



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

SEP 19 2001

Dr. Ed Richardson
State Superintendent of Education
Alabama State Department of Education
Gordon Persons Building
P.O. Box 302101
Montgomery, Alabama 36130-2101

Dear Superintendent Richardson:

This is a response to your letter dated May 4, 2001, addressed to me at the Office of Special Education Programs (OSEP). In your letter you asked for guidance regarding whether the Alabama State Department of Education may use Part B funds under the Individuals with Disabilities Education Act (IDEA) to pay for litigation costs associated with lawsuits involving two local educational agencies in Alabama. The first lawsuit you ask about resulted in a Consent Decree in *Lee v. Macon* and the second resulted in a settlement agreement in *F.M. & L.G., et al. v. Barbour County Board of Education, et al.*

With respect to *Lee v. Macon* you describe the consent decree as requiring "the Department to address the over-representation of African-American students identified as mentally retarded and emotionally disturbed, the under-representation of African-American students as have specific learning disabilities and giftedness, and facilities." Most of the identified costs associated with this lawsuit are allowable under Part B as costs incurred as a result of compliance with specific provisions of the Federal award as allowed by #20 (Fines and Penalties), Attachment B, OMB Circular A-87, Cost Principles for State, Local and Indian Fiscal Government.

Section 618(c) of the IDEA requires the States to examine data to determine if significant disproportionality based on race is occurring in the identification of children into particular disability categories and in the placement of children with disabilities into particular educational settings. If significant disproportionality is discovered, the State must review, and if appropriate, revise policies, procedures and practices to ensure compliance with the IDEA. This would cover activities to address over-representation of African-American students as students who have mental retardation and who are emotionally disturbed and under-representation of African-American students as having specific learning disabilities. However, "giftedness" is not a category of disability under the IDEA, and activities related to addressing the under-representation of African-American students as "gifted" would not be allowable. Also, we do not understand the reference in your description of the activities under the consent decree to "and facilities".

The disability awareness training and ongoing professional development activities in instructional and behavioral interventions would be allowable, as these activities also are required for compliance with specific provisions of the Federal award. Disability awareness training is generally an integral part of child find activities required by section 612(a)(3) of the Act. Ongoing professional development activities in instructional and behavioral interventions are required activities under section 612(a)(14) (Comprehensive System of Personnel Development) and section 653(c)(3)(D)(i), (vi) and (vii) (State Improvement Strategies).

With regard to *F.M. & L.G., et al. v. Barbour County Board of Education, et al.*, the costs associated with this lawsuit cannot be paid with Part B funds. The fees and travel expenses of the expert panel members are not incurred as a result of compliance with specific provisions of the Federal award.

We hope that this information is helpful. If you need further assistance, you may contact Dr. JoLeta Reynolds or Troy Justesen at 202-205-5507 at OSEP.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education Programs

cc: Mr. Mabrey Whetstone
Alabama Department of Education