

MEMORANDUM

TO: Bridget Dooling, Desk Officer
President's Office of Management and Budget

FROM: Andrew J. Pepin
Executive Administrator
Delegated the authority to perform the functions of the Assistant Secretary for
Special Education and Rehabilitative Services

SUBJECT: Request for Emergency Clearance of Information Collection 1820-NEW: Report
on IDEA Part B Maintenance of Effort Reduction (34 CFR §300.205(a)) and
Coordinated Early Intervening Services (34 CFR §300.226)

The Office of Special Education Programs (OSEP) respectfully requests emergency clearance of Information Collection 1820-NEW: Report on IDEA Part B Maintenance of Effort Reduction (34 CFR §300.205(a)) and Coordinated Early Intervening Services (34 CFR §300.226) (1820-NEW). This collection is necessary because an unanticipated event has occurred beyond the control of the Department; specifically the enactment of The American Recovery and Reinvestment Act of 2009 (P.L. 111-5 or ARRA).

Background

The provisions of 34 CFR §§300.205(a), regarding maintenance of effort reduction (MOE reduction), and 300.226, regarding coordinated early intervening services (CEIS) have been incorporated in regulation since the final Individuals with Disabilities Education Act (IDEA) Part B regulations issued on August 14, 2006. Briefly –

- 20 U.S.C. 1413(a)(2)(C)(i), and its implementing regulation at 34 CFR §300.205(a), allows, with certain exceptions, a local education agency (LEA) to reduce its level of state and local expenditures (otherwise known as “maintenance of effort”) by not more than 50 percent of the amount of the excess for any fiscal year for which the allocation received by the LEA exceeds the amount the LEA received for the previous fiscal year.
- 20 U.S.C. 1413(f)(1), and its implementing regulation at 34 CFR §300.226, allows an LEA to use not more than 15 percent of the amount the LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the LEA pursuant to 34 CFR §300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement CEIS. Further, 20 U.S.C. 1413(f)(4), and its implementing regulation at 34 CFR §300.226(d), requires each LEA that develops

and maintains CEIS to annually report to the State education agency (SEA) on: the number of children served under this section who received CEIS; and the number of children served under this section who received CEIS and subsequently received special education and related services under Part B of the Act during the preceding two year period.

OSEP has not previously exercised its authority under 20 U.S.C. 1418(a)(3), which allows the Secretary to annually collect any information that may be needed to implement IDEA, to collect the information describe above because the Part B amounts received by LEAs from fiscal year to fiscal year rarely increased by an amount that would warrant an LEA to take advantage of the provisions of 34 CFR §300.205(a). Further, it has been assumed that LEAs are exercising their responsibilities under 34 CFR §300.226(d). However, due to the enactment of ARRA and the disbursement of \$11.7 billion in IDEA Part B ARRA funds to LEAs (in addition to the regular FY 09 appropriation of \$11.8 billion), the FY 2009 allocations for most LEAs far exceed those of FY 2008; thereby making it advantageous for these LEAs to reduce their MOE under 34 CFR §300.205(a) and to reserve an amount under 34 CFR §300.226 to provide CEIS. Therefore, it is now necessary to collect information on the implementation of 34 CFR §§300.205(a) and 300.226. Collecting this information will allow the Department to –

- Monitor the reduction of MOE
- Determine the amount of FY 2009 Part B funds (both regular IDEA and IDEA ARRA funds) reserved for CEIS
- Exercise our fiduciary responsibilities to prevent fraud, waste and abuse and to ensure the effective use of FY 2009 Part B funds
- Provide information to Congress and the public regarding LEAs that took advantage of these flexibilities

Justification for Emergency Clearance

As previously stated, the enactment of the ARRA, an event beyond the control of the Department, has precipitated the need for this request. An emergency clearance is necessary because SEAs must begin planning for collecting and reporting this information as soon as possible given that they are reporting on the use of FY 2009 funds that are generally available to SEAs and LEAs on July 1, 2009. SEAs need to be informed about the details of this collection as soon as possible so they have the most amount of time available to ensure that the reported data are valid and reliable.

OSEP is requesting OMB approval by August 7, 2009.

Thank you for your prompt consideration of my request. If you have questions, please contact Meredith Miceli of OSEP at 202-245-6028 or meredith.miceli@ed.gov.