



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

THE ASSISTANT SECRETARY

April 4, 2022

Honorable Mike Morath  
Commissioner  
Texas Education Agency  
1701 N. Congress Avenue  
Austin, Texas 78701  
commissioner@tea.state.tx.us

Dear Commissioner Morath:

The purpose of this letter is to inform you that the U.S. Department of Education (Department) proposes to make a final determination that Texas is not eligible for a portion of its grant under section 611 of Part B of the Individuals with Disabilities Education Act (IDEA) because Texas has failed to meet the IDEA's maintenance of State financial support (MFS) requirement in State fiscal year (SFY) 2017 and SFY 2018. 20 U.S.C. § 1412(a)(18)(A) and 34 C.F.R. § 300.163(a). Under 20 U.S.C. § 1412(a)(18)(B), if a State fails to meet the requirement to maintain State financial support, and absent a waiver request, the Secretary is required to reduce the State's allocation of funds under section 611 of the IDEA, for any fiscal year following the fiscal year in which the State fails to comply with the MFS requirement, by the amount of the shortfall.

**Review of SFY 2017 and SFY 2018 Data:**

Based on the Office of Special Education Programs' (OSEP's) review of Section V of Texas's IDEA Part B applications for Federal fiscal years (FFYs) 2018 and 2019, OSEP determined that Texas had apparent MFS failures in SFY 2017 and SFY 2018. Below is the data the Texas Education Agency (TEA) submitted in Section V of its FFY 2018 and FFY 2019 IDEA Part B grant applications:

SFY	Total Amount of State Financial Support	Shortfall
2016	\$1,579,476,047	N/A
2017	\$1,537,881,721	\$41,594,326
2018	\$1,546,443,822	\$33,032,225

When TEA submitted its FFY 2018 and FFY 2019 IDEA Part B grant applications, TEA indicated that the MFS data it had provided in Section V were based on the total amount of State funding made available for special education and related services – a methodology accepted by the Department – rather than the “weighted-student model,” a methodology based on the amount and level of services received by a full-time equivalent student in average daily attendance. However, TEA disagreed with the Department's methodology and challenged the Department's

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methodology in litigation regarding the Department’s proposed determination for Texas’s MFS failure in SFY 2012.<sup>1</sup> In that litigation, TEA argued that it was appropriate for Texas to use its “weighted-student model” methodology for calculating MFS.

Because of this pending litigation, including Texas’s petition for review of the SFY 2012 proposed determination with the United States Court of Appeals for the Fifth Circuit, and, in part, for reasons of judicial and administrative economy since the litigation was centered on Texas’s “weighted-student model,” the Department temporarily suspended further action on the apparent new MFS failures Texas reported for SFY 2017 and SFY 2018. As noted, the Fifth Circuit later denied Texas’s petition for review and confirmed that Texas’s “weighted-student model” for calculating MFS contradicts the plain language and the purposes of the MFS provision. Subsequently, TEA submitted a settlement proposal relating to the SFY 2012 shortfall and requested that the Department consider that proposal and discuss possible settlement with TEA. The Department continued to suspend further action on the apparent new MFS failures Texas reported for SFY 2017 and SFY 2018 during the settlement discussions, because TEA also wanted the Department to consider possible MFS shortfalls from SFY 2017 and SFY 2018 in a settlement. Those discussions did not conclude in a settlement, and TEA did not request a waiver of the MFS requirement under section 612(a)(18)(C) of the IDEA. Therefore, in light of the Fifth Circuit’s determination that Texas’s “weighted-student model” is inconsistent with the IDEA MFS requirement, and the conclusion of settlement discussions which did not result in an agreement to resolve the SFY 2017 and SFY 2018 MFS failures, we are resuming taking action on this proposed determination for SFY 2017 and SFY 2018, based on the data reported by TEA in its IDEA Part B grant applications.

