



of Wisconsin Disability Organizations

---

*101 East Wilson Street, Room 219, Madison, Wisconsin 53703*

Voice: 608/266-7826 Fax: 608/267-3906

December 2, 2013

Comments to Docket ID ED-2012-OSERS-0020

Assistance to States for the Education of Children with Disabilities  
Notice of Proposed Rulemaking (NPRM)  
U.S. Department of Education

The Survival Coalition of Wisconsin Disability Organizations submits the following comments in response to the Notice of Proposed Rulemaking (September 18, 2013) of the Office of Special Education and Rehabilitative Services, U.S. Department of Education, to amend regulations implementing the *local maintenance of effort* mandate under the Individuals with Disabilities Education Act (IDEA).

Overall we believe the amendments will bring needed clarification to several aspects of LEA MOE that will benefit Wisconsin's 125,000 students with disabilities.

The Survival Coalition supports the proposed amendments along with specific recommendations below. In 2011 our organization [communicated](#) with USDOE regarding concerns about IDEA MOE in our state. Specifically, in recent state budgets our state legislature and governor reduced overall state general education funding which put pressure on special education resources in our schools. In 2011 Wisconsin school districts actively sought waivers of IDEA Maintenance of Effort (MOE) beyond those currently allowed by law. IDEA MOE is an important back-stop to protect already scarce special education funding for our students with disabilities. The regulations will ensure improved compliance with federal requirements and provide important clarification to situations not currently addressed in regulation, avoiding future misinterpretations.

Maintaining the integrity of the LEA MOE requirement, as intended by Congress, is critical to the education of the nation's 6 million school-age IDEA-eligible students, including those in our state.

Section 613(a)(2)(A) of IDEA requires an LEA as a condition of eligibility for federal assistance under Part B to submit a plan that provides assurances to the State educational agency that no Part B funds provided to an LEA "(iii) shall be used except as provided in subparagraphs (B) and (C) to reduce the level of expenditures for the education of children with disabilities made by the local educational agency from local funds below the level of those expenditures [from local funds] for the *preceding fiscal year.*" Only an LEA that can demonstrate that its reduction of local expenditures is

attributed to one of the list of authorized local reductions set forth in subparagraph (B) or to an increase in its allocation under §611 as described in subparagraph (C) of §613(a)(2) [the ‘50% rule’], can lawfully reduce its local MOE “below the level of those expenditures for the *preceding fiscal year*” (emphasis added). In such instance, based on this explicit language, the local MOE for such an LEA that has *lawfully reduced* its local MOE would then be reset as the basis for the next fiscal year.

Our comments echo those provided by The Consortium for Citizens with Disabilities (CCD) and various other national disability organizations whose mission is to support the special education rights of students and families.

### **§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.

#### **SURVIVAL COALITION SUPPORTS:**

- We support additional clarity at 300.203(a)(2)(ii) to 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.

**SURVIVAL COALITION SUPPORTS:**

- We support that the proposed revision 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 support 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. (This issue is especially relevant as national demographics indicate a decline in the eligible population of children with disabilities.)
- We support that 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.

**SURVIVAL COALITION SUPPORTS:**

- We support removing "*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.”

**SURVIVAL COALITION SUPPORTS:**

- We support expansion of this section to include language that reflects the additional guidance provided in OSEP letter to Baglin, July 26, 2006. We support underscoring the importance of SEA monitoring and oversight for ensuring implementation and compliance with the local MOE requirement.

Thank you for the opportunity to comment on the proposed regulations.

Sincerely,

Survival Coalition Co-Chairs

Beth Swedeen, Wisconsin Board for People with Developmental Disabilities  
608-266-1166; [Beth.Swedeen@wisconsin.gov](mailto:Beth.Swedeen@wisconsin.gov)

Maureen Ryan, Wisconsin Coalition of Independent Living Centers, Inc.  
608-444-3842; [moryan@charter.net](mailto:moryan@charter.net)

Kit Kerschensteiner, Disability Rights Wisconsin  
608-267-0214; [kitk@drwi.org](mailto:kitk@drwi.org)