

During the past two years, we have seen an unprecedented Federal investment in special education -- more than \$25 billion from the regular FY 2009 and 2010 Education Department appropriations and another \$12.2 billion under the American Recovery and Reinvestment Act (ARRA). At the same time, we recognize that the falloff in State revenues has caused hardships for many States.

With this in mind, we have received questions about the process and criteria used to evaluate a request by States to waive Maintenance of Effort (MOE) requirements under Part B of the Individuals with Disabilities Education Act (IDEA).

Based on the statutory language, and in light of the potential impact of a waiver on the education of students with disabilities, the Department grants such waivers only when a State demonstrates that it has experienced "exceptional or uncontrollable circumstances."

If a waiver is granted, the statute contains several protections to ensure that appropriate services continue to be provided for children with disabilities. Thus, a State must continue to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities residing in that State. Further, if the Department grants a waiver, the amount of financial support required of the State in future years is the same amount that would have been required in the absence of the waiver.

As we have indicated in our preamble to the regulations issued in 2006 under the IDEA, the decision to grant or deny a waiver is made on a case-by-case basis; waivers are considered through a very careful process that takes into account the specific facts and circumstances of each situation being reviewed.

When considering a waiver request, the Department wants to ensure that any reduction in the level of State support for special education and related services is not greater than the percentage reduction in revenues experienced by the State, and that the State is treating special education equitably when compared to other programs within the State. In part B of IDEA, as of June 1, 2010, the Department has received waiver requests regarding maintenance of effort from Kansas, Iowa, South Carolina and West Virginia for the 2009-2010 school year. The Department has granted a waiver request from Kansas and from Iowa, and the other requests are currently under review. In reviewing waiver requests under IDEA, Part B, the Department is considering factors such as the following:

- Whether the State experienced exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State.
- The State's revenues for the year for which it sought a waiver compared to the prior year and to what extent the decrease was based on exceptional or uncontrollable circumstances.
- The State's total appropriations in the year for which a waiver was sought and the prior year.
- The State's level of financial support for special education and related services provided to children with disabilities in the year for which a waiver was sought and the prior year.
- The State's appropriations for other agencies by category in the year for which a waiver was requested and the prior year, including education as a whole, and broken down by higher education, K-12, and special education.
- The State's compliance and performance record in implementing Part B of IDEA – the nature and length of any noncompliance, data in its State Performance Plan and Annual Performance Report, including data on performance and compliance indicators, the State's determination under Section 616 of IDEA, whether there are outstanding findings of noncompliance, whether corrective actions are underway, and whether the Department has placed special conditions on the State's Part B grant award.
- As general background, the Department might also look at financial information on the measures mentioned above from prior years as well. While this information is not directly relevant, it may provide trend data that might be helpful.
- Other sources of revenue used by the State for special education and related services, such as funds provided through Part B of IDEA and ARRA. While these funds are not considered in the calculation for State support of special education and related services, the existence of these funds may help mitigate the effects of a waiver to the State's MOE. Therefore, we consider these funds when examining the equities of granting or denying a waiver.

In addition, in making a decision about a waiver under IDEA, Part B, the Department reviews the monitoring it has done of the State and, after granting a waiver, may undertake additional monitoring of the State's implementation of Part B to assess such issues as whether a FAPE is being made available to all children with disabilities residing in the State.