



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

May 4, 2011

The Honorable Robert Moser, MD, Secretary &
Pat Kuester, MPA, Chief Fiscal Officer
Kansas Department of Health and Environment
1000 SW Jackson Street, Suite 570
Topeka, Kansas 66612-1368

Dear Secretary Moser and Ms. Kuester:

This is in response to the inquiry from your State to the Office of Special Education Programs (OSEP) at the U.S. Department of Education (Department) regarding the maintenance-of-effort (MOE) requirement under Part C of the Individuals with Disabilities Education Act (Part C or IDEA). Specifically, your State has asked the following:

- (1) What is the liability if a State fails to maintain effort?
- (2) If the State must pay back funds to the Department for its failure to maintain effort for a particular fiscal year, how is the amount computed?
- (3) If the State fails to maintain effort, can it pay the liability by not drawing down all of its Federal funds in an amount equal to the MOE shortfall?

IDEA section 637(b)(5)(B) requires that IDEA Part C funds “be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds.” The Part C regulations in 34 CFR §303.124(b) provide that, “the total amount of State and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this part and their families must be at least equal to the total amount of State and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available.” Allowances for the level of MOE required may be made under the following two circumstances: (1) Decreases in the number of children who are eligible to receive early intervention services; and (2) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of facilities.

If the State fails to maintain effort in a particular fiscal year, the State would be subject to liability under the Single Audit Act. The remedy would be for the State to pay back the amount by which it failed to meet the MOE requirement in a particular fiscal year under 34 CFR §303.124(b). The actual amount that the State would need to pay back would be based on the State’s shortfall in meeting the total amount of State and local public expenditures for the provision of early intervention services in that fiscal year, as supported by records of those expenditures.

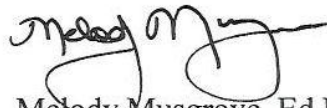
You asked whether such payment could be made by liquidating less than the full allotment of your State's annual IDEA Part C allotment. A State could not decline to draw down all of its Federal IDEA Part C award funds to offset the amount by which the State failed to maintain effort because this would constitute repayment using Federal funds. The State's repayment must

be made with non-Federal funds, or Federal funds for which accountability to the Federal government is not required. *See* 2 CFR Part 225, Appendix B, #16. As a result of the enactment of the American Recovery and Reinvestment Act of 2009 (ARRA), States received a large one-time increase in Federal Fiscal Year 2009 IDEA Part C funds. A State is prohibited from using Federal award funds, including ARRA IDEA Part C funds, to pay back the amount by which the State failed to maintain effort.

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 Department of the IDEA in the context of the specific facts presented.

If you have further questions, please do not hesitate to contact Ruth Ryder at 202-245-7513 or by email at ruth.ryder@ed.gov.

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

Enclosure

cc: Part C Coordinator