



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

Dated January 24, 2008

Dr. John Copenhaver
Director
Mountain Plains Regional Resource Center
Utah State University
1780 North Research Parkway, Suite 112
Logan, Utah 84341

Dear Dr. Copenhaver:

This letter is in response to your electronic mail (email) communication of September II, 2007, in which you ask six questions concerning Part B of IDEA. These questions are listed below, along with the answer to each question.

1. Are Impact Aid funds, at the District level, considered to be Federal Funds or local funds?

Impact Aid funds are Federal funds that are designed to assist local school districts that are affected by the presence of Federal activities. No accountability to the Federal government is required for Impact Aid funds received as Payments for Federal Property under section 8002 of the Impact Aid Program (IAP) statute or Basic Support payments under section 8003(h) of the IAP statute. School districts may use those IAP grant funds in whatever manner they choose, in accordance with State and local requirements. Payments for Children with Disabilities under section 8003(d) of IAP, which some districts receive on behalf of certain Federally-connected children with disabilities, must be used for the increased costs associated with educating those children. Formula and discretionary construction grants that certain school districts receive under section 8007 of the IAP statute must be spent for repair or construction of an Impact Aid district's school facilities.

2. If Impact Aid funds are considered to be Federal Funds, is it allowable for a Part B applicant to use its Impact Aid funds to make repayment to the State for failure to maintain fiscal effort?

Part B regulations provide that

The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA in determining an LEA's compliance with the requirement in paragraph (a) of this section.

§300.203(b)(3).

Because accountability to the Federal government is not required for section 8002 or 8003(b) funds, those funds may be used to make repayment to the State for failure to maintain fiscal effort. However, as noted above, because school districts are accountable to the Federal government for funds provided through sections 8003(d) and 8007 of IAP, those funds may not be used to make repayment to the State for failure to maintain fiscal effort.

3. Are district expenditures of Impact Aid funds for support of special education and related services to be included in the calculation of maintenance of fiscal effort?

There is no requirement that any Impact Aid funds be included in the maintenance of effort calculation under IDEA. Whether they could be included depends on the type of Impact Aid funds. For example, as noted above, Payments for Children with Disabilities under section 8003(d) of IAP must be used for the increased costs associated with educating those children. Similarly, formula and discretionary construction grants received under section 8007 of the IAP statute must be spent for repair or construction of an Impact Aid district's school facilities. Since these funds require accountability to the Federal government, States may not include these funds in the calculation of maintenance of effort under the IDEA.

4. Are Medicaid funds that a district receives in the form of reimbursement considered to be Federal or local funds?

Under 34 CFR §300.154(g)(2), reimbursements from Federal funds, including Medicaid, will not be considered "State and local" funds for the purposes of maintenance of effort requirements.

5. Are Medicaid funds expended by a district for support of special education and related services required to be included in the calculation of maintenance of fiscal effort? In the OSEP letter to Burgett (Feb. 16, 1989) it states that Medicaid funds should not be used in calculating MOE. Is this still true? If not, why not?

See the answer to question #4 above. Medicaid funds may not be treated as State and local funds for the purposes of maintenance of effort calculations.

6. Please identify Federal Funds used for support of education for which accountability to the federal government is not required.

With the exception of the Impact Aid funds noted in question #1, we are not aware of any other Federal funds used to support education for which accountability to the Federal government is not required. However, it is possible that other funds exist which may be administered by other agencies of the Federal government.

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.

We hope this information is helpful to you. If you have further questions, please contact Dr. Deborah Morrow at 202-245-7456.

Sincerely,

A handwritten signature in cursive script that reads "Patricia J. Guard".

Patricia J. Guard
Acting Director
Office of Special Education
Programs