



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

February 12, 2010

Bruce Hunter
Deputy Executive Director
American Association of School Administrators
801 North Quincy Street, Suite 700
Alexandria, VA 22203

Dear Mr. Hunter:

This is in response to your electronic mail (email) communication dated October 8, 2009, to Patricia Guard, former Acting Director of the Office of Special Education Programs (OSEP) at the U.S. Department of Education (Department). Specifically, you requested a formal response to your question regarding how State Fiscal Stabilization Funds (SFSF) under the American Recovery and Reinvestment Act of 2009 (ARRA), can be used to meet State maintenance of effort (MOE) requirements under Part B of the Individuals with Disabilities Education Act (Part B of the IDEA). You also asked whether IDEA funds provided under ARRA could be used to meet State funding shortfalls. I understand that you have received questions regarding these issues from your constituents and would like a formal response.

The Department issued guidance concerning Part B of the IDEA ARRA funds in April 2009. The Part B Guidance (Funds for Part B of the Individuals with Disabilities Education Act Made Available Under The American Recovery and Reinvestment Act of 2009) was revised on July 1, 2009 to include a section H entitled "Treating Stabilization funds as State or Local Funds for Purposes of Meeting the IDEA, Part B MOE Requirements." This document can be found at: <http://www.ed.gov/policy/gen/leg/recovery/programs.html>.

IDEA ARRA funds are subject to State and local supplement, not supplant and local-level MOE and State financial support requirements, as discussed in sections C and D of the Guidance. Except as specifically provided for in 34 CFR §§300.162 -300.165, and 300.202-300.205, IDEA ARRA funds may not be used to "back-fill" for decreased State or local funds.

On the other hand, SFSF funds are intended to help stabilize State budgets, and may, under certain circumstances, be used to meet State and local MOE requirements. The Guidance document referred to previously includes questions and answers related to SFSF in section H. This section lays out the process for using SFSF funds to meet the IDEA State maintenance of support requirements, in questions H-1 through H-5, and for using SFSF funds to meet the IDEA local-level MOE requirement, in questions H-6 through H-12.

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.

I hope you find this response helpful. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Alexa Posny". The signature is fluid and cursive, with the first name "Alexa" written in a larger, more prominent script than the last name "Posny".

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