



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

APR -9 2019

Frank Edelblut
Commissioner
New Hampshire Department of Education
101 Pleasant Street
Concord, NH 03301

Dear Commissioner Edelblut:

The purpose of this letter is to respond to the New Hampshire Department of Education's (NHDOE's) January 2, 2019 letter and proposal regarding its practice of 1) reducing the amounts of its local educational agencies' (LEAs') expiring Individual with Disabilities Education Act (IDEA) section 611 and section 619 subgrants prior to the end of their 27-month period of availability and 2) retroactively transferring expenditures from more recently allocated IDEA Part B subgrants to draw down the expiring subgrants without the LEAs' knowledge (transfer practice). This transfer practice has been utilized by NHDOE for at least 12 years and resulted in the State reallocating funds to LEAs in a manner inconsistent with IDEA and its regulations in 34 CFR §§300.705(c) and 300.817 and not ensuring all LEAs in the State had knowledge of the full amount of their IDEA Part B funds available for obligation at any given time, in accordance with section 421(b) of the General Education Provisions Act (GEPA) and 34 CFR §76.709(b).¹ Specifically, NHDOE did not ascribe LEAs' expenditures of IDEA Part B subgrant funds to the subgrant intended by the LEA, which resulted in \$9,446,087.62 of IDEA section 611 funds and \$838,599.32 of IDEA section 619 funds that NHDOE cannot trace back to LEAs entitled to those funds (IDEA transfer funds). In its letter NHDOE sought to end the transfer practice over the next four Federal fiscal years (FFYs) by distributing the IDEA transfer funds using the population and poverty components of the IDEA Part B subgrant formulas in 34 CFR §§300.705(b)(3) and 300.816(c), starting in FFY 2019 through FFY 2022.

While the Office of Special Education Programs (OSEP) understands NHDOE would like to extend the practice over the next four fiscal years to avert a "cliff effect" where there will be a sudden decrease in additional funds, OSEP does not have the authority to extend the period of availability in section 421(b) of GEPA and 34 CFR §76.709(b) and allow NHDOE or its LEAs to obligate FFY 2017 funds after September 30, 2019. However, in order to provide LEAs additional time to plan for and obligate the entire amount of their subgrant and limit a "cliff effect", OSEP will allow some additional time and flexibility to mitigate any potential harm to children with disabilities and provide additional resources to children in a timely manner.

¹ IDEA Part B grants are "forward funded," meaning that a portion of the IDEA funds are made available three months prior to the start of the Federal fiscal year (i.e., on July 1) and the remainder of the funds are made available on October 1. Under 34 CFR §76.709(a), which implements section 421(b) of the General Education Provisions Act, known as the Tydings Amendment, if a State or a subgrantee does not obligate all of its grant or subgrant funds by the end of the fiscal year for which Congress appropriated the funds, it may obligate the funds during a carryover period of one additional fiscal year. See 20 U.S.C. §1225(b)(1). 34 CFR §76.709(b) requires the State to return to the Federal government any carryover funds not obligated by the State or its subgrantees at the conclusion of the carryover period. Therefore, funds under Part B of the IDEA are available for obligation by the State and its subgrantees from either July 1 or October 1 through September 30 of the fiscal year following the fiscal year in which Congress appropriated the funds. Through the combination of forward funding and the Tydings Amendment, SEAs and LEAs have 27 months to obligate the IDEA Part B funds that become available on July 1 and 24 months to obligate the IDEA Part B funds that become available on October 1.

During OSEP's February 25, 2019, meeting with NHDOE, OSEP found that NHDOE's subgranting procedures were also inconsistent with IDEA. Specifically, OSEP found that: (1) NHDOE did not include the enrollment of children in private elementary schools and secondary schools within the LEA's jurisdiction when calculating the population portion of the IDEA sections 611 and 619 subgrants; and (2) NHDOE did not include the relative numbers of children enrolled in public and private elementary schools and secondary schools within the LEA's jurisdiction when calculating the population portion of the IDEA section 619 subgrant. This issue must be fixed prior to addressing the issue of the transfer funds.

In order to resolve NHDOE's transfer process and its failure to allocate IDEA sections 611 and 619 subgrant funds in accordance with IDEA requirements, OSEP is requiring that NHDOE take the following actions:

a. Within 90 days of receipt of this correspondence, NHDOE must recalculate FFYs 2017 and 2018 IDEA sections 611 and 619 subgrant allocations. After reserving funds for base payments, the State must allocate 85 percent of any remaining funds to LEAs on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the LEA's jurisdiction and then allocate 15 percent of those remaining funds to those LEAs in accordance with their relative numbers of children living in poverty, as determined by the SEA, as required by 34 CFR §§300.705 and 300.816.

