determined that an LEA fails to meet eligibility requirements or is not complying with the IDEA. Additional requirements are at 34 CFR §76.401.

Question: Where an LEA is determined to have not met the MOE requirements, what options are available to the local school systems in response to State action?

OSEP's Response: If an LEA, in a particular fiscal year, failed to meet the maintenance of effort requirement, the Office for Special Education and Rehabilitative Services (OSERS), as noted above, would take steps to recover the appropriate amount of funds from the SEA. The SEA, in turn, following applicable State procedures, could seek reimbursement from the LEA. If the SEA determined that an LEA should not receive a subgrant or that further payments should not be made under a current subgrant because

the SEA believes the LEA is not complying with or cannot assure its future compliance with the maintenance of effort requirement, the administrative due process procedures noted in response to the previous question should be followed.

Question: What role does the Department have in the process?

OSEP's Response: The Department is responsible for overseeing the compliance of States with the requirements of the IDEA. As part of that responsibility, OSERS resolves any audit findings involving a particular State, which could involve, among other things, a violation of the maintenance of effort requirement. In those instances where OSERS, through an audit report or some other means, determines that there has been a violation of the maintenance of effort requirement, it is responsible for taking appropriate steps to ensure that IDEA funds are recovered. OSERS carries out this responsibility by issuing a program determination letter that seeks recovery of funds and outlines the procedures the SEA can follow if it wishes to appeal that determination. In addition, OSERS, through its monitoring of SEA implementation of the IDEA, would review the SEA's efforts to ensure compliance by its LEAs with the maintenance of effort requirement, including ensuring the sufficiency of those efforts and providing technical assistance as needed.

This response regarding a policy, question, or interpretation under Part B of the Individuals with Disabilities Education Act is provided as informal guidance, is not legally binding, is issued in compliance with the requirements of 5 U.S.C. 553, and represents the interpretation by the Department of Education of the applicable statutory or regulatory requirements in the context of the specific facts presented.

I hope that the answers to the above questions provide the information that you need. If you need further assistance, please contact Ruth Ryder at (202) 245-7513 or Martin Benton at (202) 245-7270.

Sincerely,

/s/

Alexa Posny, Ph.D.
Director
Office of Special Education
Programs