



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

JAN -7 2010

Collette E. Chapman, M.Ed.  
Deputy Associate Superintendent  
Exceptional Student Services  
Arizona Department of Education  
1535 West Jefferson, Bin 34  
Phoenix, Arizona 85007-3280

Dear Ms. Chapman:

This is in response to your electronic mail (e-mail) inquiry dated November 24, 2009 regarding whether Arizona's General Accounting Office (AZ-GAO) can bill indirect costs to Arizona State agencies that received awards under the American Recovery and Reinvestment Act of 2009 (ARRA). The Exceptional Student Services section of the Arizona Department of Education (ADE) received, in Federal fiscal year (FFY) 2009, an Individuals with Disabilities Education Act (IDEA) ARRA award of \$178,476,064, in addition to a regular IDEA award of \$184,310,869.

In your e-mail you include a notice dated November 18, 2009, in which AZ-GAO informed Arizona agencies that received ARRA funds that:

The State of Arizona submitted an amended 2009 statewide cost allocation plan (SWCAP) specific to the ARRA statewide costs. We received approval on October 20, 2009 from the Federal Department of Health and Human Services, Division of Cost Allocation for our plan. The approved plan will allow for 0.49418% to be charged against the total ARRA award amount. Therefore, State agencies that have received ARRA funding directly from a Federal agency will be receiving a billing for their portion of the charge.

You note that since the Exceptional Student Services section of the Arizona Department of Education received an IDEA ARRA award, the section was "billed" \$881,993 by the AZ-GAO. You further note that this amount is approximately 1/3 of the current maximum administrative funds allowed to be retained under your regular IDEA grant.

Funds provided under the ARRA are a supplemental grant to States. The IDEA ARRA funds were provided to States primarily to be allocated to LEAs. In general, the distribution of these funds is governed by the same provisions of IDEA that apply to the State's regular IDEA allocation. Under 34 CFR §§300.705 and 300.815, each State that receives a grant under sections 611 and 619 of the IDEA for any fiscal year must distribute any funds the State does not reserve under 34 CFR §§300.704 and 300.812 to local educational agencies (LEAs), including public charter schools that operate as LEAs, in the State that have established their eligibility under section 613 of the IDEA for use in accordance with Part B of the IDEA. The amount of

IDEA funds (both ARRA IDEA and regular IDEA funds) that can be retained by the State is limited by 34 CFR §§300.704 and 300.812 to a small portion of the total IDEA grants.

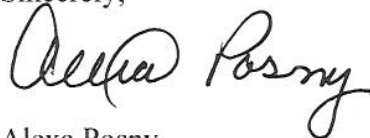
The ARRA did not include an increase in the amount of IDEA funds a State could retain for State use, however, section 1552 of the ARRA allowed the Secretary of Education (Secretary), after notice and comment rulemaking, to reasonably adjust the applicable limits on administrative expenditures to help defray the costs of data collection requirements initiated pursuant to the ARRA. The Secretary conducted notice and comment rulemaking and in the final notice dated October 27, 2009 (74 Fed. Reg. 55215-55220), the Secretary provided notification that States could adjust the statutory caps on funds for State administration under Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended, and Part B, section 611 of the IDEA. For the Arizona IDEA program, ADE is allowed to increase the IDEA, section 611 State administrative set-aside by \$178,476.

AZ-GAO may only charge, under the ARRA SWCAP, indirect costs against any IDEA ARRA funds retained at the State level. State indirect costs rates cannot be applied to the LEA subgrants, nor may the State withhold funds from the LEA subgrants for State use in excess of the amounts specified in 34 CFR §§300.704 (as modified by the October 27, 2009 notice) and 300.812. In addition, Arizona's ARRA SWCAP does not apply to non-ARRA IDEA funds that are retained for State administration.

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.

Please do not hesitate to contact this office if you have further questions.

Sincerely,

A handwritten signature in black ink that reads "Alexa Posny". The signature is written in a cursive style with a large, looped "A" and a long, sweeping "y".

Alexa Posny  
Acting Director  
Office of Special Education Programs