



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUL 16, 2002

Michael J. Hernandez, Esq.
Franczek Sullivan P.C.
Suite 3400
300 South Wacker Drive
Chicago, Illinois 60606

Dear Mr. Hernandez:

Thank you for your June 11, 2002 letter regarding the use of Medicaid Reimbursement Funds pursuant to Titles XIX and XXI of the Social Security Act (and related regulations) and consistent with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 *et seq.* and related regulations 34 CFR. Part 300.

Given the background assumptions presented in your letter (that Medicaid reimbursements are not considered "State or local funds" for purposes of maintenance of effort requirements of 34 CFR §300.231, and that the local education agency (LEA) can demonstrate that the funds provided under Part B of the IDEA are not used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year), we do not believe that using Medicaid reimbursement funds to construct or equip special education classrooms onto a general education school building would violate the 'maintenance of effort' requirements of Part B of the IDEA.

We are not, however, expressing an opinion about the requirements of other Federal laws not administered by the Department of Education, in particular, the requirements of Medicaid. To the extent you also may be asking whether Medicaid permits using Medicaid reimbursement funds for special education-related capital improvements and equipment purchases we encourage you to consult State and Federal officials who administer that program.

If you have any questions regarding this letter, please contact Dr. JoLeta Reynolds of my staff at 202-205-5507.

Sincerely,

Stephanie S. Lee
Director
Office of Special Education Programs

cc: Dr. Anthony E. Sims
Illinois Director of Special Education