



The New Jersey Coalition for Special Education Funding Reform

November 15, 2011

Melody Musgrove, Director
United States Department of Education
Office of Special Education Programs
400 Maryland Avenue, SW
Washington, DC 20202-7100

Re: USDOE's June 16, 2011 interpretation of IDEA's Maintenance of Effort provisions

Dear Dr. Musgrove:

The New Jersey Coalition for Special Education Funding Reform, established in 1996, is comprised of ten statewide organizations concerned with special education funding and policy. We seek a special education funding mechanism that is adequate, efficient, equitable, predictable, flexible, transparent, fully placement-neutral, and is accountable for both spending and student outcomes.

We are writing to urge the United States Department of Education, Office of Special Education Programs (USDOE) to rescind its June 16, 2011 "informal guidance" regarding the Maintenance of Effort (MOE) provisions of the Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400 *et seq.* (IDEA).

Section 613 of IDEA authorizes a local educational agency (LEA) to reduce the level of expenditures below the level from the preceding fiscal year *only* where it meets one of two stated exceptions. The letter represents a departure from the law.

Based on OSEP's June 16th letter, an LEA would be allowed to "reset the base amount to reflect the lower amount actually spent the previous year." This means that after reducing its level of expenditures - in violation of the statute - not only would the LEA be enriched, but also there would be no need for the exceptions to the MOE provisions.

By interpreting the MOE provision in IDEA to treat all LEAs the same - whether they are reducing expenditures lawfully or not - the USDOE's informal guidance violates statute and regulation.

Only through legislative action can Congress authorize a modification to the MOE provision. The USDOE's guidance letter clearly conflicts with the legislative history of the MOE provision, which makes numerous references to State Educational Agencies and LEAs upholding their financial obligation to educate students with disabilities.

Especially in this time of severe cutbacks, we cannot afford an unauthorized exception to the MOE provisions. The Coalition respectfully requests that USDOE rescind its June 16, 2011 informal guidance.

Sincerely yours,



Brenda Considine, Chairperson
New Jersey Coalition for Special Education Funding Reform

cc:

Chris Cerf, Commissioner of the New Jersey Department of Education
Governor Chris Christie
Senator Robert Menendez
Senator Frank Lautenberg
New Jersey Congressional Delegation