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

Ms. Kathleen Boundy
Center for Law and Education
99 Chauncy Street
Suite 700
Boston, MA 02111

APR 4 2012

Dear Ms. Boundy:

This letter is in response to your letter of August 17, 2011, regarding the local maintenance of effort requirement in section 613(a)(2)(A)(iii), (B) and (C) of the Individuals with Disabilities Education Act (IDEA) and our response on June 16, 2011, to a question raised by Dr. Bill East, Executive Director of the National Association of State Directors of Special Education. This earlier correspondence concerned the level of effort required of a local educational agency (LEA) in the year after it fails to maintain effort under section 613(a)(2)(A)(iii), (B) and (C) of the IDEA. In our June 16th letter to Dr. East, the Department stated that, in the absence of an explicit alternative rule, an LEA would be obligated only to meet a level of effort equal to the amount it expended in the prior year, even if it had not maintained effort in the prior year. After further review, we have determined that the level of effort that an LEA must meet in the year after it fails to maintain effort is the level of effort that it should have met in the prior year, and not the LEA's actual expenditures. We are, therefore, withdrawing the letter to Dr. East.

LEAs, at a minimum, should not reduce their level of financial support for the education of children with disabilities, except as permitted in section 613(a)(2)(B) and (C), so that they can continue to meet their obligations to provide the special education and related services that children with disabilities need to receive a free appropriate public education.

Based on section 607(d) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents the interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented. The Department intends to seek comments from the public on this issue.

Thank you for your views on the letter of June 16, 2011 to Dr. East. We appreciate your thoughtful comments, and your desire to improve the education of children with disabilities.

Sincerely,

Alexa Posny, Ph.D.
Assistant Secretary
Office of Special Education and
Rehabilitative Services

Melody Musgrove, Ed.D.
Director
Office of Special Education Programs