



## *National Association of State Directors of Special Education, Inc.*

*1800 Diagonal Road, Suite 320, Alexandria, VA 22314*

*Tel: 703/519-3800 Fax: 703/519-3808 www.nasdse.org*

December 7, 2009

Mr. Charles Rose, Esq.  
General Counsel  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC

Dear Mr. Rose:

I am writing on behalf of the members of the National Association of State Directors of Special Education – the state directors of special education in the 50 states, the U.S. Department of Defense, the Bureau of Indian Education, the Federal territories and the Freely Associated States – to express our grave concern about a recent change in interpretation of the Individuals with Disabilities Education Act (IDEA) that has tremendous implications for states.

Since IDEA was first enacted in 1975, state education agencies have relied on an interpretation of *state maintenance of effort* under Section 612(a) of the Act to mean *state education agency* maintenance of effort. In talking to both previous state directors of special education who have been active at the state level since 1975 and current state directors and others who have been working at the state level for many years, they have never seen any document nor had any conversation with any U.S. Department of Education personnel who interpreted this section of the law otherwise. In other words, state education agencies have relied on this interpretation of the law since 1975.

This year, for the first time, without any formal change in the law or regulation, the Department has apparently changed this interpretation. In visits to states, OSEP staff is now informing states that maintenance of effort includes *all* state funding. In addition, the Department has released a document under the ARRA with this new interpretation, again with this interpretation literally coming 'out of the blue.'

In addition to relying on an interpretation of the law for the past 35 years, it would be extremely difficult for many states to make such a calculation. In some states, state agencies that provide services to children with disabilities are under the control of the governor and the director of special education has neither the authority nor the ability to review the budgets of those agencies to determine the extent of expenditures for students with disabilities, thus making it literally impossible to make the calculation OSEP is now demanding.

Furthermore, this change in interpretation of the law ironically could have a negative impact on state education funding for special education. If state education agencies believe that their maintenance of effort can be calculated by adding funds from other sources, we are concerned that it could result in state education personnel being willing to pull funding out of special education. We know from our discussions with state directors how they fight to hang onto funding for special education at the state level. This interpretation is creating a loophole to let state education agencies 'off the hook' when it comes to funding special education.

We challenge this change in policy given the consistent contrary interpretation and application of the law since its enactment by the Department. At a minimum, if the Department wants to change this long-held interpretation of the law, a formal notice and comment period from the Department is required. Sending out OSEP staff to the states on verification visits and 'announcing' this change is simply insufficient. More fundamentally, as explained above, this change in policy simply fails to take into account the realities of state government and the limited access that state directors of special education have to other state agency budgetary information.

I am therefore requesting that you immediately call a halt to this change in policy and meet with me to discuss this matter at your earliest convenience.

Sincerely,

A handwritten signature in cursive script that reads "Bill East".

Bill East, Ed.D.  
Executive Director

cc: Alexa Posny, OSERS Assistant Secretary