



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

June 1, 2022

Honorable Brian Schroeder
Superintendent of Public Instruction
Wyoming Department of Education
2300 Capitol Avenue, Hathaway Building, 2nd Floor
Cheyenne, Wyoming 82002
superintendent@wyo.gov

Dear Superintendent Schroeder:

This is in response to the September 30, 2021 letter from Dicky Shanor, Wyoming Department of Education's former Chief of Staff, in which Wyoming requests waivers of the requirement to maintain State financial support (MFS) for special education and related services under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1412(a)(18) and 34 C.F.R. § 300.163, in the amount of \$2,567,730 (based on a per capita MFS calculation) for State fiscal year (SFY) 2019 and \$6,504,391 (based on a total MFS calculation) for SFY 2020.¹ For the reasons explained below, the U. S. Department of Education (Department) does not grant these waiver requests, and therefore finds that Wyoming failed to meet MFS in both SFYs 2019 and 2020.

Background

Several years ago, the Office of Special Education Programs (OSEP) identified a potential MFS issue after staff of the Wyoming Department of Education (WDE) informed OSEP that the State legislature was considering changes in the school financing system that would have a significant impact on the funding for special education, and — through subsequent discussions, as well as a white paper submitted to OSEP on June 15, 2018 — provided OSEP with additional information about its school financing system. This information raised questions about the methodology by which WDE calculated Wyoming's State financial support under the MFS requirement. The MFS requirement mandates that the amount of State — rather than local — funds be maintained from one year to the next in order to ensure that State-provided funds are available for local educational agencies (LEAs) to meet their ongoing obligation to make a free appropriate public education (FAPE) available to each child with a disability. See 20 U.S.C. § 1412(a)(1) and § 1413(a)(1). OSEP sought additional information from Wyoming to determine which funds in its school financing system were being made available by the State.

OSEP learned that Wyoming uses a foundation or "base budget" school funding formula. In other words, Wyoming's primary school funding formula is designed to capture the total amount of funding the State calculates is necessary to educate a particular student and then divides that total between the State and its LEAs. For LEAs that generate more local revenue than that "base

¹ States may meet the MFS requirement on either a total dollar or per capita basis, and where there is a shortfall under both bases, may use the basis that results in the smallest shortfall amount.

budget” amount, the excess amount is required to be remitted to the State through a process known as “recapture.” The State uses some of these recaptured funds to help offset the cost of providing additional funding to low-revenue LEAs, while also using a portion of these recaptured funds for other educational programs and purposes.

Under State statutory and regulatory requirements, LEAs’ costs of special education and related services (not covered by Federal IDEA Part B funds) were reimbursed at 100% from three sources of funds: (1) State funds from State generated revenue; (2) local funds (not “recaptured”); and (3) local funds (“recaptured”). WDE informed OSEP that WDE included all of these funds as amounts made available by the State in calculating State financial support towards the MFS requirement.

On December 13, 2019, OSEP had a subsequent conversation with WDE to further discuss and understand the State’s school funding structure, and to determine which funds should be counted as State funds for MFS purposes. On January 13, 2020, WDE submitted responses to questions that OSEP raised during that conversation.

WDE explained that although Wyoming Statute § 21-13-306 states that local funds “recaptured” by the State “shall be drawn out and distributed to the [local school] districts,” the State interpreted that directive as allowing those funds to be used for all education programs, and not just reimbursement to LEAs. Thus, at the State’s discretion, the State’s view was that it may use those funds for other education programs or purposes or carry them over to the following year. In a September 11, 2020, letter, OSEP determined that it is reasonable for the “recaptured” local funds to be deemed State funds for the purposes of calculating MFS. However, OSEP determined that the local funds which are not “recaptured,” and which remain local funds without being remitted to or controlled by the State, cannot be considered State funds for MFS purposes. As a result, those local funds cannot be included in the calculation of State financial support for special education and related services. WDE’s then MFS methodology incorrectly included the amount of local funds that are not “recaptured” by the State. Because WDE was counting funds that are not State funds as State financial support for MFS purposes, the September 11, 2020, letter informed WDE that WDE’s methodology was inconsistent with the requirement in 20 U.S.C. §1412(a)(18)(A). OSEP required WDE to submit revised data, covering the previous five fiscal years, using a corrected MFS methodology to include only State funds, and to not include local funds which are not “recaptured” by the State and thus were incorrectly included in previous calculations.

