



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

AUG 20 2012

Honorable Gwen Moore
Congress of the United States
House of Representatives
2245 Rayburn Building
Washington, DC 20515

Dear Congresswoman Moore:

This is in response to your January 30, 2012 letter to me, in which you raised issues regarding Wisconsin's implementation of the requirements of Part B of the Individuals with Disabilities Education Act (IDEA or Part B) regarding local maintenance of effort (MOE). Those requirements are in section 613(a)(2)(A) (iii), (B) and (C) of the IDEA and its implementing regulations in 34 CFR §§300.203 through 300.205. In your letter, you indicate that a group of Wisconsin's school districts are actively seeking to amend the IDEA to permit waivers of the MOE requirement beyond those exceptions and adjustments currently allowed by law. You also reference a December 1, 2011 letter to me from the Survival Coalition of Wisconsin Disability Organizations (Survival Coalition) on this issue. I apologize for the delay in responding; the Office of Special Education Programs (OSEP) was following up with the Wisconsin Department of Public Instruction (WDPI) on this matter.

You and the Survival Coalition are concerned that legislation enacted by the Wisconsin State Legislature may put pressure on school districts to reduce funding for the education of children with disabilities. In order to ensure that school districts do not improperly reduce such funding, you suggest that OSEP in the U.S. Department of Education (Department) reinforce with the State of Wisconsin that local educational agencies (LEAs) must meet local MOE requirements and that the State must monitor LEAs on an annual basis to ensure that they meet those requirements.

We assure you that the Department takes the local MOE requirements in IDEA seriously. Under section 613(a)(2)(A)(iii) of the IDEA and 34 CFR §300.203(a), Part B funds provided to an LEA 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. Section 613(a)(2)(B) and (C) and 34 CFR §§300.204 and 300.205 set out the only conditions under which an LEA lawfully may reduce its level of expenditures for the education of children with disabilities. OSEP has taken significant steps to ensure that State educational agencies (SEAs) understand their responsibility for sub-recipient monitoring regarding fiscal requirements, including local MOE. These steps have included several presentations to States in conferences and Webinars. As part of its monitoring visits to States, including Wisconsin, OSEP has examined States' procedures for ensuring LEA compliance with MOE requirements. OSEP is also in the process of completing a desk audit of all States' fiscal systems, including procedures for ensuring compliance with local MOE requirements.

I am also enclosing a copy of the February 6, 2012 letter to me from Dr. Stephanie Petska, Director of the Division of Learning Support: Equity and Advocacy of WDPI. In her letter, Dr. Petska responds to the concerns expressed by the Survival Coalition in its December 1, 2011

letter to me (also enclosed, as is my response to that letter). She states, "We recognize we are not permitted to waive IDEA's MOE requirements for LEAs, and we do not." She also describes:

1. WDPI's procedures for monitoring, on an annual basis, each LEA's compliance with MOE requirements, and the fact that auditors that conduct LEA single audits also review LEA compliance with MOE requirements;
2. The actions that WDPI takes if an LEA's application for funds under Part B of the IDEA does not meet the eligibility requirements related to MOE, and if an LEA's expenditures do not demonstrate compliance with MOE requirements; and
3. The steps that WDPI has taken to ensure that LEAs understand that "mandated cost savings from benefits reductions are not an MOE exception."

In her letter, Dr. Petska reported that six LEAs did not meet the MOE compliance test for 2009-2010 (the most recent year for which complete information was available at the time of Dr. Petska's February 6, 2012 letter). Subsequently, Dr. Petska provided documentation to OSEP that the State has collected from the LEAs nonfederal funds in the amount by which the LEAs failed to maintain effort, and has returned those funds to the Department.

We believe that Dr. Petska's letter demonstrates that WDPI is taking actions, including monitoring and providing technical assistance, on matters related to the local MOE requirements of the IDEA.

We appreciate your sharing these concerns with the Department. Please feel free to contact me if we can be of further assistance.

Sincerely,



Melody Musgrove, Ed.D.
Director
Office of Special Education Programs

Enclosures

cc: Dr. Stephanie Petska