



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

June 8, 2020

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Dear XXXXXXXXXXXX:

This letter addresses your February 20, 2020, electronic correspondence to me regarding the use of Individuals with Disabilities Education Act (IDEA) Part B funds to pay hearing officers to conduct due process hearings under IDEA. Specifically, you ask whether it is permissible for States to use IDEA Part B funds for this purpose. We regret the delay in responding.

We note that Section 607(d) of IDEA prohibits the Secretary from issuing policy letters or other statements that establish a rule that is required for compliance with, and eligibility under, IDEA without following the rulemaking requirements of Section 553 of the Administrative Procedure Act. Therefore, based on the requirements of IDEA Section 607(e), this response is provided as informal guidance and is not legally binding. This response represents an interpretation by the U.S. Department of Education (Department) of the requirements of IDEA in the context of the specific facts presented and does not establish a policy or rule that would apply in all circumstances.

The answer to your question requires an examination of the requirements that apply to Federal grants under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (hereafter, Uniform Guidance) as well as IDEA and its implementing regulations.

Uniform Guidance: Allowability of Costs Charged to Federal Awards

Subpart E of 2 C.F.R Part 200, Cost Principles of the Uniform Guidance, sets out general criteria that must be met for costs to be allowable under Federal awards. In order to charge a cost to a Federal award, among other factors, it must be necessary and reasonable for the performance of the Federal award and be allocable to the Federal grant. 2 C.F.R. § 200.403.

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The reasonableness of a given cost is determined by applying the considerations in 2 C.F.R. § 200.404, including whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of

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the Federal award. A cost is allocable to a particular Federal award or other cost objective if the goods or services involved are chargeable or assignable to the Federal award or cost objective in accordance with the relative benefits received. The requirements for meeting this standard are set forth in 2 C.F.R. § 200.405.

The Uniform Guidance, at 2 C.F.R. §§ 200.420–200.475, sets out “General Provisions for Selected Items of Cost.” Among the items included are “[c]osts of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the non-Federal entity,” which are allowable, subject to certain conditions. 2 C.F.R. § 200.459(a). The regulation sets out the relevant factors in determining the allowability of such costs. 2 C.F.R. § 200.459(b).

Part B of IDEA: Ensuring the Opportunity for an Impartial Due Process Hearing

The Department makes grants to States to assist them in providing special education and related services to children with disabilities in accordance with Part B of IDEA. 20 U.S.C. 1411(a)(1); 34 C.F.R. § 300.700(a). A portion of the State’s allocation may be reserved by the State for the purpose of administering Part B of IDEA. 20 U.S.C. 1411(e)(1); 34 C.F.R. § 300.704(a).

In its application for IDEA Part B funds, pursuant to Assurance 6, a State must assure that it has policies and procedures in place to ensure children with disabilities and their parents are afforded the procedural safeguards required by 34 C.F.R. §§ 300.500 through 300.536, and in accordance with 20 U.S.C. 1412(a)(6) and 34 C.F.R. § 300.121. These policies and procedures include ensuring that whenever a due process complaint is received under 34 C.F.R. §§ 300.507 or 300.532, the parents and the local educational agency (LEA) involved in the dispute have an opportunity for an impartial due process hearing, consistent with the procedures in 34 C.F.R. §§ 300.507, 300.508, and 300.510. 34 C.F.R. § 300.511(a).

In a one-tier due process system, the State educational agency (SEA) conducts the impartial due process hearing. 34 C.F.R. § 300.511(b). Under 34 C.F.R. § 300.511(c)(1)(i)-(ii), a hearing officer may not be an employee of the SEA or the LEA that is involved in the education or care of the child and must have no personal or professional interest that conflicts with the person’s objectivity at the hearing. Further, an individual who otherwise qualifies as a hearing officer is not an employee of the SEA or the LEA that is responsible for conducting the hearing solely because he or she is paid by the agency to serve as a hearing officer. 34 C.F.R. § 300.511(c)(2). Thus, it is not uncommon for the SEA to contract with another entity to conduct impartial due process hearings. Because the State is required to ensure that parents and LEAs have an opportunity for an impartial due process hearing, costs of paying hearing officers that conduct due process hearings in a one-tier State where the SEA is responsible for conducting the hearing, are allocable to a State’s IDEA Part B grant award, subject to the Uniform Guidance cost principles described above, and a portion of the Part B funds reserved for State administration in 34 C.F.R. § 300.704(a) may be used for this purpose.

While your letter does not ask about whether LEAs can use their Part B allocations to pay hearing officers, we also wish to clarify that the expenditure of an LEA’s Part B allocation for this purpose is also permissible for the reasons described above. In a two-tier due process system, the public agency directly responsible for the education of the child conducts the impartial due process hearing. 34 C.F.R. § 300.511(b). As previously noted by the Department,

nothing in Part B would prevent an LEA from using its Part B allocation for the cost of conducting these hearings, “so long as the expenditures meet the other applicable requirements under the Act and regulations.” Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, Analysis of Comments and Changes, 71 Fed. Reg. 46540, 46624 (Aug. 14, 2006). Just as in a one-tier due process system where the cost of the hearing officer can be paid for with IDEA Part B funds reserved for State administration, the costs of the hearing officers are allocable to the LEA’s IDEA Part B subgrant award, consistent with the Uniform Guidance cost principles summarized above and at 34 C.F.R. § 300.202(a)(1).

If you have any further questions, please do not hesitate to contact Rebecca Walawender of my staff at 202-245-7399 or by email at Rebecca.Walawender@ed.gov.

Sincerely,

/s/

Laurie VanderPloeg
Director
Office of Special Education Programs