



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

JUL 25 2005

Dear Colleague:

This letter addresses the implementation of a requirement concerning State administrative costs added to the Individuals with Disabilities Education Act (IDEA) by the 2004 Amendments. Section 611(e)(1)(C) of the IDEA provides that “[p]rior to expenditure of funds under this paragraph [section 611(e)(1) concerning funds for State administration], the State shall certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12)(A) are current.” (emphasis added)

Section 612(a)(12)(A) of the IDEA requires that the Chief Executive Officer [or his or her designee] of a State ensure that an “interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (B) [any public agency responsible under Federal or State law or assigned responsibility by State policy or under subparagraph (A) to provide or pay for services that are considered special education and related services under the IDEA] and the State educational agency, in order to ensure that all services” needed to provide a free appropriate public education (FAPE) are provided. These mechanisms must include: (1) identification of, or a method to define the financial responsibility of, each agency providing services that are needed to ensure FAPE, with the financial responsibility of the non-education agencies preceding the financial responsibility of the education agencies; (2) conditions, terms, and procedures under which local educational agencies will be reimbursed by other agencies; (3) procedures for resolving interagency disputes for reimbursement and to settle other disputes; and (4) policies and procedures for agencies to determine and identify interagency coordination responsibilities to promote timely service delivery. Section 611(e)(1)(C) took effect July 1, 2005; section 612(a)(12)(A) has been in the statute since 1997.

Several States have informed us that they do not have some or all of their needed interagency arrangements in place, and that some of the agreements may need revision. They are concerned that, if they are barred from using section 611 administrative funds, they will not be able to carry out their administrative responsibilities under the IDEA because no other funds are available to pay their staff. Our review of initial State applications suggests that the problem may be even more widespread than these States.

Therefore, in order to allow for continuing State administrative management of the IDEA program and provide for a smooth transition to implementation of the IDEA as revised in December, 2004, the Department is invoking the transition authority under section 303 of the Individuals with Disabilities Education Improvement Act of 2004 to give States more time to get their interagency arrangements in place before the restriction on the use of State administration funds takes effect. The transition authority terminates one year after

Page 2 Dear Colleague

the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, i.e., December 3, 2005.

It is imperative that States ensure that as soon as possible all of their necessary interagency agreements or other arrangements meet the requirements of section 612(a)(12)(A) and are in place and current, including that they have been through the public participation process required by section 441(b)(7) of the General Education Provisions Act and the regulations in 34 C.F.R. §§300.280 through 300.284. As of December 3, 2005, if a State does not have interagency agreements or other arrangements in place to establish responsibility for the provision of services consistent with section 612(a)(12)(A), the State will not be authorized to expend funds available to the State under section 611(e)(1) [State administration funds] until the State has these agreements or arrangements in place.

Thank you for your prompt attention to this matter.

Sincerely,


John H. Hager

cc: Chief State School Officers