

ELEMENTARY & SECONDARY EDUCATION
Key Policy Letters from the Education Secretary or Deputy Secretary
October 21, 2009

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Dear Colleagues:

As a result of the enactment of the American Recovery and Reinvestment Act (ARRA), States are receiving a large increase in fiscal year (FY) 2009 Individuals with Disabilities Education Act (IDEA), Part B funds. This increase in special education funding under the ARRA represents an unprecedented opportunity to improve outcomes for students with disabilities, and to advance systemic reforms that will have a lasting impact. This is particularly true for those local educational agencies (LEAs) that, at least in prior years, have not been in “meets requirements” status under the monitoring and accountability provisions in section 616 of the IDEA. In recent guidance specifically related to ARRA, the Department has identified many possible uses of IDEA, Part B ARRA funds that are likely to have an impact on student learning outcomes and school reform (see: <http://www.ed.gov/policy/gen/leg/recovery/guidance/idea-b-reform.pdf>).

Because of this increase, most LEAs will receive approximately twice the amount of IDEA, section 611 funds in FY 2009 that they received in FY 2008. This unparalleled increase in funding has resulted in heightened interest in the possibility of taking advantage of the flexibility provided for in section 613 of the IDEA. Under section 613(a)(2)(C), LEAs that have been determined by their State to be in “meets requirements” status under section 616 of the IDEA may reduce local spending on special education by an amount equal to up to 50 percent of the increase in their Part B allocation and use those funds to carry out activities authorized under the Elementary and Secondary Education Act of 1965 (ESEA). It has come to my attention that some States may be changing their determinations simply so that additional LEAs would qualify to reduce their maintenance of effort (MOE). I am concerned about States lowering their standards for these determinations, particularly since it enables LEAs that have not met previously established performance targets to reduce spending on special education.

Under section 616 of the IDEA, States are required to make annual determinations about the performance of the LEAs using the categories of “meets requirements,” “needs assistance,” “needs intervention,” and “needs substantial intervention.” Under section 616(f) (34 CFR §300.608(a)), if in making its annual determinations, a State educational agency (SEA) determines that an LEA is not meeting the requirements of Part B, including meeting targets in the State’s performance plan, the SEA *must* prohibit that LEA from reducing its MOE under IDEA section 613(a)(2)(C) for any fiscal year.

The Department currently requires SEAs, in making these annual LEA determinations, to use indicators that relate directly to LEA compliance with IDEA requirements, such as those addressing timely evaluations; disproportionate representation based on race and ethnicity in special education and related services that is the result of inappropriate identification; early

childhood and secondary school transitions; as well as whether the LEA provided valid, reliable, and timely data on all of the indicators, among other factors. However, SEAs also have the option of using indicators related to LEA performance in other critical areas, such as graduation rates or performance on assessments, in determining which LEAs will achieve “meets requirements” status. As part of its monitoring responsibilities, the Office of Special Education Programs has been reviewing how States make LEA determinations, and will continue to do so.

While I understand that many LEAs want the flexibility to reduce local, or State and local, special education funding to free up those funds for activities authorized under the ESEA, I urge States to maintain high standards and not compromise the section 616 determination process. It is each State’s responsibility to ensure that this process is implemented in a rigorous manner, with a focus on improving results for students with disabilities and ensuring that appropriate special education and related services are provided. I strongly advise States not to eliminate consideration of important performance indicators (such as graduation rates or performance on assessments) in making these determinations. I believe that these performance indicators are valuable measures of the overall success of an agency’s efforts to provide high-quality special education services to children with disabilities. Finally, I strongly encourage States to further the transparency of the determinations process by informing the public of the criteria used in making LEA determinations and the determination category of each LEA in the State by posting this information on the SEA’s Internet Web site.

Thank you for your continued interest in improving results for children with disabilities.

Sincerely,

/s/

Arne Duncan