



of Wisconsin Disability Organizations

131 West Wilson Street, Suite 700, Madison, Wisconsin 53703
(608) 267-0214 voice/tty • (608) 267-0368 fax

December 1, 2011

Melody Musgrove, Director
Office of Special Education Programs
United States Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-7100

RE: IDEA Local Maintenance of Effort – Wisconsin

Dear Dr. Musgrove:

We have become aware that Wisconsin school districts are actively seeking waivers of IDEA Maintenance of Effort (MOE) beyond those currently allowed by law (see attached letter). On behalf of the Survival Coalition of Wisconsin Disability Organizations we ask that you reject those requests. Instead, we suggest that you reinforce with the State of Wisconsin the requirement of local educational agencies (LEAs) to meet their MOE obligations and for the State to monitor LEAs on an annual basis to ensure they are meeting their MOE obligations.

As the state's largest cross-disability coalition comprised of more than 40 state and local organizations and groups, we support people with disabilities of all ages to be full participants in community life, including their schools. While we acknowledge difficult financial times over the past three years which have made state and local education budgeting decisions particularly tenuous, **our state legislature has made deliberate choices in education funding priorities that have put pressure on LEAs to reduce school funding. This should not result in decreased funding at the local level for the provision of a Free and Appropriate Public Education (FAPE) for students with disabilities.**

Specifically the Wisconsin legislature passed the 2011-13 biennial budget earlier this year which contained sweeping changes to public school funding, including the second largest single-year reduction in per pupil spending among 46 states nationally.¹ These cuts were proposed by the

¹ Oliff, P, Leachman, M., New School Year Brings Steep Cuts in Funding for Schools, Center for Budget Policy and Priorities, <http://www.cbpp.org/cms/index.cfm?fa=viewid=3569>, 2011.

Governor and approved by the state legislature while simultaneously increasing the overall state budget by two percent.

The Congressional intent in IDEA related to local MOE is clear: maintain and protect levels of funding for students with disabilities and the LEAs' abilities to provide FAPE, particularly during difficult fiscal times. Congress has already provided for limited exceptions to local MOE in 20 USC 1413(a)(2)(B); 34 CFR 300.204 or 20 USC 1413(a)(2)(C), 34 CFR 300.205 which allow appropriate flexibility, including exceptions that recognize reduced local expenditures in cases of voluntary departures or retirements of staff, decreased student enrollment, and the termination of high cost circumstances.

The Wisconsin Department of Public Instruction (DPI) reports that due to state budget cuts 97% of the state's public school districts (411 of 424) will receive less state education funding for the 2011-12 school year than the previous year. The median decrease in state school education funding for FY 12 for districts is 9.98%.² The budget also mandated a change in Wisconsin revenue limit policy resulting in a loss of \$1.6 billion in revenue authority. Until this year Wisconsin's revenue cap law allowed local school districts the ability to raise local property taxes sufficiently to keep up with inflation and thus meet the gap in education expenditures.³ However, this budget, for the first time in Wisconsin history, reduces local school district's ability to raise revenue by 5.5%.

These unprecedented cuts to general education funding in Wisconsin are responsible for the fiscal pressures local districts are experiencing causing many LEAs to look to special education spending as a way to cut their expenses. Districts are responding to a state education funding policy decision explicitly made by the Governor and approved by the state legislature. The fiscal pressure on LEAs is related to these state level decisions and not to any extrinsic crisis such as a natural disaster that might require such reductions. In addition, it is clear the Governor and state legislature were aware of the State Educational Agency MOE requirements by including adequate state special education funding to comply with state level MOE.

A survey of the Wisconsin Association of School District Administrators (WASDA) released this November shows the tangible impacts of general education funding reductions, including targeted cuts in special education. **The largest cuts in the 2011-2012 school year by districts were in special education.** Twenty-eight percent of all reporting districts indicated they cut special education positions.⁴

² Wisconsin Department of Public Instruction, 2011-12 General Aid Certification, October 2011.
http://dpi.wi.gov/eis/pdf/dpinr2011_120_general_aid.pdf

³ Reschovsky, Andrew; An Analysis of the Proposal to Reduce Revenue Limits for Wisconsin School Districts; Working Paper Series La Follette School Working Paper No. 2011-003; March 2011.
<http://www.lafollette.wisc.edu/publications/workingpapers/reschovsky2011-003.pdf>

⁴ Wisconsin Association of School District Administrators, Wisconsin Department of Public Instruction; Budget Survey Analysis, November 2011.

