

September 23, 2011

The Honorable John Kline
Committee on Education & the Workforce
2181 Rayburn House Office Building
Washington DC 20515

Dear Chairman Kline:

Thank you for your continued leadership to ensure children with disabilities receive a free appropriate public education. We are writing to express our significant concern over recent guidance issued by the U.S. Department of Education related to local maintenance of effort requirements for school districts under the Individuals with Disabilities Education Act (IDEA). This guidance could greatly compromise access to a free appropriate public education (FAPE) for students with disabilities and raises serious questions about the value of ongoing Federal support for special education.

In June the U.S. Department of Education issued informal guidance in response to a request from the National State Directors of Special Education. This request sought clarification on what level of fiscal effort a school district must maintain in the year after a year in which the district reduced their maintenance of effort outside of the existing statutory exceptions. As you know, these exceptions include: staff departure, decreased enrollment of students with disabilities; elimination of a high cost program; or the termination of long-term costly expenditures. The Department's informal guidance stated that the school districts can comply with IDEA's maintenance of effort requirements by meeting the amount of spending after taking into account the previous year's reduction.

We are particularly concerned about the impact of this determination on the value of ongoing Federal support for special education and its impact on the ability of districts to provide FAPE. As Congress continues to fund Part B of IDEA, permitting districts to reduce their maintenance of effort with little if any consequences will significantly devalue the Federal portion of special education spending. Federal funds should be used to enhance and ensure special education and related services, not used in place of state and local resources.

Likewise, reductions in the amount of state and local funds spent on special education with students presenting the same need for services and supports could begin to jeopardize FAPE or further jeopardize FAPE in districts with existing compliance problems. It is especially noteworthy that the Department's informal guidance could be viewed as allowing any school district, including those with serious IDEA compliance issues, to reduce their fiscal effort. Parents should not be left having to remedy this situation by employing due process proceedings to force school districts to make up for shortfalls in special education spending at the local level.

This is a serious issue which, if left unchecked, could cause significant fiscal and compliance issues directly impacting the ability of children with disabilities to receive the education to which they are entitled. Thank you for your attention to this issue and your continued leadership on issues impacting children with disabilities and their right to a free appropriate public education.

Sincerely,



Paula F. Goldberg
Executive Director