



## **American Recovery & Reinvestment Act Implementation: Special Education Recovery Funds for Services to Children and Youth with Disabilities**

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### **BACKGROUND**

On April 1, 2009, the U.S. Department of Education (Department) released detailed guidance about administering special education funding to state and local education agencies (SEAs and LEAs) for the *Individuals With Disabilities Education Act* –IDEA Part B grants. As a preface to the guidance, the Department indicated that it would provide additional updates as necessary and invited interested parties to forward comments on the document.

Of specific concern is the recent interpretation of maintenance of effort waivers under IDEA issued by the Department on April 13, 2009, regarding states' and LEA's eligibility to reduce state and local effort by up to 50 percent of the increase in its subgrant allocation.

The Department issued the following guidance:

The first step for an LEA that is considering taking advantage of this flexibility is to compare the total Federal subgrant allocation the LEA received under the Part B Grants to States program in FY 2008 with the total subgrant Grants to States allocation they expect to receive in FY 2009 (including both the regular Part B LEA Grants to States subgrant allocation *and* any Part B IDEA Grants to States ARRA funds that the LEA receives). If the total Federal subgrant allocation under the Part B Grants to States program received by an LEA in FY 2009 exceeds the amount received by that LEA in FY 2008 under that program, the LEA may be eligible to reduce the level of local, or state and local, special education expenditures otherwise required, by up to 50 percent of this increase.

There are other provisions of the IDEA that limit whether an LEA may reduce local effort under IDEA section 613(a)(2)(C) (34 CFR §300.205). Under IDEA section 616(a) (34 CFR §300.600(a)(2)), SEAs are required to make determinations annually about the performance of each LEA using the following categories: Meets Requirements, Needs Assistance, Needs Intervention, and Needs Substantial Intervention. Under 616(f) (34 CFR §300.608(a)), if in making its annual determinations, an SEA determines that an LEA is not meeting the requirements of Part B, including meeting targets in the state's performance plan, the SEA *must* prohibit that LEA from reducing its MOE under IDEA section 613(a)(2)(C) for any fiscal year. Therefore, an SEA must prohibit an LEA from taking advantage of the MOE reduction under IDEA section 613(a)(2)(C) if the LEA's determination is Needs Assistance, Needs Intervention, or Needs Substantial Intervention.

Also, IDEA section 613(a)(2)(C)(iii) requires an SEA to prohibit an LEA from reducing its MOE if the SEA has taken responsibility for providing a FAPE in the LEA because the LEA is unable to establish and maintain programs of FAPE, or the SEA has taken action against the LEA under IDEA section 616. Finally, an LEA that is required to use 15 percent of its IDEA Part B allocation on CEIS because the SEA identified the LEA as having significant disproportionality under 34 CFR §300.646, will not be able to reduce local MOE under IDEA section 613(a)(2)(C).

## **PROBLEM**

Given this interpretation, LEAs are subjected to conflicting goals and requirements. On one hand, the LEAs are directed to move quickly in using the funds to stimulate the economy. On the other hand, LEAs would be restricted in the availability of the funds due to existing requirements not specifically written for these unusual circumstances.

For example, the Department stated in its April 1<sup>st</sup> guidance on IDEA recovery funds that, “SEAs should encourage LEAs that can and do take advantage of this flexibility to focus the freed-up local funds on one-time expenditures that will help the state make progress on the goals in the SFSF program, such as improving the equitable distribution of effective teachers and the quality and use of assessments to enhance instruction for students most in need.”

However, imposing the restrictions cited above on maintenance of fiscal effort is not consistent with the intended purpose of the ARRA and the Department statement in the preceding paragraph. Districts that are unable to reduce fiscal effort may not be able to preserve jobs and will miss this opportunity to rebalance the relative federal/state/local financial support of special education.

Further, several LEAs in a number of states are in the category of “Needs Assistance” for the first time. This first-time determination provides no opportunity for the district to correct a problem before the imposition of the sanction on maintenance of fiscal effort. Applying this punitive approach without first having provided the opportunity to correct the deficiency is simply not fair.

When LEAs received their level of determination of “Needs Assistance,” they were not aware that it would trigger the prohibition reducing its fiscal effort. If this sanction would have been known in advance it, it is likely that more would have appealed their level of determination. Secondly, the designation of needing assistance is broad and is interpreted in varying degrees. The category of “Needs Assistance” in one state may encompass minor state technical assistance, perhaps assistance with purchasing assistive technology, or on-site peer reviews. However, said category does not imply major intervention, as would the other designations of “Needs Intervention” and “Needs Substantial Intervention.”

## **RECOMMENDATION**

A resolution to this problem is urgently needed and must be driven by the intent of the stimulus package. Therefore, it is recommended that the Administration issue a statement as soon as practicable. Two options are offered:

- (1) Issue a statement that would temporarily remove the current State requirement to prohibit the LEA from reducing its MOE under IDEA section 613(a)(2)(C), thus allowing them to take full advantage of the MOE reduction under IDEA section 613(a)(2)(C) if the LEA’s determination is Needs Assistance, Needs Intervention, or Needs Substantial Intervention; or
- (2) Issue a statement that would clarify that for funds reserved under ARRA, the state action under 613(a)(2)(c)(iii) would only apply to substantial actions when needed that have not been met. Under this scenario, LEAs would be able to use the funding under ARRA to address Needs for Substantial Interventions.

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