



Commemorating 40 Years
Of Disability Advocacy
1973-2013

December 9, 2013

Mary Louise Dirrigl
U.S. Department of Education
400 Maryland Avenue SW., room 5103
Washington, DC 20202-2600

RE: Comments to Docket ID ED-2012-OSERS-0020
Assistance to States for the Education of Children with Disabilities
<http://www.regulations.gov/ED-2012-OSERS-0020>

Dear Ms. Dirrigl:

The Consortium for Citizens with Disabilities Education Task Force (CCD) is a coalition of more than 100 organizations speaking on behalf of our nation's children and youth with disabilities, representing our nation's six million school-age students with disabilities eligible for services under the Individuals with Disabilities Education Act (IDEA). We are writing in regard to the U.S. Department of Education's (ED) Notice of Proposed Rulemaking (NPRM) proposing to amend the *local maintenance of effort* mandate regulations under Part B of the Individuals with Disabilities Education Act (IDEA).

Through this NPRM, ED specifically indicates that it seeks "to clarify existing policy and make other changes" regarding: (1) the *compliance* standard; (2) the *eligibility* standard; (3) the *level of effort required* of a local education agency (LEA) *in the year after it fails to maintain effort under the IDEA*; and the *consequence for a failure to maintain local effort.*" 78 Fed. Reg. 57324 (emphases added). ED requests comments regarding whether the proposed amendments will improve understanding of and compliance with current statutory provisions governing local maintenance of effort (MOE).

CCD is generally supportive of the proposed amendments with specific recommendations that appear below. Maintaining the integrity of the local education agency (LEA) MOE requirement, as intended by Congress, is critical to the education of the nation's 6 million school-age IDEA-eligible students.

While IDEA's current LEA MOE requirements, including the allowable exceptions and adjustments, may be in need of review and revision, such a process can only occur within the context of a statutory reauthorization and resulting amendments enacted by Congress. In the interim these amendments will bring needed clarification to several aspects of LEA MOE.

CCD offers the following recommendations below to strengthen and improve the proposed amendments:

§300.203 Maintenance of effort.

(a) Compliance standard.

At subsection (a)(2) the NPRM proposes to improve understanding and implementation of the local MOE by explicitly setting forth the manner in which the SEA shall determine whether an LEA has, in fact, complied with its annual local MOE requirement.

We support ED's clarification of the annual local maintenance of effort mandate which after reiterating the statutory standard at subsection (a)(1) of §300.203, expressly sets forth at subsection (2)(i)-(iii) how each LEA shall demonstrate that it has met its local MOE compliance standard.

We support the proposed addition of the language at NPRM 300.203(a)(2)(ii) through which ED is helping to mitigate misunderstanding of the local MOE mandate that has contributed to non-compliance with the mandate that bars LEAs from "[r]educ[ing] the level of expenditures for the education of children with disabilities made by the LEA *from local funds*, either in total or per capita, below the level of those expenditures for the *most recent fiscal year for which the LEA met the MOE* compliance standard based on local funds only, *even if the LEA also met the MOE compliance standard based on State and local funds*, except as provided in §§ 300.204 and 300.205; or..." [emphasis added] We are similarly supportive of the clarifying language added at subsection (iii) specifically referencing the "preceding fiscal year" if the LEA has not previously met the MOE compliance standard based on local funds only, except as provided in §§ 300.204 and 300.205.

RECOMMENDATION:

- We recommend for additional clarity that 300.203(a)(2)(ii) include a cross reference to subsection (a)(2)(1) after "even if the LEA also met the MOE compliance standard based on State and local funds...".

(b) Eligibility standard.

As set out in the NPRM and consistent with the statutory requirement at §613(a)(2)(A), each LEA applicant for Part B funds must be able to show evidence that it has budgeted at least the same amount for the education of children with disabilities (total or per capita) from either local or a combined local and state funds that the LEA spent from the same source for the most recent prior year for which information is available.