Budget cuts are also leading to verified class size increases with nearly six in ten students attending a district with increased class sizes in K-12.⁵ Since the beginning of this school year the state's disability protection and advocacy agency has been fielding calls from families in school districts both large and small in which it is now more difficult, if not impossible, to secure a one-on-one or general classroom aide for a student who requires this level of support. As a result of these reports, disability organizations are now surveying families directly to assess the impact of budget cuts to individual students. Results will be released early next year.

Preliminary survey results suggest that it has already become more difficult to achieve FAPE in the least restrictive environment for many students.

Although the Wisconsin legislature also enacted controversial changes to state law that require increased contributions to health care and pension costs by school employees, not all school districts are experiencing savings. In fact, survey data from school administrators analyzing the impact of these personnel changes illustrated that districts anticipated a statewide education budget gap of more than \$300 million, even after accounting for potential savings.⁶ **For all these reasons it would be inappropriate to uniformly allow for MOE exceptions related to benefits changes in Wisconsin before we know more about how these cuts are affecting student access to FAPE.**

States have the responsibility to monitor changes in special education funding to ensure that cuts in whatever form do not directly impact students with disabilities and the delivery of FAPE in the least restrictive environment. Any increase in overall MOE flexibility will simply reward the State of Wisconsin for its drastic and unprecedented cuts to its general education budget and harm even more students with disabilities, clearly not something contemplated by Congress in the MOE requirements under the IDEA.

Therefore we request that the Department of Education:

- 1) Issue guidance or a Dear Colleague letter reminding SEAs that they are responsible for monitoring LEAs' MOE obligations annually;**
- 2) Ensure that SEAs monitor LEAs, hold them accountable for meeting their MOE obligations, and publicize when LEAs meet and do not meet MOE – conducted on an annual basis;**
- 3) Do not consider any regulations or interpretations that would allow LEAs not to meet their MOE obligations.**

In addition, the Department should continue to advise direct investment in special education funding that promotes high quality personnel development and school-wide coordinated early intervening services that are both allowable uses of IDEA funds and are proven to achieve FAPE as well as the overall high quality education of students with disabilities in the general education curriculum.

⁵ Wisconsin Department of Public Instruction, Impact of 2011-13 Biennial Budget, Survey of School Districts by Wisconsin Association of School District Administrators (WASDA), November 2011. Survey form and raw district-by-district data: http://dpi.wi.gov/pb/11-13_budget.html

⁶ Wisconsin Association of School Boards School Administrators Alliance; Public Schools Make Key Program Cuts; May 2011. http://dpi.wi.gov/pb/pdf/budget_saa.pdf

Thank you for considering our request. Please contact us with additional questions.

Survival Coalition Co-Chairs

Beth Swedeen, Wisconsin Board for People with Developmental Disabilities
608-266-1166; Beth.Swedeen@wisconsin.gov

Lynn Breedlove, Disability Rights Wisconsin
608-267-0214; lyymb@drwi.org

Maureen Ryan, Wisconsin Coalition of Independent Living Centers, Inc.
608-444-3842; moryan@charter.net

cc: Assistant Secretary Alexa Posny
Deputy Assistant Secretary Sue Swenson
Senator Tom Harkin, Senate HELP Committee Chairman
Senator Mike Enzi, Senate HELP Committee Ranking Member
Representative John Kline, House Education and Workforce Chairman
Representative George Miller, House Education and Workforce Committee, Senior Democrat
Senator Herb Kohl-WI
Senator Ron Johnson-WI
Representative Paul Ryan-WI
Representative Tammy Baldwin-WI
Representative Ron Kind-WI
Representative Gwen Moore-WI
Representative James Sensenbrenner-WI
Representative Tom Petri-WI
Representative Sean Duffy-WI
Representative Reid Ribble –WI
Superintendent Anthony Evers, Wisconsin Department of Public Instruction (DPI)
Stephanie Petska, Wisconsin DPI Director of Special Education
Laura Kaloi, National Center for Learning Disabilities (NCLD)
Cindy Smith, National Disability Rights Network
Katy Neas, Easter Seals