



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

NOV 13 2009

Lana Michelson, Chief
Thomas A. Mayes, Legal Consultant
Student and Family Support Services
Iowa Department of Education
Grimes State Office Building
400 E 14th Street
Des Moines, IA 50319-0146

Dear Ms. Michelson and Mr. Mayes:

This is in response to your letter to me and Philip H. Rosenfelt, dated May 11, 2009, regarding guidance on Part B of the Individuals with Disabilities Education Act (IDEA-B) and the American Recovery and Reinvestment Act of 2009 (ARRA) dated April 13, 2009, specifically Question D-7. Your letter states that you believe the U.S. Department of Education (Department) is in error in its guidance to States when it interpreted provisions of law to mean that a State educational agency (SEA) must prohibit a local educational agency (LEA) from taking advantage of the maintenance of effort (MOE) reduction under IDEA section 34 CFR §300.205 if an LEA is determined to have significant disproportionality under 34 CFR §300.646. We respectfully disagree with the assertion in your letter that our guidance is contrary to the plain language of the statute. In fact, our guidance accurately reflects all of the language of the statute affecting LEA MOE reductions under 34 CFR §300.205.

Under 34 CFR §300.646(b)(2), if an SEA identifies one of its LEAs as having significant disproportionality, the SEA must require the LEA to reserve the maximum amount of funds under section 613(f) (34 CFR §300.226) of the IDEA to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified under 34 CFR §300.646(a). Under 34 CFR §300.226(a), "An LEA may not use more than 15 percent of the amount the LEA receives under Part B of the Act for any fiscal year, *less any amount reduced by the LEA pursuant to §300.205* [emphasis added], if any...to develop and implement coordinated, early intervening services...." The language of §300.226(a) tracks the statutory provision at section 613(f)(1).

Department guidance dated April 13, 2009 included the following clarification of this provision in the response to question D-4:

...an LEA that is required to use 15 percent of its IDEA Part B allocation on CEIS [Coordinated Early Intervening Services] because the SEA identified the LEA as having significant disproportionality under 34 CFR §300.646, will not be able to reduce local MOE under IDEA section 613(a)(2)(C).

We believe this guidance is accurate based on the requirement of 34 CFR §300.226 (which requires that an LEA subtract the amount by which it intends to reduce its MOE under 34 CFR §300.205, from any amount intended for the use in providing CEIS), coupled with the provision of 34 CFR §300.646(b)(2) wherein a State must require an LEA identified with significant disproportionality to use the entire allowable 15 percent of its IDEA sections 611 and 619 allocations for the provision of CEIS. If an LEA that was required, under 34 CFR §300.646, to use 15 percent of its IDEA sections 611 and 619 allocations for CEIS, also reduced its MOE pursuant to 34 CFR §300.205, it would violate 34 CFR §300.226(a), as that provision limits the combined amount of funds that can be spent on CEIS and the amount of MOE reduction an LEA may take under 34 CFR §300.205 to 15 percent of the LEA's IDEA sections 611 and 619 allocations.

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, please do not hesitate to contact my office.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education
Programs