



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JAN - 7 1999

Honorable Shirley J. Holloway
Commissioner
Alaska Department of Education
Goldbelt Place
801 West 10th Street, Suite 200
Juneau, Alaska 99801-1894

Dear Commissioner Holloway:

Secretary Riley has asked me to respond to your letter of July 1, 1998, concerning the maintenance of effort (MOE) requirements of the reauthorized Individuals with Disabilities Education Act (IDEA). Since receipt of your letter my staff also has had several helpful conversations with members of your staff about the issues raised in your letter and the application of the IDEA MOE requirements to grants to local educational agencies (LEAs) in Alaska for school year 1998-99. You raise concerns about MOE requirements that apply at the State and LEA levels (sections 612(a)(19) and 613(a)(2)(A)(iii), (B) and (C), respectively).

With regard to the State-level MOE requirement, you are concerned that it may be difficult to demonstrate the State level maintenance of effort requirement given the new State funding formula, which provides LEAs a basic allocation based on average daily membership and a percentage increment above that amount based on combined student participation in special education, vocational education and bilingual education, collectively referred to as "special needs funding." While the amount of special needs funding may vary from year to year, dependent on enrollments, the State contribution for special needs funding on a per child amount will be the same from year to year. You then ask for a waiver of the State-level MOE requirements for special education and vocational education as long as Alaska's new foundation funding law is in effect.

A waiver of the IDEA State-level MOE requirement does not appear to be either appropriate or necessary. The State-level MOE requirement would not be violated unless a State had not provided at least the same amount of State financial support for special education and related services for children with disabilities in one fiscal year as it had provided the year before. Section 612(a)(19)(B) provides that if a State were not to meet that standard, the Secretary would reduce the State's allocation of funds under section 611 for a future year by the amount by which the State has failed to meet the requirement. If a State had not provided the same amount of State-wide financial support for special education and related services as it had in the preceding fiscal year, a waiver would be possible if the Secretary determined that the State met either of the standards in section 612(a)(19)(C). As we understand from your staff, Alaska has not reduced the amount of State financial support for special education and related services from that provided in the preceding fiscal year. However, there is some concern that since the total amount of State-level financial support under your State's formula is tied to enrollments, if enrollment

were to decrease at some point in the future, the total amount of State financial support for special education would also decrease. The issue of whether a State can demonstrate that it meets this requirement on either a total or per child basis is one that we are considering as we develop final regulations under the IDEA. The Department's Office of Vocational and Adult Education will be responding to you separately on your request for a waiver of State-level MOE requirements regarding vocational education programs.

Unlike some other Department programs, the IDEA LEA-level MOE requirement does not require, as a condition of eligibility for a grant for one fiscal year, that the LEA demonstrate that it has expended as much in the preceding fiscal year as it had in the second-preceding fiscal year. Instead, as under the IDEA LEA-level MOE requirement in prior law, in determining an LEA's eligibility for a grant the State should compare the amount the LEA has budgeted for the grant year to the amount actually expended in the most recent fiscal year for which data are available. Reductions in the amount budgeted are permissible for the conditions described in section 613(a)(2)(B). (Further reductions will be possible when the amount appropriated under section 611 exceeds \$4,100,000,000, as described under section 613(a)(2)(C). The appropriation for Federal fiscal year 1998, which was distributed to most States on or about July 1, 1998, did not reach this level.) Of course, if an audit subsequently reveals that an LEA did not expend for a grant year at least as much as it had in the year on which the LEA-level MOE comparison is based, it will be liable for repayment of the amount by which it failed to expend to equal the prior year's expenditures, up to the total amount of the LEA's IDEA grant. The Department does not have authority to grant waivers of this LEA-level MOE requirement.

You also question whether the LEA-level MOE calculation must include only local revenue funds or also may include State-generated funds and those Federal funds, such as certain Impact Aid funds, for which accountability is not due to the Federal government, as the LEA also controls how these funds will be expended. We understand that Alaska has a number of LEAs that do not have a tax structure and that have only a very small amount of local revenue from items such as interest payments, sale of school lunches, and other miscellaneous sources, and that as a result, local revenue in those LEAs tends to fluctuate from year to year. We also understand that in your State special education expenditures from local funds cannot be isolated, because State-generated special needs finding, Federal funds for which accountability is not required to a Federal or State agency, and locally-generated funds are all placed in LEAs' general operating account. Under these circumstances, we believe that it would be appropriate for the LEA-level MOE test to compare budgeted and expended State and local funds, including Federal funds for which no accountability is due to a Federal or State agency. As we work to develop final regulations for the IDEA, we are considering how to address, as a rule of general applicability, the appropriate test for this LEA-level MOE requirement.

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I hope that this information will assist you in implementing the IDEA program for Alaska. If you have further questions about the IDEA, please ask your staff to contact Dr. JoLeta Reynolds, of the Office of Special Education Programs at (202) 205-5507.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Hehir".

Thomas Hehir
Director
Office of Special
Education Programs