



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

OCT 30 2009

Mr. Tim Harris
Director of Special Education
Montana Office of Public Instruction
P.O. Box 202501
Helena, MT 59620-2501

Dear Mr. Harris:

This is in response to the April 20, 2009 letter to me from Mr. Bob Runkel, former Acting Deputy Superintendent, regarding guidance on the Individuals with Disabilities Education Act Part B (IDEA-B) American Recovery and Reinvestment Act (ARRA) dated April 13, 2009, specifically Question D-7. His letter states that you believe the U.S. Department of Education (Department) is in error in its guidance to States when it interpreted provisions of law to mean that a State educational agency (SEA) must prohibit a local educational agency (LEA) from taking advantage of the maintenance of effort (MOE) reduction under IDEA section 613(a)(2)(C) if the LEA's determination is "Needs Assistance," "Needs Intervention," or "Needs Substantial Intervention" and that the SEA should be required to prohibit an MOE reduction under section 613(a)(2)(C) only when an SEA has taken action against an LEA under section 616, consistent with the provision in section 613(a)(2)(C)(iii). He further states his belief that our interpretation has adverse consequences for both students and schools in that it may result in LEAs being less likely to provide additional support for special education and related services in the future and will not allow affected LEAs to use freed-up funds to preserve jobs in regular education.

Section 616(f) of the IDEA and the implementing regulation in 34 CFR §300.608(a) require that if an SEA determines that one of its LEAs is not meeting the requirements of Part B, including the targets in the State's performance plan, the SEA must prohibit the LEA from reducing the LEA's MOE under IDEA section 613(a)(2)(C). Department guidance dated April 13, 2009 included the following clarification of this provision:

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."

We believe that this is the only reasonable interpretation of the provisions at IDEA section 616(f). As a general matter, we read the IDEA so as to avoid rendering statutory language as merely superfluous, and so disagree with his assertion that section 616(f) be read to provide no further limitation to the LEA MOE reduction than that provided by section 613(a)(2)(C)(iii) (34 CFR 300.205(c)). In sum, we cannot grant his request that LEAs that have received the determination of "Needs Assistance" be allowed to take advantage of the 50 percent MOE reduction in section 613(a)(2)(C).

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have further questions, please do not hesitate to contact my office.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education
Programs