

American Recovery and Reinvestment Act  
SPECIAL EDUCATION PROGRAMS  
Question and Answer Document

GENERAL QUESTIONS

**1) When does IDEA stimulus money need to be spent by?**

September 30, 2011

**2) Can a school increase its SPED fund balance by banking either its State or Local funds and spending the Federal money?**

No. As a condition of receiving IDEA funds, the district must ensure that it budgets and maintains its fiscal effort out of local, or state and local funds first, before it can use its federal funds.

**3) Can you carry over any these stimulus funds through FY10 or FY11?**

The IDEA funds may be carried over for use in SY 2010-11.

**4) In regards to the increased money we are seeing for 611 and 619 that is not the stimulus money, is that money going to be there again in FY11 and beyond?**

Probably, but that is up to the Congress.

**5) When will we be able to start spending any of these funds?**

The funds can pay for activities beginning February 17, 2009.

APPLICATION FOR FUNDS

**1) Will there be two applications coming out? (i.e. One for our regular allocation and one for the ARRA funds)**

There will be two applications. The regular Flow-through Fund Application will have parts of the ARRA information needed in it. For example: the FY 09 regular application will include the options of using up to 15% of your total allotment (both regular IDEA and ARRA – a chart with amounts will be included) for coordinated early intervening services (CEIS); the flexibility to reduce the local expenditures for special education (if the state law is amended in January); and the proportionate share for private schools (which will include both regular and ARRA allocations combined).

The ARRA application will be a very small application and will include a budget in the E – Grant System. This way the ARRA expenditures can be drawn down from the system.

## PROFESSIONAL DEVELOPMENT

### **1) Can we use SPED dollars for professional development?**

Yes, with a caveat. You can either send special education teachers to professional development that will assist them in working with students with disabilities. Or, you can bring in professional development to the district, which will supplement the education of students with disabilities. This could be open to both special education teachers and general education teachers who have students with disabilities in their classrooms. An example would be if you want to bring in professional development on how to work with students with Attention Deficit/Hyperactive Disorder to your school. After this training there will be follow-up teleconferences where teachers continue to learn best practices and can communicate specific questions to the presenter. The professional development cost is NOT on a per teacher basis, it is based on a PER DAY cost. This type of professional development would be open to all of the special education teachers and any general education teachers that work with students with disabilities in their classroom.

If the professional development is based on a "per individual" cost instead of a "per day" cost or a lump sum cost, the cost for the professional development would have to be prorated out between general and special education. For example: if you bring in professional development for students with disabilities that will cost \$10,000 whether you have 25 teachers (sped and general) or 50 teachers. Nothing needs to be prorated, because the cost is the same. But, if your professional development costs \$1,000 per teacher with a maximum of 25 teachers and you decide that 5 special education teachers and 20 general education teachers can participate you can only pay for the special education teachers out of your special education dollars.

### **2) What part of PD can the Sped stimulus money be used for? Can it be used for General Education PD?**

The stimulus IDEA funds can only be used for activities allowable under the regular IDEA Part B 611 & 619 programs. ARRA or regular IDEA funds could be used for general education professional development if the district is using up to 15 percent of the funds for providing Coordinated Early Intervening Services (CEIS). Those funds are used for at-risk general education students and professional development for teachers who teach those students. There is a Q and A Guidance document on the DOE Stimulus Web Page.

### **3) Any problems with spending PD money for teachers' salaries for their extra time?**

If a SE teacher is putting in extra time, such as in the summer or spending a Friday night and Saturday at a training, the district could provide them a stipend for their time using the money. The teacher could be paid for professional development only if it is directly related to the Title I or IDEA program. The stimulus funds can only be used for activities allowable under the applicable regular Title I or IDEA program.

### **4) Is funding an ESA considered PD money? Can we use Sped money to do this?**

The ESA can only be paid Title I or IDEA stimulus money to provide services or training that is allowable under the applicable regular Title I or IDEA program. If you are using CEIS funds you would need to follow the guidance for using those funds appropriately.

