



September 14, 2011

Dear Maryland Members of Congress

The Maryland Down syndrome Advocacy Coalition, the statewide Governmental Affairs Committee associated with the National Down Syndrome Society, and the undersigned state and local advocacy organizations request your assistance in our efforts to protect local special education funding.

On June 16, 2011, the U.S. Department of Education's Office of Special Education Programs (OSEP) issued new "informal guidance" regarding the "maintenance of effort" (MOE) requirement of the Individuals with Disabilities Education Act (IDEA). As you know, MOE, as it applies to local education agencies (LEAs) means that LEAs have to provide at least the same level of local special education funding this year as they provided last year, as a condition of receiving federal IDEA funding. This new OSEP guidance would permit LEAs that lower special education funding this year below the amount from last year, in violation of the MOE requirement, to base next year's education funding (and funding for future years) on the lower funding level that violated the law.

Based on OSEP's interpretation of the MOE requirement in the guidance, if an LEA is supposed to provide \$1 million for special education funding in Year X (because that is what they provided the previous year) and the LEA violates this rule by only providing \$500,000, then the new special education funding level for the year following Year X (and every year thereafter) would be \$500,000, unless the LEA decides to raise it or violates the law again by lowering it further. In this example, OSEP would only consider the LEA to be in violation of IDEA in Year X even though funding will continue at the lower level for every year thereafter.

Imagine applying this same result to your own life. What would happen if you violated your lease by paying only half of your rent this month and then the next month you expected the rent to be changed to the lower amount indefinitely? The landlord would

never let you be enriched by a violation in this way. You would have to go back to paying the rent you owed before you violated the lease.

The purpose of the MOE requirement (demonstrating maintenance of effort by maintaining the prior year's funding level) is to ensure that all students with disabilities receive the special education services and supports they need for a free appropriate public education (FAPE). For that reason there are only two limited exceptions to the MOE requirement: (1) if the LEA's expenses for that year have been legitimately reduced (e.g. by the natural turnover of senior highly paid staff for younger, but still qualified, lower paid staff) or (2) if the LEA receives additional federal funding.

Special education funding for each year is supposed to be based on the amount of funding from the prior year to protect the students. Therefore, Congress could not have intended this to be the case when the funding level from the prior year violated the law. In addition this interpretation undermines the LEA monitoring provisions in IDEA because even LEAs with a poor record of meeting student's needs would be permitted to maintain a lower spending level in the years following the MOE violation.

To prevent the rights of students with disabilities from being diminished by this OSEP guidance, the Maryland Down syndrome Advocacy Coalition joined by the undersigned state and local organizations are asking you to call on the Secretary of Education to rescind this informal guidance and reinforce to states and local districts the standards for eligibility for federal funds clearly articulated in IDEA.

If you have any questions, please contact Ricki Sabia at [rsabia@ndss.org](mailto:rsabia@ndss.org) or 301-452-0811.

#### State Organizations

Maryland Down syndrome Advocacy Coalition  
Learning Disability Association of Maryland  
Maryland Disability Law Center  
Maryland Council for Exceptional Children  
The Arc Maryland  
Maryland Coalition for Inclusive Education  
Maryland Developmental Disabilities Council  
Parent Advocacy Network for Differently-Abled

#### Local Organizations

Down Syndrome Network of Montgomery County  
The Arc Montgomery County  
Autism Society of Montgomery County  
PODS of Prince George's County  
The Arc Prince George's County  
Chesapeake Down Syndrome Parent Group  
The Arc of the Central Chesapeake Region  
Down Syndrome Connection (Anne Arundel County)