
MEMORANDUM

TO: Act 173 Advisory Group
FROM: Daniel M. French, Secretary
SUBJECT: Review of Flexibility in Technical Guidance
DATE: September 30, 2022

Per our discussion at the last meeting, I met with my team to review our proposed technical guidance from the perspective of flexibility, or to what extent does the new guidance not promote the promised district-level flexibility by Act 173. Based on this review, my conclusion is that our proposed technical guidance does promote that flexibility, but we need to do a better job of communicating it.

For example, at the last meeting the claim of limiting flexibility was made by the example of the perceived change from 20% to 5%. The problem with this comparison is the percentages are not referring to same thing. The 20% referred to the allowable percentage of time special education staff could spend on *related* activities to qualify for reimbursement under the old funding model. 5% refers to the amount of *unrelated* activities staff can perform to still count the cost towards district Maintenance of Effort (MoE).

The proposed technical guidance does not make a shift from 20% to 5% relative to flexibility. They are describing two different requirements, one (eligibility for reimbursement) which has effectively been repealed with the new block grant funding system, and the other (MoE) which has, and remains, a district responsibility.

Also, 5% is not an arbitrary standard. We consulted with Center for IDEA Fiscal Reporting (CIFR) on 5% as a standard and their response was "there is a silent rule for time and effort that is guided by Internal Revenue Code section 132(a)(4) from the IRS called De Minimis benefits that most auditors apply to determine the allowable time that can be spent on non-SPED program activities or other costs objectives. That rule allows employers not to account for certain benefits or items when the amount is so small that making accounting for it could be unreasonable or impractical."

AOE has historically applied the de minimis methodology to time and effort for all Federal grants. From our perspective, it makes sense to extend it to the documentation for state funds used for IDEA MOE both for flexibility and to lessen administrative burden.

I think the communications challenge around imparting the new flexibility is twofold. On the one hand, there are technical nuances and changes that need to be explained (e.g., how to use the MoE calculator). On the other hand, districts are used to a more prescriptive system of documenting costs, and they expect the state to essentially tell them how to do this through formal guidance and regulation even though MoE is a district responsibility.

As we embark upon more flexibility, districts will have multiple ways (flexibility) to document costs relative to their MoE responsibility so we will need to come up with a more dynamic approach to sharing best practices as they emerge. Our preliminary thinking on this indicates that a formal FAQ process like we used during the COVID-19 response would be helpful. We also think it would be useful to convene meetings among practitioners to work through practical examples to help surface and disseminate good practices as they emerge.