



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

January 6, 2011

Dr. Douglas Gill
Special Education Section
Washington Office of Superintendent of Public Instruction
P.O. Box 47200
Olympia, Washington 98504-7200

Dear Dr. Gill:

I am writing in response to an electronic mail (email) message you sent on September 21, 2009, regarding maintenance of effort (MOE) reductions in light of the American Recovery and Reinvestment Act of 2009 (ARRA). I apologize for the delay in responding. Specifically, you asked: "Is the maximum amount a district can reduce their expenditures in prior year no more than 50% of the increase, OR can a district reduce by 50% and then apply the exceptions, etc. so that a district could in fact, reduce their expenditures by MORE than 50% of the increase in a given year?"

Statement of the Issue

As you are aware, States received a large increase in fiscal year (FY) 2009 Individuals with Disabilities Education Act (IDEA) Part B funds under the ARRA. This increase in special education funding under ARRA represents an unprecedented opportunity to improve outcomes for students with disabilities, and to advance systemic reforms that will have a lasting impact. Because of this increase, most local educational agencies (LEAs) received approximately twice the amount of IDEA, section 611 funds in FY 2009 than they received in FY 2008. The Department issued Guidance on Funds for Part B of the Individuals with Disabilities Education Act Made Available Under The American Recovery and Reinvestment Act of 2009. Sections D and H relate to use of funds and local-level MOE. The guidance is available at the following Internet address: <http://www2.ed.gov/policy/gen/leg/recovery/guidance/idea-b.pdf>.

Legal Requirements

The IDEA, Part B local-level MOE requirement is found at section 613(a)(2)(A)(iii) of the IDEA statute and in the regulations at 34 CFR §300.203. Section 300.203(a) states that "except as provided in §§300.204 and 300.205, funds provided to an LEA under Part B of the Act must 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."

Under 34 CFR §300.204, "[n]otwithstanding the restriction in §300.203(a), an LEA may reduce the level of expenditures by the LEA under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:

- (a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.
- (b) A decrease in the enrollment of children with disabilities.
- (c) The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child—
 - (1) Has left the jurisdiction of the agency;
 - (2) Has reached the age at which the obligation of the agency to provide FAPE [free appropriate public education] to the child has termination; or
 - (3) No longer needs the program of special education.
- (d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.
- (e) The assumption of cost by the high cost fund operated by the SEA [State educational agency] under §300.704(c).”

Under 34 CFR §300.205(a), “[n]otwithstanding §300.202(a)(2) and (b) and §300.203(a), and except as provided in paragraph (d) of this section and §300.230(e)(2), for any fiscal year for which the allocation received by an LEA under §300.705 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by §300.203(a) by not more than 50 percent of the amount of that excess.”

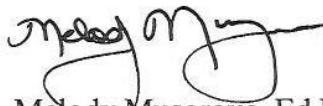
Analysis and Conclusion

We do not interpret 34 CFR §300.205(a) as restricting the MOE reductions that may be made because of the exceptions described in 34 CFR §300.204. Therefore, an LEA may reduce its maintenance of effort under 34 CFR §300.203 in accordance with any applicable exceptions under 34 CFR §300.204 and may further reduce its effort, if eligible to do so, in accordance with the provisions of 34 CFR §300.205.

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 information helpful and, again, apologize for the late response. If you have questions, please do not hesitate to contact Dr. Deborah Morrow at 202-245-7456 or by email at Deborah.Morrow@ed.gov.

Sincerely,



Melody Musgrove, Ed.D.

Director
Office of Special Education Programs