



**UNITED STATES DEPARTMENT OF EDUCATION**

**OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES**

June 30 2009

Ms. Gloria J. Yepa  
Supervisory Education Specialist/Special Education  
Division of Performance & Accountability  
Bureau of Indian Education  
P.O. Box 1088  
Albuquerque, New Mexico 87103-1088

Dear Ms. Yepa:

The Bureau of Indian Education (BIE) at the U.S. Department of the Interior has asked if a portion of its funds under Part B of the Individuals with Disabilities Education Act (IDEA), reserved for administration under 34 CFR §300.710, can be used to pay for 50% of the salary of an attorney in the Solicitor's Office that would be assigned specifically to special education on a half time basis. The attorney would be employed by the Department of the Interior, but would not be assigned to work within the BIE, and would be assigned to work on IDEA-related issues for 50% of the time.

The cost principles applicable to State and local and Indian tribal governments provide that "legal expenses required in the administration of Federal programs are allowable. Legal expenses for prosecution of claims against the Federal government are unallowable." Office of Management and Budget (OMB) Circular A-87, Attachment 13, Section 10. Because these expenses are allowable for State, local and Indian tribal governments, we have concluded it is also an allowable use of funds for BIE. Therefore, BIE may use Part B funds reserved for administration to pay 50% of the salary of an attorney assigned to special education on a halftime basis who provides legal advice on the BIE's administration of the Grants to States Program under Part B of IDEA.

However, it is very important to note that under 34 CFR §300.517(b)(1), Part B funds may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 615 of the IDEA and Subpart F of 34 CFR Part 300. (Under 34 CFR §300.716, BIE must comply with the requirements of 34 CFR §300.517.) Therefore, Part B funds may not be used to pay for an attorney to represent the BIE in any administrative or judicial proceeding regarding a due process complaint filed under section 615 of IDEA and Subpart E of 34 CFR Part 300. The BIE must maintain documentation that the attorney spends 50% of his or her time on work related to special education and that Part B funds are used for legal expenses required in the administration of the Grants to States Program.

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.

OSEP is committed to supporting the BIE's efforts to improve results for children with disabilities and looks forward to continuing our work together. If you have any further questions, please contact Matthew Schneer at (202) 245-6755.

Sincerely,

A handwritten signature in black ink that reads "Patricia J. Guard". The signature is written in a cursive style with a large initial "P" and a distinct "J" and "G".

Patricia J. Guard  
Acting Director  
Office of Special Education Programs