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April 22, 2009

To: Exceptional Children Directors
Charter School Directors
State Operated Program Directors

From: Mary N. Watson, Director
Exceptional Children Division

RE: Recovery Funding (IDEA)

The American Recovery and Reinvestment Act of 2009 (ARRA) appropriates significant new funding under Part B of the Individuals with Disabilities Education Act (IDEA). These funds will provide school systems an opportunity to implement innovative programs and services to improve outcomes for students with disabilities.

The Department of Education has released official guidance on the use of the IDEA ARRA funds. This guidance can be found at <http://www.ed.gov/policy/gen/leg/recovery/index.html>.

One area that continues to cause some confusion across NC is the potential to reduce a local education agency's (LEA) Maintenance of Effort (MOE). The following guidance on this issue was released April 13, 2009 and is included below:

How can an LEA determine that it is eligible to reduce its state and local effort by up to 50 percent of the increase in its subgrant allocation? (Revised April 13, 2009)

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 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: Meet 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 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 or 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).

In summary, an LEA can reduce its MOE for IDEA services by 50 percent of the increase of federal IDEA funds from FY 2008 to FY 2009 if:

1. the LEA has a performance determination of "Meets Requirements", and
2. the State Education Agency has not taken responsibility for providing a free appropriate public education (FAPE) in the LEA or taken action against the LEA under IDEA section 616, and
3. the LEA is not identified as having significant disproportionality under 34 CFR 300 §300.646.

If you have any questions concerning this issue, please contact Laura Snyder at lsnyder@dpi.state.nc.us or 919-807-3992.

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