

May 27, 2020

Senator Mitch McConnell
Majority Leader
U.S. Senate
Washington, D.C. 20510

Representative Nancy Pelosi
Speaker of the House
U.S. House of Representatives
Washington, D.C. 20515

Senator Chuck Schumer
Minority Leader
U.S. Senate
Washington, D.C. 20510

Representative Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Dear Speaker Pelosi, Leader McCarthy, Leader McConnell and Leader Schumer,

On behalf of national education organizations representing school business officials, school superintendents, school boards, school psychologists and state and local special education directors, we write to urge you to provide important flexibility related to the local maintenance of effort requirements in the Individuals with Disabilities Education Act in the next COVID-19 relief package. This flexibility is essential in ensuring that districts do not have to pay back millions of dollars to the federal government for their inability to maintain funding levels for special education during and as a result of the COVID-19 pandemic.

Our organizations have championed the full funding of the Individuals with Disabilities Education Act (IDEA) for decades and we believe it is critical that the next relief package provides more resources to districts to ensure they are meeting their obligations under IDEA for each student with a disability that we educate as we transform the delivery of education in the upcoming school year.

We write to request key flexibility around a provision in IDEA that is intended to ensure districts maintain constant spending levels on special education, despite other budgetary pressures they experience. The emergence of the COVID-19 pandemic has forced school districts to reallocate resources to meet unexpected needs during this crisis, which include but are not limited to creating and building the infrastructure necessary for remote and online learning, training for school personnel, and computers and hotspots for students. For example, school personnel who normally travel with and assist students with disabilities on specialized school buses were re-deployed to help with food preparation and delivery. Other school personnel who offer assistance in the classroom to students instead delivered instructional packets to students' homes during the school week.

Unfortunately, the maintenance of effort requirements in IDEA do not have a pandemic exception. Specifically, the IDEA local maintenance of effort requirements do not allow districts to adjust their special education funding that they had previously, and in good-faith, dedicated to special education efforts. Under IDEA, when a district fails to maintain fiscal effort for special education, the district must pay back any unspent special education funding to the federal government. This fiscal penalty was intended to ensure districts were incentivized to meet the 100% fiscal effort requirement in the law, but will now lead many districts to return money as a result of the COVID-19 pandemic given the overall unexpected expenditures that a district may have incurred that did not align with prior or budgeted spending levels.

Given the expected shortfall in state and local funding resources and the increased costs that will be incurred to ensure students can return to school in the fall, districts should not be forced to send money that has been spent during this school year, back to the federal government. Furthermore, as districts anticipate delivering COVID-19 impact services, every dollar they have in current and future school-year funding will be needed to ensure districts are meeting the needs of students with disabilities appropriately under IDEA.

Unlike ESSA Title I requirements, IDEA maintenance of effort requirements are very stringent. Title I allows districts to receive a local waiver if they experience a precipitous decline in financial resources. In addition, the maintenance of effort requirement in Title I is 90%, not 100% as in IDEA. Unlike districts, states can receive a waiver from the U.S. Department of Education to reduce Title I and IDEA funding if they are experiencing financial distress. The inequitable funding flexibility related to local maintenance of effort requirements for IDEA when compared to state IDEA maintenance of effort and local Title I makes it essential that Congress act quickly to provide districts with some much-needed financial flexibility in meeting local requirements .

Please provide flexibility to school districts so they do not suffer financial consequences for their failure to allocate special education resources as intended over the course of the school year, through no fault of their own, as a result of the COVID-19 pandemic.

Sincerely,

AASA, The School Superintendents Association
Association of School Business Officials International
Council of Administrators of Special Education
National Association of State Directors of Special Education
National Association of School Psychologists
National School Boards Association

CC: Senator Alexander, Senator Murray, Representative Scott, Representative Foxx