Revised Data and Waiver Requests:

On March 5, 2021, and May 19, 2021, WDE submitted revised MFS data to OSEP based on required revisions to the State’s MFS methodology that excluded local funds not “recaptured” by the State. The corrected level of State financial support indicated MFS shortfalls in SFYs 2019 and 2020 using either of the two methods for calculating State financial support recognized by OSEP — per capita (per child) or sum total — when compared to SFY 2018 baseline amounts.

Table 1: Total and Per Capita MFS Calculations

SFY	Total amount of State financial support	Child Count	Per Child Amount of State financial support	Shortfall based on Sum Total Amount of State financial support	Shortfall based on Per Child Amount of State financial support
2018	\$163,969,617	15,638	\$10,485	N/A	N/A
2019	\$160,603,024	15,562	\$10,320	\$3,366,593	\$2,567,730
2020	\$157,465,226	15,897	\$9,905	\$6,504,391	\$9,220,260

Under 20 U.S.C. § 1412(a)(18)(A) and 34 C.F.R. § 300.163(a), a State must not reduce the amount of State financial support for special education and related services for children with disabilities or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year. The Department is permitted to waive this requirement for a State, for one fiscal year at a time, only if the Department determines that granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State. 20 U.S.C. § 1412(a)(18)(C)(i) and 34 C.F.R. § 300.163(c)(1). Regardless of whether a State receives a waiver under this authority, the State has a continuing obligation to ensure that a FAPE is made available to all eligible children with disabilities, as required in 20 U.S.C. § 1412(a)(1) and 34 C.F.R. § 300.101.

As noted above, on September 30, 2021, WDE submitted waiver requests for both SFYs 2019 and 2020. In support of its waiver requests, WDE argued it would be equitable to grant this waiver because of “exceptional or uncontrollable circumstances” due to fluctuations in “local revenue” that resulted in districts requiring less funding directly from the State to provide educational services. In its request, WDE conceded the State did not experience precipitous and unforeseen declines in State financial resources for the fiscal years at issue. WDE, however, argued that it did not decrease overall special education funding or availability and that the increased portion of local revenue is a result of its reimbursement system. Specifically, Wyoming argued that its “exceptional or uncontrollable circumstances” exist because its ratio of “State” and “local” funding is unstable year over year because of uncontrollable commodities market fluctuations. Therefore, while the total revenue that a district receives may be relatively unchanged year-over-year, the ratio of “local revenue” to “State support” may shift. WDE argued that this shift caused a decrease in State-level funding without a corresponding decrease in overall special education spending.

As explained on OSEP’s June 23, 2021 call with WDE, in assessing waiver requests, the Department considers, among other factors, whether the State experienced exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State as well as the State’s revenues for the year for which it sought a waiver, and to what extent the decrease was based on “exceptional or uncontrollable circumstances.” In this case, WDE has not demonstrated that the State experienced an exceptional or uncontrollable circumstance that caused the State unusual difficulty in meeting the MFS requirement in SFYs 2019 or 2020. Similarly, the State has not identified a decrease in

State revenues which would have been a contributing factor to the MFS shortfall. Instead, in its waiver request, WDE relied on the implementation of its own MFS methodology, and particular aspects of the State’s funding system which are within the State’s control, as constituting “exceptional or uncontrollable circumstances” in SFYs 2019 and 2020.

