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CENTER FOR LAW AND EDUCATION URGES DEPARTMENT OF EDUCATION TO CORRECT MISINTERPRETATION ALLOWING DISTRICTS TO REDUCE MAINTENANCE OF EFFORT UNDER IDEA

Recent regulations and guidance issued by the US Department of Education circumvent the requirements of the Individuals with Disabilities Education Act (IDEA) and will thwart the distribution of considerable IDEA stimulus monies to the intended beneficiaries – under-performing students with disabilities, according to the Center for Law and Education (CLE).

In a memorandum and letter sent August 11, 2009 to Andrew Pepin, acting assistant secretary in the Office of Special Education and Rehabilitative Services, and Patty Guard, acting director of the Office of Special Education Programs, CLE challenges (1) the Department's interpretation of the IDEA statute and (2) the Department's authority to issue regulations inconsistent with the law.

Under the American Recovery and Reinvestment Act, substantial numbers of local school districts throughout the nation are expected to receive up to twice as much IDEA funding as in the previous fiscal year for the excess cost of educating students with disabilities who receive specialized instruction and related services. The need is undisputed: Just over half of these students graduate with a regular education diploma; one in four drops out; only 7 percent of 8th grade students with disabilities score at or above the standard proficiency level; and only one in 10 special educators is highly qualified to teach students in core academic subjects. In fiscal year 2008, the Department found only 12 states met IDEA requirements.

Despite these findings, the Department has issued an interpretation of a little-used provision in IDEA that distorts the statutory language and thereby jeopardizes funding intended for students with disabilities. The provision allows local school districts that receive IDEA funds that exceed their previous fiscal year allocation to reduce their "maintenance of effort" expenditures by up to 50 percent of that excess. Theoretically, districts that receive IDEA stimulus monies could be in a position to reduce local maintenance of effort funds. However, that option is only available to those districts that meet IDEA requirements under an exception provision that Congress included in the law. This safeguard requires every state department of education to prohibit

maintenance of effort reductions by any school district that fails to meet IDEA requirements, including state-established performance indicators, such as higher graduation rates, reduced drop-out rates and improved academic performance.

However, the Department has issued guidance and promulgated regulations that grant states discretion not to consider such performance indicators when determining whether school districts are meeting their IDEA requirements. According to the Department, states must consider IDEA compliance indicators, but are *not required* to consider performance indicators when making determinations about whether local school districts are meeting the IDEA requirements.

“What we have here is not only an incorrect interpretation of the law, but a blown opportunity,” said CLE’s co-director Kathleen Boundy.

Instead of requiring States to ensure that school districts target their additional IDEA stimulus funds to address the needs of students with disabilities, and to make educationally informed decisions based on data already collected by the states and submitted to the Department that identify the gaps in performance (e.g., achievement and proficiency, access to qualified teachers, participation in general curriculum), the Department has issued an interpretation that ostensibly invites states and school districts to circumvent their legal obligations.

“Rather than requiring use of this infusion of funds to begin to close the gaps for students with disabilities, the Department ignores the very data they require to be collected, and gives the green light to districts –the vast majority which are not meeting performance requirements under IDEA - to reduce their local maintenance of effort,” said Ms. Boundy.

She pointed out that the Department’s interpretation has long-term and precarious implications for special education funding. “Once the local level of effort has been reduced, it remains at that level unless the local district chooses to increase its level of financial support.”

The CLE Memorandum is available at the national advocacy organization’s website:

www.cleweb.org