

April 7, 2009

Andrew J. Pepin, Assistant Secretary
Office of Special Education and Rehabilitative Services
Office of Special Education Programs
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Assistant Secretary Pepin:

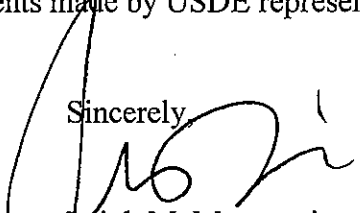
I am writing to obtain clarification on whether a Local Educational Agency ("LEA") satisfies the supplement not supplant requirement under IDEA Part B if the LEA maintains its local maintenance of effort ("MOE") under IDEA Part B. *See* 34 C.F.R. §§ 300.202(a)(3) and 300.203(a).

Under IDEA an LEA must use its Part B funds "to supplement State, local, and other Federal funds and not to supplant those funds." 34 C.F.R. § 300.202(a)(3). An LEA must also maintain its effort under Part B by not reducing "the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year." 34 C.F.R. § 300.203(a). An LEA may reduce its level of expenditures under Part B if it can attribute the reduction to several enumerated causes. *See* 34 C.F.R. § 300.204.

As you know the IDEA Part C regulations specifically state that supplement not supplant requirement is satisfied for Part C if the MOE requirement for that program is satisfied. *See* 34 C.F.R. § 303.124(a-b). The Part B regulations do not state this. The Part B Guidance issued for the ARRA Part B funds in April 2009 stated that "if the LEA maintains (or exceeds) its level of local, or state and local, expenditures for special education and related service from year to year, either in total or per capita, then the Part B funds, are in fact, supplementing those local, or state and local expenditures and the LEA has met its MOE and supplement/not supplant requirements." Part B Guidance Question C-6 (April 2009). We also have been informed by several of our clients that representatives from the U.S. Department of Education ("USDE") have stated in public forums that under Part B an LEA satisfies its supplement not supplant requirement if it meets its MOE requirement. Our question then concerns whether the supplement not supplant requirement under IDEA Part B will be met if an LEA maintains its local maintenance of effort without any further consideration, and specifically without any expenditure by expenditure analysis?

Thank you for the opportunity to raise this question. Your response will be greatly appreciated since this issue is of compelling and immediate interest to our clients especially in light of the recent Guidance and comments made by USDE representatives. Thank you in advance for your prompt assistance.

Sincerely,



Leigh M. Manasevit