1. For any LEA whose section 611 or section 619 allocation was less than the amount to which it was entitled in FFY 2017 and/or FFY 2018, NHDOE must determine the difference between the amount the LEA actually received and the amount of the allocation the LEA should have received, and;
2. Any LEA that received less than the amount of section 611 or section 619 funds to which it was entitled in FFY 2017 and/or FFY 2018 must be made whole. The State may use: (1) any remaining FFY 2017 and FFY 2018 section 611 and/or section 619 State set-aside funds or any FFY 2019 section 611 and/or section 619 State set-aside funds that become available on July 1, 2019; (2) use State funds²; or (3) make downward adjustments to over-allocated LEAs' future allocations and upward adjustments to under-allocated LEAs' future allocations. If the State chooses either option (2) or (3), the State and affected LEAs must consider the impact on those LEAs' ability to meet the maintenance-of-effort requirement, given any change to those LEAs' expenditures for the education of children with disabilities using State and/or local funds could impact their ability to meet the local maintenance-of-effort requirement in 34 CFR §300.203.

b. For the FFY 2017 IDEA Part B grants that the Department made available to NHDOE on July 1, 2017 and whose period of availability ends on September 30, 2019, OSEP will allow NHDOE to expend those FFY 2017 funds not to exceed \$9,446,087.62 of IDEA section 611 funds and \$838,599.32 of IDEA section 619 funds by utilizing the transfer practice outlined above, because States are permitted to use FFY 2017 funds to pay for expenditures incurred between July 1, 2017 and September 30, 2019. NHDOE must have supporting documentation that the obligations charged to the FFY 2017 IDEA Part B grants occurred between July 1, 2017 and September 30, 2019.

1. Upon completion of the transfer practice, NHDOE must distribute the entire amount of the IDEA transfer funds in NHDOE's FFY 2018 IDEA Part B grant in an amount not to exceed \$9,446,087.62 of IDEA section 611 funds and \$838,599.32 of IDEA section 619 funds to all eligible LEAs based on the following formula:

² If a State uses State funds to make under-allocated LEAs whole, the State must demonstrate that those State funds are funds the under-allocated LEAs would not have otherwise received.

- i. 85 percent of the above amounts to New Hampshire's LEAs on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the LEA's jurisdiction; and
 - ii. 15 percent of the above amounts to its LEAs in accordance with their relative numbers of children living in poverty, as determined by the NHDOE.
- 2. The entire FFY 2018 allocation must be obligated by September 30, 2020. In order to ensure that LEAs understand they have the full 27 months from July 1, 2018, through September 30, 2020 to obligate FFY 2018 IDEA Part B funds, New Hampshire may not apply its transfer practice to FFY 2018 funds (i.e., may not charge expenditures incurred in FFY 2019 to FFY 2018 funds without LEAs' knowledge). However, New Hampshire may reallocate funds from LEAs that are unable to obligate FFY 2018 funds by September 30, 2020, but it must do so consistent with the reallocation procedures in 34 CFR §§300.705(c) and 300.817.
- c. Within 90 days of the receipt of this letter, NHDOE must submit to OSEP:
 - i. Revised State policies and procedures that demonstrate that NHDOE will allocate IDEA subgrants to all eligible LEAs in accordance with 34 CFR §§300.705 and 300.816;
 - ii. Documentation demonstrating that NHDOE has made whole any LEA that received less than the amount of section 611 or section 619 funds to which it was entitled in FFY 2017 and/or FFY 2018 ;
 - iii. Documentation that NHDOE has developed reallocation procedures consistent with 34 CFR §§300.705(c) and 300.817;
 - iv. Documentation that NHDOE has developed internal controls and no longer utilizes the transfer practice;
 - v. An assurance that FFY 2018 IDEA sections 611 and 619 subgrants were expended for allowable purposes under the IDEA and did not result in LEAs reducing their level of effort under 34 CFR §300.203; and
 - vi. A copy of the correspondence in which the State has informed its State audit office that is responsible for conducting audits in accordance with the Single Audit Act and the Uniform Guidance, of this finding of noncompliance and OSEP's required corrective actions.

We appreciate your cooperation in this matter. If you have further questions, please contact your State lead, Jennifer Barrett-Zitkus, at Jennifer.Barrett-Zitkus@ed.gov or 202-245-8417.

Sincerely,



Laurie VanderPloeg
Director
Office of Special Education Programs

cc: Santana Thibedeau