



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

AUG 1, 2003

Mr. Brad White
Audit Manager
Washington State Auditor's Office
P.O. Box 40021
Olympia, Washington 98504-0021

Dear Mr. White:

Mr. Hugh Monahan at the U.S. Department of Education, Office of the Inspector General, forwarded your electronic correspondence seeking clarification regarding a maintenance of effort issue to the Office of Special Education Programs for response. In your correspondence you indicate that you have identified a local education agency (LEA) that appears not to be in compliance with the maintenance of effort requirement under 34 CFR §300.231. You report the LEA explained that its failure to meet the maintenance of effort requirement is due to a reduction in retirement rates paid to certified staff in Fiscal Year (FY) 2002 from the rates paid in FY2001. You specifically ask whether a change in retirement rates falls under 34 CFR §300.232(a)(1) and therefore qualifies as an acceptable reason for failing maintenance of effort.

As you point out in your correspondence, the regulations implementing Part B of the Individuals with Disabilities Education Act (IDEA) contain exceptions to the general rule that funds provided to an LEA under Part B may not be used 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. 34 CFR §300.231(a). See also §613(a)(2)(A)(iii). The regulations provide that the LEA may reduce its level of expenditures under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to:

- 1) the voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel, who are replaced by qualified, lower-salaried staff;
 - 2) a decrease in the enrollment of children with disabilities;
 - 3) the termination of the LEA's obligation to provide an exceptionally costly special education program to a child with a disability; or
 - 4) the termination of costly expenditures for long-term purchases.
- 34 CFR §300.232.

Page 2 – Mr. Brad White

However, neither the Act nor the current regulations implementing the IDEA permit the LEA to reduce its level of expenditures under Part B below the level of those expenditures for the preceding fiscal year if the decrease is attributed to a reduction in the LEA's retirement rates for its staff. §613(a)(2)(B); 34 CFR §300.232. In the situation you described, there was no actual *departure*, either voluntary or for just cause, of any special education or related services personnel in the LEA, so it does not fall under the exception in §300.232(a)(1).

I hope the above information has been helpful. If we can be of further assistance, please contact Dale King at (202) 260-1156 or Dr. JoLeta Reynolds at (202) 205-5507 (press 3 and ask to be transferred to Dr. Reynolds).

Sincerely,

A handwritten signature in cursive script that reads "Patricia J. Beaud".

for Stephanie S. Lee

Director

Office of Special Education Programs

cc: Hugh Monaghan
U.S. Department of Education
Dr. Douglas Gill
Washington Office of Superintendent of Public Instruction