



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

10/31/08

James "Sarge" Kennedy
Fiscal and Policy Advisor
Rural and Sparsely Populated Consortium of California
Post Office Box 689
Red Bluff, CA 96080

Dear Mr. Kennedy:

This is in response to your May 5, 2008 letter to Ms. Patty Guard, Deputy Director of the Office of Special Education Programs (OSEP). I apologize for your not receiving a response as promised by the electronic mail (email) system. Your questions and OSEP's responses are provided below.

1-2. You refer to Appendix A to Part 300 (the regulations implementing Part B of the Individuals with Disabilities Education Act (IDEA)) and the instructions pertaining to calculation of the excess cost, specifically, paragraph b. The instructions in paragraph b require an LEA to subtract from the total amount of its expenditures for elementary school students amounts spent for, among other things, State and local funds for children with disabilities. You ask if this includes only State and local funds whose use is restricted to children with disabilities or any State and local funds, including unrestricted funds, that are used to provide services to children with disabilities. You also ask for clarification of the Appendix A, paragraph b, statement that "These are funds that the LEA [local educational agency] actually spent, not funds received last year but carried over for the current school year."

OSEP's Response: Once the LEA has calculated the total amount of its expenditures for elementary school students from all sources - local, State and Federal (including Part B) in the preceding school year (excluding only capital outlay and debt services), the LEA must subtract from these total expenditures a variety of amounts spent for various purposes (listed in Appendix A, paragraph b), including State and local funds spent for children with disabilities, consistent with 34 CFR §300.16. In response to your first question, any State and local funds that are used for services for children with disabilities, including unrestricted funds that the LEA is not required to use for children with disabilities, must be included in the calculation. Your letter states that in California, the only local funds that must be used to provide services to children with disabilities are the local property taxes assessed for that purpose and any other local funds used to provide services to children with disabilities come from general purpose funds or funds restricted for certain programs for which a child with a disability might also be eligible. When calculating excess cost, the amount of State and local funds spent for elementary school children with disabilities in the preceding school year, whether the funds came from local property taxes assessed for the purpose of providing services to children with disabilities or from the general purpose funds or from funds restricted for certain programs for which a child with a disability might be eligible, must be subtracted from the total amount of the LEA's expenditures for

elementary school students. The LEA must compute the minimum average amount separately for children with disabilities in its secondary schools.

In response to your second question regarding the statement that these are funds that the LEA actually spent, not funds received last year but carried over for the current school year, your assumption is correct. Because funds that the LEA actually spent must be included in the calculation, it would, as you believe, include funds carried over from the second prior year that were subsequently spent in the year for which you are calculating the cost. Funds that were received last year but not spent and carried over to the current year are not included in the calculation.

3-4. You ask about the relationship between the supplement, not supplant and excess cost requirements and also how the maintenance of effort requirement can be met if the average expenditure per k-8 student or 9-12 student goes down.

OSEP's Response: The excess cost and supplement, not supplant requirements are different and an LEA must meet both requirements. Under 34 CFR §300.202(a), amounts provided to the local educational agency (LEA) under Part B of the IDEA: (1) must be expended in accordance with the applicable provisions of 34 CFR Part 300; and (2) must be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with 34 CFR §300.202(b); and (3) must be used to supplement State, local, and other Federal funds and not to supplant those funds. The excess cost requirement prevents an LEA from using funds provided under Part 13 of IDEA to pay for all of the costs directly attributable to the education of a child with a disability, subject to 34 CFR §300.202(b)(1)(ii). *See* 34 CFR §300.202(b)(1)(i). An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of IDEA are used. *See* 34 CFR §300.202(b)(2)(i).

With regard to education for children with disabilities, the nonsupplanting requirement is met by meeting the maintenance of effort requirements in 34 CFR §300.203(a). Under that provision, funds provided to an LEA under Part B of the IDEA 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 [emphasis added]. Exceptions to this provision can be found at 34 CFR §§300.204 and 300.205. LEAs must comply with this requirement by budgeting, for the education of children with disabilities, at least the same total or per capita amount from either local funds only, or from the combination of State and local funds, as the LEA spent for that purpose from the same source for the most recent prior year for which information is available. *See* 34 CFR §300.203(b)(1). The fluctuation of the average per pupil amounts used to determine excess cost would not be a factor in determining whether an LEA has maintained fiscal effort.

5. You ask how OSEP intends to monitor the excess cost requirement; supplement, not supplant; and maintenance of effort requirements.

OSEP's Response: Under 34 CFR §300.149(a)(1), the State educational agency (SEA) is responsible for ensuring that the requirements of Part B of IDEA are carried out. This includes

ensuring that LEAs comply with the excess cost requirements in 34 CFR §§300.16, 300.202(a)(2) and (b); the supplement, not supplant requirement in 34 CFR §300.202(a)(3); and the maintenance of effort requirements in 34 CFR §§300.203 through 300.205. States also are required to ensure that LEAs meet the single annual audit requirements of the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133. See 34 CFR §80.26. Section 616(a)(1)(A)(i) of IDEA requires the Department to monitor the States' implementation of Part B of IDEA through oversight of the exercise of general supervision by the States. As part of OSEP's Continuous Improvement and Focused Monitoring System (CIFMS) for ensuring compliance with, and improving performance under Part B of IDEA, OSEP conducts verification visits to a number of States each year. One of the purposes of the verification visit is to verify the effectiveness of the State's fiscal management system. In addition, OSEP resolves any audit findings under IDEA made by the Department's Office of Inspector General (OIG) in a particular State, which could involve, among other things, a violation of the excess cost; supplement, not supplant; or maintenance of effort requirements.

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.

If you have further questions about this issue, please contact Dr. Deborah Morrow at 202-2457456.

Sincerely,

A handwritten signature in black ink, appearing to read "William W. Knudsen".

William W. Knudsen
Acting Director
Office of Special Education Programs

cc: Mary Hudler