



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

DEC - 2 2009

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OSEP 10-5

MEMORANDUM

TO: Chief State School Officers
State Directors of Special Education

FROM: Alexa Posny *AP*
Acting Director
Office of Special Education Programs

SUBJECT: Maintenance of State Financial Support under the
Individuals with Disabilities Education Act

Since the Office of Special Education Programs (OSEP) began focusing on the fiscal requirements of the Individuals with Disabilities Education Act (IDEA) in 2007, the heightened scrutiny has given rise to requests for clarification of several of those provisions. In addition, the passage of the American Recovery and Reinvestment Act of 2009 on February 17, 2009, requires States and local educational agencies (LEAs) to examine the fiscal requirements in a new light and to be in a position to account for each of those requirements with increasing detail and specificity. One of the provisions which OSEP has been asked to clarify is found at 34 CFR §300.163, Maintenance of State financial support.

Under 34 CFR §300.163(a), "a State must not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year." The question has been asked whether this provision specifically means the support for special education and related services provided by the State educational agency (SEA) or whether, in computing its maintenance of financial support for special education and related services, the SEA must include support provided by other State agencies, such as a State Department of Health or a State Vocational Rehabilitation Agency.

Under section 602(31) of the IDEA and 34 CFR §300.40 of the Part B implementing regulations, "State" is defined as each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas. Under section 602(32) of the IDEA and 34 CFR §300.41 of the regulations, "State educational agency" is defined as the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

The reference to "State financial support" in 34 CFR §300.163 is not limited to only the financial support provided to or through the SEA, but encompasses the financial support of all State agencies that provide or pay for special education and related services, as those terms are defined under the IDEA, to children with disabilities. Because 34 CFR §300.163(a) requires that a State not reduce its financial support from year to year for special education and related services, a State must include in its calculation of financial support under 34 CFR §300.163(a), any financial support for special education and related services provided by any State agency. The SEA is one of those agencies and likely provides or supervises the administration of the majority of the State's support for special education and related services but possibly not all the State's financial support for special education and related services. For example, payment by the State Vocational Rehabilitation Agency from State funds for job coaching services to youth with disabilities pursuant to an individualized education program (IEP) would be included in the calculation of the maintenance of State financial support for special education and related services. Likewise, if the State Department of Health provides psychological counseling or other mental health services to children with disabilities pursuant to their IEPs, the cost of such services would also be included in the calculation under 34 CFR §300.163. In other words, a State needs to include in its calculation of 'State financial support for special education and related services' funds other agencies provide to the SEA for such services, funds other agencies provide directly to LEAs for the services, and funds other agencies directly pay to staff or contractors for the delivery of the services pursuant to an IEP.

The State financial support provided by the SEA for special education and related services is, of course, also included in the calculation required by 34 CFR §300.163. This includes State funding for special education staff, the cost of monitoring and carrying out other State administrative duties related to special education, and the cost of any direct services provided by the SEA, as well as any State funds provided to public agencies (including LEAs) in the State for the purpose of providing special education and related services.

The standard of State financial support provided at 34 CFR §300.163(a) is a different standard than the LEA maintenance of effort (MOE) standard delineated at 34 CFR §300.203(b). The LEA standard at 34 CFR §300.203(b) requires that an LEA both budget, in each subsequent year, at least the same amount that it expended in the most recent prior year for which information is available, and expend, from year to year, at least the same amount that it expended in the previous year. The comparison, for LEA MOE compliance, is expenditures from year to year. For SEAs, the comparison is the amount of State financial support provided (made available) for special education and related services from year to year, regardless of the amount actually expended.

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The consequences are also different for an LEA and a State if they fail to meet the required standard. If a State fails to maintain the required level of financial support for special education and related services, under 34 CFR §300.163(b), the Secretary of Education reduces the allocation of funds under section 611 of the IDEA for any fiscal year following the fiscal year in which the State fails to comply with the requirement of 34 CFR §300.163(a) by the same amount by which the State fails to meet the requirement. If an LEA fails to maintain fiscal effort, the SEA must return to the U.S. Department of Education, an amount equal to the amount by which the LEA failed to maintain effort. This repayment must be from non-Federal funds or from Federal funds for which accountability to the Federal government is not required.

If you have questions regarding these provisions, please contact Ruth Ryder at 202-245-7513 or Deborah Morrow at 202-245-7456.