



**The Council of Parent Attorneys and Advocates, Inc.**  
*A national voice for special education rights and advocacy*

September 10, 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

Dear Dr. Musgrove and Ms. Ryder:

The Council of Parent Attorneys and Advocates supports the position of The Center for Law and Education (CLE) articulated in its August 17<sup>th</sup> request for the Office of Special Education Program (OSEP) to reconsider and rescind its “informal guidance” concerning the local maintenance of effort (MOE) requirement under § 613 of the Individuals with Disabilities Education Improvement Act (IDEA) issued 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. CLE believes, and COPAA agrees, that OSEP’s interpretation of §613, as applied to the factual scenario presented in the letter of inquiry, is inconsistent with the legislative history of P.L. 94-142 and the local MOE statutory provision, and is contrary to basic tenets of statutory construction and contract law.

The “interpretation” urged by the Department of Education (ED) in its informal guidance is one which directly contradicts IDEA and, thus, cannot be sustained without seeking a change to the underlying law. Only Congress makes laws and can change the statute. It is inappropriate for ED to provide an interpretation where IDEA clearly does not in order to allow more LEAs to reduce their level of special education expenditures in these tough times.

The scenario set forth in Bill East’s letter - an LEA violates the MOE provision by reducing its level of spending despite NOT having met one of the two types of exceptions expressly authorized by Congress – would not support a reduction in the MOE under IDEA. The express language of IDEA provides the only congressionally authorized bases for reducing local MOE requirements. Each LEA’s eligibility for IDEA Part B funds is contingent upon the LEA’s meeting the local MOE requirement unless it meets one of the expressed statutory exceptions in section 613 of IDEA. The Department’s interpretation condoning [or allowing] this reduction is inconsistent with the plain meaning of the statute. The LEA should be in jeopardy of losing its eligibility for Part B monies if it reduces spending without authorization, not being rewarded for violating the statute.

We respectfully join CLE in urging OSEP to rescind its June 16, 2011 informal guidance concerning local MOE requirements. The implications of this flawed interpretation will be detrimental not only to

students with disabilities receiving high quality education but to LEAs that will be rightfully challenged through costly litigation.

Please do not hesitate to contact us with any further question.

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