



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

JUN 28 2010

[REDACTED]

Dear [REDACTED]

This is in response to your electronic mail (email) communication to Dr. Deborah Morrow on April 2, 2010, requesting information on local educational agency (LEA) maintenance of fiscal effort (MOE) under Part B of the Individual with Disabilities Education Act (IDEA or Part B) as addressed under 34 CFR §300.203. Your questions and responses from the Office of Special Education Programs (OSEP) are below.¹

Question #1: If the fiscal year (FY) 2010 budgeted per capita student special needs expense meets or exceeds the prior year actual per capita expense, does the budget of the LEA have to be adjusted or amended if the actual December 1 student count is greater than the budgeted student count before the State educational agency (SEA) will release Federal funding?

Question #2: If the budget for the fiscal year ending June 30, 2010 is due to the SEA prior to the end of June 2009, and the audit for the fiscal year ending June 30, 2009 is not final and due to the SEA until November 1, 2009, then isn't the most recent fiscal year for which comparable per capita information actually the FY 2008 audit which is due to the SEA November 1, 2008?

OSEP's Response: Under 34 CFR §300.203(a), except as provided in 34 CFR §§300.204 and 300.205, funds provided to an LEA under Part B 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. There are two standards that apply to the LEA regarding MOE. The first relates to the LEA's eligibility for an award. In order to determine that the LEA is eligible for an award, the State must determine that the LEA complies with 34 CFR §300.203(a). In order to make this determination, the SEA must determine that the LEA *budgets* at least the same total or per capita amount from either local, or a combination of State or local funds, as the LEA *spent* for that purpose from the same source for the most recent prior year for which information is available. 34 CFR §300.203(b). The second standard, addressed below, establishes whether in fact the LEA has complied with 34 CFR §300.203(a) – which requires determining whether the LEA *expended*, from year to year, either per capita or in total, from local, or State and local, funds at least as much as it *expended* in the immediate prior year.

¹ For the purposes of your questions, we are assuming that by "fiscal year 2010" you are referring to State fiscal year 2010, which in many, but not all States, is from July 1, 2009 through June 30, 2010.

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With respect to LEA eligibility for a subgrant, if the LEA budgeted for the education of children with disabilities for FY 2010 during the spring of FY 2009, prior to "closing the books" on FY 2009 at the end of June 2009, its budget for FY 2010 is compared against FY 2008 - "the most recent prior year for which information is available." Accordingly, the LEA would be eligible to receive its FY 2010 Federal allocation if the budgeted amount for FY 2010, in total or per capita, is equal to, or greater than, the actual expenditures from FY 2008. There is no requirement in IDEA that the LEA adjust this budget based on updated child count data in order to establish or maintain eligibility for FY 2010 Federal funds. Since the December 1 child count for FY 2010 occurs on December 1, 2009, the Federal funds for FY 2010 would have been released, based on eligibility established when the application (including the FY 2010 budget against the FY 2008 expenditures) was approved and, having established eligibility for the funds, the SEA is required to flow the IDEA funds through to an eligible LEA, regardless of the December 1 child count.

Question #3: If the FY 2010 budgeted per capita expense in the special needs area meets or exceeds the actual per capita expense from the most recently completed audited financial statements at the time of the budget preparation (FY 2008), then is the MOE compliance requirement met for the current year (FY 2010) regardless of any variance between the actual mid-year December 1 child count and what was originally budgeted as the child count?

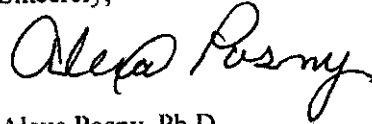
OSEP's Response: If the FY 2010 budgeted per capita expense meets or exceeds the actual per capita expense from the most recently completed audited financial statements at the time of the budget preparation (FY 2008), then the MOE *eligibility* requirement (to receive the FY 2010 Federal allocation) is met for the current year. However, the fact that an LEA has satisfied the MOE eligibility requirement for a particular year does not mean that the LEA is - or is not -- in compliance with the MOE requirements. We do not have sufficient information to conclude whether the LEA in the circumstance you describe has met the MOE compliance requirement for that year, as there are variables, such as whether the LEA is relying on any of the exceptions in 34 CFR §300.204 and/or the adjustment provided for in 34 CFR §300.205, that could affect a compliance determination. In addition, any variance between the actual mid-year December 1 child count and what was originally budgeted as the child count could impact the LEA's compliance with the MOE requirement, depending on whether the LEA chooses to continue to compute its MOE based on per capita expenses rather than total expenses. (If the LEA changes its method of calculating MOE from year to year, it must ensure that the immediately previous year's MOE is calculated in the same manner.)

As a general rule, however, once the "books are closed" on both FY 2009 and FY 2010, if the LEA did not expend, in FY 2010, at least as much as it expended in FY 2009, either per capita or in total, from local, or from State and local, funds, and cannot justify the failure under 34 CFR §§300.204 or 300.205, the LEA has not met its MOE requirement. In that case, the SEA must pay the Department, from funds for which accountability to the Federal Government is not required, the difference between the amount of local, or State and local, funds the LEA should have expended and the amount that it did expend. The SEA may then seek to recoup from the LEA, from funds for which accountability to the Federal Government is not required, the amount by which the LEA did not 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 U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have additional questions, please do not hesitate to contact Dr. Deborah Morrow at 202-245-7456 or by email at Deborah.Morrow@ed.gov.

Sincerely,

A handwritten signature in black ink that reads "Alexa Posny". The signature is written in a cursive, flowing style.

Alexa Posny, Ph.D.
Acting Director
Office of Special Education Programs

cc: Lester Wyer