



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

October 3, 2011

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

Re: Informal Guidance - interpretation of section 613

Dear Dr. Musgrove and Ms. Ryder:

The undersigned members of the Education Task Force of the Consortium for Citizens with Disabilities write to share our concern regarding the “informal guidance” on the local maintenance of effort (MOE) requirement under § 613 of the Individuals with Disabilities Education Act (IDEA) issued on June 16, 2011 in response to a letter of inquiry from Dr. Bill East, Executive Director of the National Association of State Directors of Special Education.

The interpretation set forth in this informal guidance appears to establish a new manner in which local educational agencies (LEAs) can reduce local spending on special education outside of the specific, limited circumstances expressly laid out in IDEA. As you know, Section 613 of IDEA states that as a condition of qualifying for federal funds, an LEA providing for the education of children with disabilities within its jurisdiction, must meet the fiscal requirements including principles of supplement not supplant and maintenance of effort (MOE). Therefore, it has been understood that any reduction to MOE outside of the two types of statutory exceptions authorized by §613(a)(2)(A)(iii) and described in subparagraphs (B) and (C) would result in a violation of eligibility to receive federal funds. Furthermore, *only* LEAs that lawfully reduce local MOE would be able to continue to meet IDEA’s MOE requirements by continuing at the lower level of local spending.

The IDEA’s MOE and non-supplanting provisions grew out of the inability of States and LEAs to provide sufficient financial resources to meet their constitutional duty to educate children with disabilities. Establishing through informal guidance that, in fact, LEAs are free to adjust spending on special education as local conditions (beyond those covered in §613(a)(2)(A)(iii)) dictate without putting their eligibility for federal funding in jeopardy provides little if any

protections for the nation's 5.9 million school-age students with disabilities. In short, this guidance undermines the MOE precept of IDEA.

A review of the recently released data on MOE reductions taken by LEAs in 2009—the year that the American Recovery and Reinvestment Act (ARRA) provided an additional \$11.3 billion in IDEA Part B 611 funds—indicates that some districts took substantial reductions to MOE despite being ineligible to do so. For example, the Houston Independent School District in Texas, the nation's eighth largest district serving 16,800 special education students, reduced local spending by \$18.4 million in 2009, or \$1092 for every special education student, despite its rating of "needs assistance" from the SEA. Despite the fact that this reduction did not comply with Section 613, based on OSEP's informal guidance, Houston could continue at the reduced MOE in all subsequent years and continue to receive more than \$36 million in annual federal IDEA funds as well as enjoy over \$40 million in IDEA Part B 611 Recovery Act funds that could be spent between April 2009 and September 2011. We find it difficult to believe that students with disabilities benefited from this reduction in funding.

While it has been suggested by your office that the interpretation offered in this guidance is not new, it is more generally held that, in fact, it is both new and inconsistent with previous OSEP guidance. Past correspondence on this issue has held that there are no other ways to reduce MOE than those provided in IDEA, even in difficult economic situation. In 1988, responding to a letter from Representative Don Young (AK-R) OSERS stated that "EHA-B does not authorize the department to waive this requirement under any circumstances, except those specified in 34 CFR 300.230(b)(2)" (Letter to Young, February 1, 1988).

We urge the Department of Education to re-examine this informal guidance in light of past guidance and Congressional intent. Additionally, we ask that your office establish a process of publicly reporting all LEAs that have reduced MOE outside of the allowable conditions in IDEA and the actions taken by the SEAs in response to that finding, including actions taken by the SEA to recoup the failed amount and return it to the Department. This public reporting should occur on an annual basis, beginning with FFY 2009, in order to allow the public to know when LEAs have reduced MOE outside of the conditions articulated in IDEA.

We look forward to your response. Thank you for considering our views.

Sincerely,
American Speech-Language-Hearing Association
Association of University Centers on Disabilities
Autism National Committee
Council for Exceptional Children
Council for Learning Disabilities
Council of Parent Attorneys and Advocates
Disability Rights Education & Defense Fund
Easter Seals

Learning Disabilities Association of America
Mental Health America
National Association of School Psychologists
National Center for Learning Disabilities
National Council on Independent Living
National Disability Rights Network
National Down Syndrome Congress
National Down Syndrome Society
School Social Work Association of America
TASH: Equity, Opportunity, and Inclusion for People with Disabilities
The Advocacy Institute
The ARC
United Cerebral Palsy

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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