Under the existing regulations, the SEA will find an LEA *eligible* to receive an award of Part B funds for the current fiscal year based on its complying with the MOE requirement [34 C.F.R. §300.203(b)(1)] if the LEA meets any one of four tests of local special education fiscal effort. Each test compares special education *expenditures* in the most recent fiscal year for which information is available to amounts *budgeted* for special education in the current year from the same source or combined sources.

RECOMMENDATIONS:

- We recommend that the proposed revision should emphasize that an LEA meets the MOE test for IDEA eligibility if it meets just one of the four tests that compare (i) total state and local funds combined; (ii) total local funds only (iii); per capita state and local funds combined; (iv) per capita local funds only from either local funds only or the combination of State and local funds.
- We recommend that the revision at §300.203(b)(1) make explicit reference to the authorized exceptions for reducing MOE found at §§300.204 and 300.205 in order to prevent LEAs from being found ineligible because they lack sufficient local or combined state and local, funds and have either

failed to identify in their budget calculations authorized reductions under §300.204 or have not been permitted to include any authorized reduction in their proposed budgets.

- We also recommend that ED consider setting out the proposed regulations concerning local MOE in the order of the process: LEA Assurances, Eligibility, Compliance and Audited Standards.

(c) Subsequent years.

The proposed amendment under the heading *Subsequent years* states that if for any fiscal year, an LEA violates the MOE compliance standard [§613(a)(2)(A)(iii)], the level of expenditures required of the LEA for any fiscal year *beginning on or after July 1, 2014*, is the amount that would have been required in the absence of that failure *and not the LEA's reduced level of expenditures*.

Proposing to include this standard in federal regulation is clear evidence of ED's reversal of its previously rescinded misinterpretation of law [See letter to Boundy, April 4, 2012].

However, there is no lawful basis for impeding timely implementation and enforcement of the local MOE requirement that was established in 1997 by introducing an effective date of July 1, 2014. ED's proposed timeline will not only delay implementation and enforcement of current law and regulations which are not being substantively modified by these regulatory modifications, it will open the door for a windfall to LEAs that are not meeting MOE.

RECOMMENDATION

- We recommend that ED remove "*beginning on or after July 1, 2014*" from the proposed amendment.

(d) Consequence of failure to maintain effort.

This section clarifies that an SEA (as the grantee) is liable in a recovery action to return to US ED an amount equal to the amount by which the LEA failed to maintain its level of expenditures. However, in previous policy interpretation (*See OSEP letter to Baglin (2006)*), also stated that "Faced with a history of noncompliance with the MOE requirement, however, the SEA would need to carefully determine whether the LEA will meet the MOE requirement in the coming year, or whether the SEA should begin an administrative withholding action consistent with §613(c) and (d) because it is not convinced that the LEA will meet the MOE requirement for the new year."

RECOMMENDATION

- We recommend that ED expand this section to include language that reflects the additional guidance provided in OSEP letter to Baglin, July 26, 2006. In particular, through this regulation ED should underscore the importance of SEA monitoring and oversight for ensuring implementation and compliance with the local MOE requirement.

Thank you for the opportunity to comment.

Sincerely,

ACCSES

Autism National Committee

Brain Injury Association of America

Conference of Educational Administrators of Schools and Programs for the Deaf

Council for Learning Disabilities

Council of Parent Attorneys and Advocates (COPAA)

Downs Syndrome Congress

Easter Seals
Mental Health America
National Association of Councils on Developmental Disabilities
National PTA
National Center for Learning Disabilities
National Disability Rights Network
The Advocacy Institute
The Arc

The Consortium for Citizens with Disabilities is a coalition national consumer, advocacy, provider and professional organizations headquartered in Washington, D.C. Since 1973, the CCD has advocated on behalf of people of all ages with physical and mental disabilities and their families. CCD has worked to achieve federal legislation and regulations that assure that the 54 million children and adults with disabilities are fully integrated into the mainstream of society. For additional information, please contact:

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