



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

June 16, 2011

Dr. Bill East, Executive Director
National Association of State Directors of
Special Education, Inc.
1800 Diagonal Road, Suite 320
Alexandria, Virginia 22314

Dear Dr. East:

I am writing in response to your letter to me dated February 17, 2011, requesting a written response to your question about the local educational agency (LEA) maintenance of effort (MOE) requirement in 34 CFR §300.203(b).

In your letter, you ask about the following scenario:

An LEA fails to meet their maintenance of effort. As a result, the LEA pays the State educational agency (SEA) an amount equal to the shortage. The SEA then returns the money to the U.S. Department of Education.

Question: In determining the base amount that the LEA must spend the following year, do they maintain the base amount from the previous year, or reset the base amount to reflect the lower amount actually spent the previous year?

Under section 613(a)(2)(A)(iii) of the Individuals with Disabilities Education Act (IDEA) and 34 CFR §300.203(a), except as provided in 34 CFR §§300.204 and 300.205, funds provided to an LEA under Part B of the IDEA must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA below the level of those expenditures for the preceding fiscal year. While the IDEA does not contain a specific provision that addresses the circumstance you raise with respect to LEAs¹, the Department must rely on the plain language of the statute and regulation with regard to the level of expenditures, which provide that an LEA may not reduce its level of expenditures for the education of children with disabilities “below the level of those expenditures for the preceding fiscal year.” See section 613(a)(2)(A)(iii) and 34 CFR §300.203(a). Under this language, the LEA, in the fiscal year immediately following the fiscal year in which it failed to maintain effort, is obligated to expend

¹ With respect to State-level maintenance of financial support, the IDEA specifically addresses what level of support the State must maintain in a year following a year in which the State fails to maintain its required level of support. Section 612(a)(18)(D) provides that the State’s level of support remains the level “that would have been required in the absence of” the failure to maintain support.

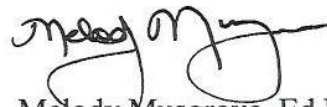
no less than the amount it expended *in the prior fiscal year* for the education of children with disabilities from either local funds only, or from State and local funds. It is not obligated to expend at least the amount it expended in the last fiscal year for which it met the maintenance of effort requirement. In other words, each year's LEA maintenance of effort obligation is based on the actual amount expended *in the immediate prior* fiscal year.

As your question assumes, in the event that an LEA fails to maintain its required level of effort, the SEA must pay the Department, from non-Federal funds or funds for which accountability to the Federal Government is not required, the difference between the amount of local, or State and local, funds the LEA should have expended and the amount that it did expend. The SEA may then seek to recoup from the LEA, from non-Federal funds or funds for which accountability to the Federal Government is not required, the amount by which the LEA did not maintain effort. Whether the SEA seeks recovery of those funds from the LEA is a matter of State discretion.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have additional questions, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melody Musgrove', with a stylized flourish at the end.

Melody Musgrove, Ed.D.

Director

Office of Special Education Programs