## ALLOCATIONS, AVAILABILITY AND FUNDING

### **1) Are stimulus dollars for one year or two?**

US DOE awarded half of the ARRA funds to the states on April 1, 2009. The second half will be awarded on September 30, 2009.

The ARRA funds are considered FY 2009 funds; however costs are allowable beginning February 17, 2009. LEAs must obligate all ARRA funds by September 30, 2011.

### **2) Will this money come in two separate payments?**

The ARRA money will not come to school districts in two separate payments. The ARRA funds will be disbursed on a reimbursement basis as costs are incurred and reported to the Department of Education. Districts will have to expend the funds, draw down from the state and the state will draw down from the US DOE.

### **3) Will this money come sooner so we could use some in this fiscal year?**

As soon as the application for the funds is completed, districts will be able to go back to February 17<sup>th</sup>, for their allowable costs if needed. US DOE has allowed this flexibility.

### **4) Could I use SPED stimulus dollars to cover local reserves we're spending on SPED this year?**

Yes, as long as the district continues to meet their required maintenance of effort for Special Education.

### **5) Can you purchase mobility vans with SPED money? Or wheelchair buses?**

No, not until the proposed statute change for allowing the transfer out of state and local funds from the special education fund (an amount not to exceed 50% of the increase in IDEA funding) is passed and then the district could transfer into capital outlay. The capital outlay fund must be used for these types of expenditures.

### **6) Do the regular stipulations for SPED apply to those dollars that aren't covered under the 50% rule?**

Yes.

## EXTRAORDINARY COST FUND

### **1) Would I be excluded from using the Extraordinary Cost Fund if I used my ARRA funds in '09 – 10 and then have an unforeseen extraordinary cost in 2010 - 2011?**

The Extraordinary Cost Fund does allow for individual circumstances. If something happened that was unforeseen when you were budgeting and expending your special education funds, the ECF board would take that into consideration.

### **2) What effect does the extraordinary cost fund have on ARRA dollars?**

Obviously ARRA funds for special education should be utilized first before applying for ECF funding.

**3) Does a school district need to spend stimulus funds first before going to the Extraordinary Cost Fund?**

Yes, if resources are available (ARRA funds) then the district should utilize these before applying to ECF.

**4) Can you go to Extraordinary Cost fund and still use Stimulus \$ on General Ed side?**

Generally no, see question # 1.

**5) What if you spend all the money and then a high cost student comes into your district? Can we go to the Extraordinary Cost Fund then?**

Yes, there are allowances for individual circumstances.

## MAINTENANCE OF EFFORT

The "particular cost test" was removed from the regulations by an amendment published in the Federal Register on August 9, 1992 (37 FR37652) and became effective on October 3, 1992. Therefore, no requirement currently exists related to supplanting "particular costs" and if an LEA maintains local, or state and local, effort, it will NOT violate the supplement/not supplant requirements of the IDEA.

**1) Does the district have to spend the same of amount of local or local and state funds this next year for maintenance of effort as previously spent?**

Yes, but with some exceptions. The standard for determining whether the MOE requirement has been met is that the LEA actually expends, in total or per capita, an equal or greater amount of local, or state and local, funds in each subsequent year.

A district may reduce the level of expenditures under Part B of the Act, below the level of those expenditures for the preceding fiscal year if the reduction is attributable to the following exceptions.

- The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.
- A decrease in the enrollment of children with disabilities.
- The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child-- (1) has left the jurisdiction of the agency; (2) has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or (3) no longer needs the program of special education.
- The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.



- The Increase is \$1,000,000
- Maximum MOE reduction (50%) \$500,000
- Maximum CEIS is 15% of \$2,000,000 = \$300,000
  - If MOE Reduction is \$500,000
  - Then max CEIS is \$0
  - If the CEIS is \$300,000
  - The MOE reduction max is \$200,000

CEIS money has to be subtracted from your MOE money.

