



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

SEP -7 2012

Albert V. Gonzales
Assistant General Counsel
Public Education Department
300 Don Gaspar
Santa Fe, New Mexico 87501-2786

Dear Mr. Gonzales:

This letter is in response to your June 19, 2012 electronic mail (email) correspondence to the Office of Special Education Programs (OSEP) in the Office of Special Education and Rehabilitative Services (OSERS), U.S. Department of Education (Department). You requested written guidance concerning 34 CFR §300.204(a), which permits a local educational agency (LEA) to reduce the level of expenditures by the LEA under Part B of the Individuals with Disabilities Education Act (IDEA) below the level of those expenditures for the preceding fiscal year if the reduction is attributable to the voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel. Specifically, you asked whether the Albuquerque Public Schools (APS) is using an allowable method of calculating the reduction permitted by 34 CFR §300.204(a).

You provided an email from the attorney for APS, in which the attorney states that 26 special education teachers voluntarily left APS. APS calculated the salaries for those 26 employees, and then subtracted the salaries of 26 newly-hired teachers. The attorney states that in a large district, when a special education teacher departs, the position frequently is filled by an existing employee who obtains an intra-district transfer. (The attorney does not state whether the existing employee who obtains an intra-district transfer is a special education teacher or a regular education teacher.) That employee's position may also be filled by an intra-district transfer. At some point, an opening is filled by an applicant from outside the district. Therefore, a voluntary departure ultimately results in the hiring of a new employee, but it may be at a different school or for a different class. As APS acknowledges in this statement, some of these new hires may not be special education teachers.

It is not consistent with 34 CFR §300.204(a), which requires that the reduction be attributable to the voluntary departure of the special education personnel, to deduct the difference between the salaries of the 26 departing special education teachers and the salaries of 26 newly-hired teachers who may or may not have replaced them in those special education positions, because we do not know that the hiring of these newly-hired teachers is attributable to the departing special education teachers, or even that they are special education teachers.

The following are examples of reductions that are permissible under 34 CFR §300.204(a) in the situation where a departing special education teacher is being replaced by: (1) a newly-hired special education teacher, (2) an existing special education teacher who obtains an intra-district transfer and the existing special education teacher is not being replaced, (3) an existing special

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education teacher who obtains an intra-district transfer, and the existing special education teacher is being replaced, and (4) an existing regular education teacher who obtains an intra-district transfer.

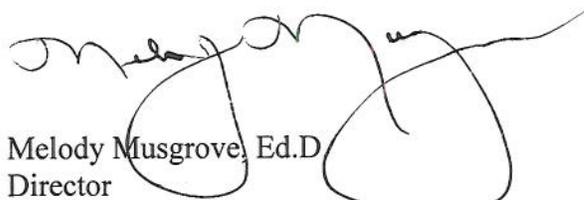
- (1) If a departing special education teacher is replaced by a newly-hired special education teacher, the LEA can reduce its level of effort by the difference between the salary of departing special education teacher and the salary of the newly-hired special education teacher.
- (2) If a departing special education teacher is replaced by an existing special education teacher who obtains an intra-district transfer, and the existing special education teacher is not being replaced, then the LEA can reduce its level of effort by the total amount of the departing special education teacher's salary. That is because the salary of the existing special education teacher who is not being replaced is already included in the level of expenditures made by the LEA for the education of children with disabilities.
- (3) If a departing special education teacher is replaced by an existing special education teacher who obtains an intra-district transfer, and the existing special education teacher is being replaced, then the LEA can reduce its level of effort by the difference between the salary of the new special education teacher who is replacing the existing special education teacher, and the salary of the departing special education teacher.
- (4) If a departing special education teacher is replaced by an existing regular education teacher who obtains an intra-district transfer and becomes a special education teacher, then the LEA can reduce its level of effort by the difference between the salary of departing special education teacher and the salary of the existing regular education teacher who is now a special education teacher. The salary of the existing regular education teacher was not included in the level of expenditures made by the LEA for the education of children with disabilities.

An LEA may perform this calculation on a position-by-position basis. However, the regulatory provision in 34 CFR §300.204(a) does not require a position-by-position approach. We believe it is permissible under 34 CFR §300.204(a) for the LEA to determine the amount it can reduce its level of effort by adding the salaries of all of the newly-hired special education teachers who are replacing departing special education teachers, the salaries of the newly-hired special education teachers replacing existing special education teachers who are replacing departing special education teachers, and the salaries of existing regular education teachers who become special education teachers and are replacing departing special education teachers; and then deducting that amount from the total salaries of the departing special education teachers.

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 any further questions, please do not hesitate to contact Melissa Turner, of my staff, at 202-245-6415 or by email at Melissa.Turner@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Melody Musgrove", written over a large, stylized circular flourish.

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

cc: State Director of Special Education