As the State explained, fluctuating funding sources are inherent in its system. The State was aware that the ratio of “local revenue” to “State support” may shift each year due to some school districts collecting more local revenue than in previous years and consequently requiring less funding being distributed to districts. Because these variations are inherently part of the State’s own funding system, the Department cannot consider local revenue fluctuation to be “exceptional or uncontrollable circumstances.”

WDE also argued that overall special education funding did not decrease in SFYs 2019 and 2020, when considering the total of both State and local funding. Under the MFS requirement in 20 U.S.C. § 1412(a)(18)(A) and 34 C.F.R. § 300.163(a), however, it is the amount of *State* financial support that determines whether a State has met the MFS requirement, not the total amount of special education funding available to LEAs from all sources. Regardless of any fluctuation in local revenues, the MFS provision requires the State to ensure that State financial support does not decrease from year to year. The State has not cited any “exceptional or uncontrollable circumstances” that would have prevented it from doing so (e.g., a precipitous and unforeseen decline in State revenue, which WDE conceded did not occur). Because WDE did not experience an “exceptional or uncontrollable” circumstance in SFYs 2019 or 2020, the Department has determined that it is not equitable to grant a waiver under 20 U.S.C. § 1412(a)(18)(C)(i) and 34 C.F.R. § 300.163(c)(1) for either SFY 2019 or SFY 2020.

Proposed Determinations

When a State fails to maintain State financial support for special education and related services at the level required by law, the Department “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. 20 U.S.C. § 1412(a)(18)(B); 34 C.F.R. § 300.163(b).

Accordingly, the Department proposes to make the following final determinations: that Wyoming is not eligible for a portion of its section 611 grant under IDEA in the amount of \$2,567,730 because of its failure to maintain State financial support for special education and related services by that amount in SFY 2019. This amount is based on the per child amount of State financial support which is the lesser of the two SFY 2019 shortfall amounts in Table 1. Wyoming also is not eligible for a portion of its section 611 grant under IDEA in the amount of \$6,504,391 because of its failure to maintain State financial support for special education and related services by that amount in SFY 2020. This amount is based on the sum total amount of State financial support which is the lesser of the two SFY 2020 shortfall amounts in Table 1.² 20 U.S.C. § 1412(d)(2). In summary, Wyoming failed to meet the MFS requirement in SFY 2019

² In the event of an MFS failure, the Department uses the lesser shortfall amount between the sum total amount of State financial support and the per child amount of State financial support for each year. In this case this means the penalty will be \$2,567,730 based on a per child amount in SFY 2019, and \$6,504,391 based on the sum total amount in SFY 2020.

and SFY 2020 by \$9,072,121. This represents the SFY 2019 Shortfall based on Per Child Amount of State financial support of \$2,567,730 and the SFY 2020 Shortfall based on Sum Total Amount of State financial support of \$6,504,391.

Notice and Opportunity for a Hearing

WDE 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 determinations to that Wyoming is not eligible for a total of \$9,072,121 of its IDEA section 611 grant because of its failure to maintain State financial support for special education and related services in SFYs 2019 and 2020. To request a hearing, WDE must submit a letter to Katherine Neas, Deputy Assistant Secretary, delegated the authority to perform the functions and duties of the Assistant Secretary of the Office of Special Education and Rehabilitative Services, 400 Maryland Avenue S.W., 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).

The Department may undertake additional monitoring of Wyoming’s implementation of Part B of IDEA should we believe that to be necessary to assess whether FAPE is still being made available to all eligible children with disabilities. In addition, in light of the Wyoming IDEA State Advisory Panel’s duties in 20 U.S.C. § 1412(a)(21)(D), particularly its duty under 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.

We look forward to resolving this matter and appreciate your continued cooperation.

Sincerely,

/s/

Katherine Neas

Deputy Assistant Secretary

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

cc: Margee Robertson
State Director of Special Education

Wyoming Advisory Panel for Students with Disabilities