



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

AUG 24 2004

Leigh M. Manasevit  
Attorney at Law  
Brustein and Manasevit  
3105 South Street, NW  
Washington, DC 20007

Dear Mr. Manasevit:

This is in response to your June 30, 2004 letter to me and Mr. Raymond J. Simon, Assistant Secretary, Office of Elementary and Secondary Education. You ask for guidance as to whether the “local educational agency (LEA) schoolwide cap, established by 20 USC §1413(a)(2)(D) of the Individuals with Disabilities Education Act (IDEA), [applies] to schoolwide programs that elect not to combine Part B funds in their schoolwide plan.”

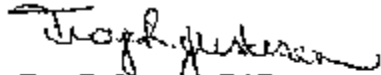
Consistent with 20 USC §1413(a)(2)(D) of the IDEA and the final implementing regulation at 34 CFR §300.234(a), and 34 CFR §200.29(c)(3) of the regulations implementing Title I of the Elementary and Secondary Education Act (ESEA), a school that operates as a schoolwide program may consolidate funds received under Part B of the IDEA. However, under 34 CFR §300.234(a), the amount of funds consolidated may not exceed the amount received by the LEA under Part B of the IDEA for that fiscal year, divided by the number of children with disabilities in the jurisdiction of the LEA, and multiplied by the number of children with disabilities participating in the schoolwide program.

A school also may consolidate funds it receives for students with disabilities under section 8003(d) of Title VIII of the ESEA, which provides additional funds to school districts that educate federally connected children who are eligible for services under the IDEA. A school that consolidates funds under Part B of the IDEA or section 8003(d) of the ESEA may use those funds in its schoolwide program for any activities under its schoolwide program plan but must comply with all other requirements of Part B of the IDEA, to the same extent it would if it did not consolidate funds under Part B of the IDEA or section 8003(d) of the ESEA in the schoolwide program, including providing services to students with disabilities in accordance with a properly developed individualized education program and ensuring that students with disabilities and their parents are afforded all the rights and services guaranteed to children with disabilities under the IDEA.

Unlike other Federal education programs whose funds are combined in a schoolwide program, the IDEA only allows flexibility in the use of funds. All other requirements of the IDEA must be met for children with disabilities in schoolwide program schools. Given the unique special education and related services needs of students with disabilities, it is conceivable that additional Part B funds, beyond those consolidated pursuant to 20 USC §1413(a)(2)(D), may be necessary to ensure that all students with disabilities in a schoolwide program school receive a free appropriate public education. There is nothing in the IDEA or its final implementing regulations that would preclude an LEA from using Part B funds, not consolidated with other funds to carry out a schoolwide program plan under section 1114 of the ESEA, to meet the special education and related service needs of individual students with disabilities in a schoolwide program school. In addition, Part B funds used in a schoolwide program school that are not used to carry out the schoolwide program plan would not be subject to the cap on the amount of Part B funds consolidated under 20 USC §1413(a)(2)(D). However, any Part B funds not consolidated with other funds to carry out the schoolwide program must be expended consistent with the IDEA and must be accounted for separately.

I hope you find this explanation helpful. If you would like further assistance, please contact Dale King at (202) 245-7405 or Dr. JoLeta Reynolds at 202-245-7459 (press 3) and ask to be transferred to Dr. Reynolds.

Sincerely,



**Troy R. Justesen, Ed.D.**  
**Acting Deputy Assistant Secretary**  
**Office of Special Education**  
**and Rehabilitative Services**

cc: Raymond Simon  
Assistant Secretary