### **Proposed Determination for SFY 2017 and SFY 2018:**

Under the IDEA, at 20 U.S.C. § 1412(a)(18)(B), when a State fails to maintain State financial support for special education and related services at the level required by law, the Secretary shall reduce the allocation of funds to the State under 20 U.S.C. § 1411 (“section 611 grant”) for any fiscal year following the fiscal year in which the State fails to maintain State financial support by the same amount by which the State fails to meet the requirement. Accordingly, the Department

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<sup>1</sup> On January 17, 2017, based on information submitted in Texas’s IDEA Part B application for FFY 2013, and after exchanges of information and further analysis, including an agreement by the Department and TEA to correct certain errors in Texas’s calculations and apply the per capita method to determine the amount of support Texas should have made available for special education and related services, the Department issued a proposed determination that Texas would not be eligible for a portion of its IDEA section 611 grant in the amount of \$33,302,428, because of Texas’s failure to maintain State financial support for special education and related services in SFY 2012 by that amount. TEA requested a hearing on the Department’s proposed determination for the SFY 2012 MFS shortfall, arguing that Texas met MFS in SFY 2012 based on the “weighted-student model.” On May 23, 2018, the Administrative Law Judge (ALJ) issued an initial decision affirming the Department’s proposed determination. The Secretary did not further review the ALJ’s decision, which therefore became the final decision of the Secretary on July 9, 2018, consistent with the hearing procedures under IDEA. On July 13, 2018, Texas petitioned for review of the final decision with the United States Court of Appeals for the Fifth Circuit, and, on November 7, 2018, the Fifth Circuit issued a decision denying Texas’s petition for review and upholding the Department’s proposed determination for Texas’s SFY 2012 MFS shortfall. On September 3, 2021, the Department issued a final determination to reduce Texas’s future IDEA section 611 grant by \$33,302,428 because of its MFS shortfall in SFY 2012.

proposes to make a final determination that Texas is not eligible for \$41,594,326 of its section 611 grant under the IDEA because of its failure to maintain State financial support for special education and related services by that amount in SFY 2017, and that Texas is not eligible for \$33,032,225 of its section 611 grant under the IDEA because of its failure to maintain State financial support for special education and related services by that amount in SFY 2018. 20 U.S.C. § 1412(d)(2).

**Notice and Opportunity for a Hearing:**

TEA may request a hearing pursuant to the procedures in 34 C.F.R. §§ 300.179 through 300.183 in connection with the Department’s proposed determination to deny eligibility to Texas for \$41,594,326 of its IDEA Part B section 611 grant because of its failure to maintain State financial support for special education and related services by that amount in SFY 2017, and to deny eligibility to Texas for \$33,032,225 of its IDEA Part B section 611 grant because of its failure to maintain State financial support for special education and related services by that amount in SFY 2018. To request a hearing, TEA must submit a letter to Katherine Neas, Office of Special Education and Rehabilitative Services, 400 Maryland Avenue SW, Room 5106, Potomac Center Plaza, Washington, D.C. 20202-2600 (facsimile number 202-245-7638) not later than 30 calendar days after it receives this notice. The filing date for any written submission by a party under 34 C.F.R. §§ 300.179 through 300.184 is the date the document is hand-delivered, mailed, or sent by facsimile transmission. 34 C.F.R. § 300.183(a)–(b).

In light of the Texas IDEA State Advisory Panel’s duties in 20 U.S.C. § 1412(a)(21)(D), particularly its duty in 20 U.S.C. § 1412(a)(21)(D)(i) to “advise the State educational agency of unmet needs within the State in the education of children with disabilities,” we are providing it with a copy of this letter.

Sincerely,

A handwritten signature in blue ink that reads "Katherine Neas". The signature is written in a cursive, flowing style.

Katherine Neas  
Deputy Assistant Secretary  
Delegated the authority to perform  
the functions and duties of the  
Assistant Secretary for the Office of  
Special Education and Rehabilitative Services

cc: Texas IDEA State Advisory Panel