

**MODIFICATIONS TO QUESTIONS IN THE
APRIL 2009 GUIDANCE ON THE
INDIVIDUALS WITH DISABILITIES EDUCATION ACT, PART B**

**U.S. DEPARTMENT OF EDUCATION
APRIL 13, 2009**

INTRODUCTORY NOTE

On April 1, 2009, the U.S. Department of Education (Department) released detailed guidance on the program. As a preface to the guidance, the Department indicated that it would provide additional or updated guidance as necessary and invited interested parties to provide comments on the document.

In response to comments received, we are updating answer D-7. This question, with the revised answer, is provided below. The Department intends to periodically incorporate new questions and answers into a revised version of the complete guidance document.

The answer to the question below modifies and supersedes the answer in the initial guidance:

D-7. 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 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).