### **3) How do I know how much I can use?**

There will be an Excel table with the amount (up to 15%) that a district can use available with the general application.

### **4) When can I use the funds?**

The funds set aside for CEIS may be used by the district in school year 2009 - 2010 or in both school years 2009 - 2010 and 2010 - 2011, as long as the funds are obligated by September 30, 2011.

### **5) How can special education funds be used for non-special education students with South Dakota's accounting system?**

For CEIS accounting a district will "revenue correct" for the amount of funds used in general fund for CEIS purposes. This provides a way for the district to account for the exact amount of revenue and expenditure that is attributable to CEIS. Please contact either Susan Woodmansey or Bobbi Leiferman if you have further questions regarding this accounting concern.

### **6) What activities may be included as CEIS?**

Professional development for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

For example:

- an LEA might use CEIS to provide behavioral interventions to students without disabilities who receive a certain number of disciplinary referrals, perhaps as a part of a Positive Behavioral Interventions and Support (PBIS) initiative.
- CEIS also might be used to fund reading and math specialists to work with students without disabilities who have not reached grade-level proficiency in those subjects, or
- to fund after-school tutoring for students without disabilities who score below "basic" on the Dakota STEP assessment.

### **7) How may I use CEIS funds for professional development?**

CEIS funds may be used to provide professional development to all personnel who are responsible for students who need additional academic and behavioral supports to succeed in a general education environment, but who have not been identified as needing special education.

Under LIMITED circumstances, personnel who 1) are solely responsible for students receiving special education services or 2) teach students who do NOT need additional support (upper level course work, AP classes, and advanced high school classes) may participate in professional development funded with CEIS funds. These personnel may participate so long as the cost of the professional development does not increase and including those personnel would not exclude other personnel who are responsible for students who need additional support but have not been identified as needing special education.

### **8) What are the reporting requirements for CEIS?**

Each LEA that implements CEIS is required to report to Special Education Programs:

- the number of children who received CEIS and the number of those children who subsequently received special education and related services under Part B during the preceding two-year period (i.e., the two years after the child has received CEIS).
- States and LEAs must maintain these records for audit and monitoring purposes but are not required to report these data to US ED unless requested to do so.

### **9) What are the supplement not supplant requirements for CEIS funds?**

The department will presume that an LEA is in violation of the IDEA's supplement not supplant provisions if it uses IDEA funds in one of the following ways:

- to provide services that are otherwise required by Federal, State or local law; or
- to provide services that were paid for with other funds in a prior year, including, if the IDEA funds are used for CEIS activities coordinated with activities funded under the ESEA, and the IDEA funds are used to provide services that were paid for with ESEA funds in the prior year.

An LEA might be able to rebut these presumptions through the presentation of evidence that, even without CEIS funds, the other funds would not have been used in the current year for the activities now paid for with CEIS funds.

### **10) What about RTI, can we use this money to employ staff which are doing RTI?**

CEIS funds may be used to support RTI as long as the CEIS funds are used for services to students without disabilities in need of additional academic or behavioral support **and** supplement, not supplant, other funds used to implement RTI.

- Tier one applies to all students in a general education setting. You can not use CEIS funds for tier one.
- Tier two activities provide specialized small group instruction for students determined to be at risk for academic and behavior problems. It would be

appropriate to use CEIS funds to support these tier two activities for at-risk general education students.

- Tier three includes specialized individualized instructional or behavioral support for students with intensive needs. CEIS funds could be used for activities that support general education students at risk for academic and behavioral problems, but could not be used for students who are receiving special education and related services.

## 50% RULE TO DECREASE MAINTENANCE OF EFFORT

### **1) May LEAs use the flexible authority available under the IDEA (34 CFR §300.205) to reduce their local, or state and local, expenditures for special education and related services?**

Federal regulations allow for districts to transfer state and/or local funds not to exceed 50% of the annual increase in IDEA allocations. Currently state statutes are **MORE** restrictive on the transfer of SE state & local funds – therefore it is NOT currently permissible.

- DOE will propose legislation in 2010 Legislative Session to allow use of this flexibility. (earliest possible effective date would be end of January, 2010)
- If legislation is passed – districts could transfer state and/or local funds from special education to other district funds based on this allowance in federal regulations.

### **2) If the South Dakota statute is changed, how can the LEA use the flexibility?**

Under certain circumstances, in accordance with IDEA, in any fiscal year that an LEA's subgrant allocation exceeds the amount that the LEA received in the previous fiscal year, that LEA may reduce the level of local, or state and local, expenditures otherwise required by the LEA MOE requirements by up to 50 percent of the increase in the LEA's subgrant allocation. The LEA must spend the "freed-up" local or state and local, funds on activities that are authorized under the Elementary and Secondary Education Act (ESEA) of 1965.

### **3) 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?**

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.

- FFY 09 allocation = \$100,000
- FFY 2010 allocation (incl ARRA) = \$180,000 (increase of \$80,000)
- Allowable transfer = \$40,000

### **4) Can you use half of both the increased IDEA amount and also stimulus money from IDEA for General Ed. and Capital Outlay expenses?**

The regular and ARRA IDEA allocations are combined and considered one school year 2009-10 allocation for the purpose of determining the amount of increase over the prior year.

So the district would subtract the school year 2008-09 allocation from the combined school year 2009-10 allocations to determine the amount of increase.

At this time in our state this is not an option. If it becomes an option with the passage of a special bill in January of 2010, a district can use up to 50% of the "freed-up" funds on activities that are authorized under the ESEA.

**5) If a school decides to wait for the Legislature and the Governor to approve in January, can the money be used for those purchases from 1<sup>st</sup> semester which were already spent?**

The district could take the chance that this will be approved. If this is not approved the district will be responsible for these costs from other sources. We can not guarantee that the legislature will approve the statutory changes.

**6) Can you purchase vehicles or capital outlay items with the other ½ of IDEA?**

If the proposed statute change for allowing the transfer out of state and local funds from the special education fund (an amount not to exceed 50% of the increase in IDEA funding) is passed, then the district could transfer into capital outlay for the purchase of vehicles and/or other capital outlay items.

**7) Do the 50% rule funds have to be spent in 2009 – 2010?**

The ARRA guidance indicates it would need to be spent in the year in which the MOE was reduced, however we are awaiting further clarification from OSEP because there have been questions on this.

**8) If you utilize the 50 percent rule, wouldn't you be reducing your MOE?**

Yes, that is the part of the flexibility. For example: if a district expended \$2,000,000 of local and state funds on special education and related services in FY 2008 and lowered that amount by \$350,000 in FY 2009, the district must expend at least \$1,650,000 in state and local funds on special education and related services in FY 2010 to meet the MOE requirement.

## PARENTALLY-PLACED PRIVATE SCHOOL STUDENTS

**1) Do we still have an obligation to private schools in our district in regards to the proportionate share?**

Yes.

**2) How will we calculate the proportionate share?**

The regular application will guide you through this process. You have to aggregate the FY 2009 funds from both the ARRA and regular IDEA money and then apply the formula to the aggregated amount.

**3) Do we expend the funds from our regular IDEA funds or can we use the ARRA funds?**

The district can determine where they want to expend the funds from, however if it comes from the ARRA funds, the district will need to follow all of the reporting requirements.

Updated: 05/04/09

**4) If a district has already completed its consultation required under IDEA, will the district have to conduct additional consultation because the IDEA ARRA funds will increase the amount available for equitable services to parentally-placed private school children?**

Timely and meaningful consultation must occur during the design and development of special education and related services. In any case, the district must ensure that it has engaged in consultation with the private school representatives and representatives of parents of parentally-placed private school students with disabilities about how the additional funds available for services will be used.