



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
REHABILITATION SERVICES ADMINISTRATION

FEB 16 2011

Mr. Doug Morton
Division of Rehabilitation Services
Illinois Department of Human Services
100 W. Randolph St., #5-300
Chicago, IL 60601

Dear Mr. Morton:

This is in response to your email, dated January 14, 2011, in which you sought guidance regarding whether certain non-Federal expenditures under the Vocational Rehabilitation (VR) program may be used for calculating the Division of Vocational Rehabilitation Services' (DVRS) VR maintenance of effort (MOE) requirement. According to your inquiry, the question has arisen because the State's Board of Education (BOE) now plans to count some of those same State dollars toward satisfying its MOE requirement under Part B of the Individuals with Disabilities Education Act (Part B of the IDEA) in accordance with guidance issued by the U.S. Department of Education's Office of Special Education Programs (OSEP).

On December 2, 2009, OSEP issued Memorandum 10-5 regarding "Maintenance of State Financial Support under the Individuals with Disabilities Education Act." The Memorandum reminded Chief State School Officers that all State financial support made available for special education and related services to children with disabilities, including payments made by other State agencies (e.g., the State Department of Health or the State VR agency) for these purposes, must be included in the State's calculation of State financial support under Part B of the IDEA (34 CFR 300.163(a)). For example, the Memorandum directs States to include payments incurred by State VR agencies for job coaching services provided to students with disabilities pursuant to an Individualized Education Program (IEP) in its calculations for State financial support under IDEA.

For purposes of satisfying the VR match and MOE requirements, a State VR agency may include only those non-Federal expenditures that are allowable under the VR program (34 CFR 361.60(b)(1) and 34 CFR 361.62)). In order to be allowable under the VR program, expenditures must be used solely for the provision of VR services or the administration of the VR program (34 CFR 361.3). A service to an individual is allowable under the VR program if it is identified on the individual's Individualized Plan for Employment (IPE) as being necessary for the individual to achieve the specified employment outcome (34 CFR 361.48).

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Pursuant to 34 CFR 361.22, the State VR agency is required to coordinate services with the State educational agency (SEA) and local educational agencies (LEAs) in order to facilitate the transition of eligible students with disabilities from the receipt of IDEA services to the receipt of VR services. The VR agency must develop an IPE for each eligible student with a disability as early as possible during the transition planning process, but at the latest by the time the eligible student with a disability leaves school (34 CFR 361.22(a)(2)). Although some VR services may also have been included in a child with a disability's IEP, the VR agency may provide these VR services only if they are also listed on the individual's IPE as necessary VR services.

For example, a high school student with a disability may have an IEP, developed pursuant to the requirements of Part B of the IDEA, that specifies that the student will receive job coaching and job placement services. That same student's IPE, developed in accordance with the requirements of the VR program, might only list job placement services. In this example, the State VR agency could only provide the job placement services – not the job coaching services -- since job placement was the only service listed on the student's IPE. All non-Federal expenditures incurred by the State VR agency when providing allowable VR services pursuant to the individual's IPE may be used toward satisfying the VR agency's match and MOE requirements under the VR program.

In addition, the State VR agency may enter into third-party cooperative arrangements for the provision of VR services to eligible individuals with State and local public agencies, including the SEA and LEAs, that are providing part or all of the matching funds for those VR services (34 CFR 361.28(a)). In order for the third-party cooperative arrangement to be used for satisfying the match requirements under the VR program, certain requirements must be met:

1. the VR services provided by the cooperating agency must be new services or expanded or modified services that have a VR focus (34 CFR 361.28(a)(1));
2. the VR services provided by the cooperating agency are available only to VR consumers and applicants (34 CFR 361.28(a)(2));
3. the expenditures incurred and the staff providing the services under the cooperative arrangements must be under the administrative supervision of the VR agency (34 CFR 361.28(a)(3)); and
4. all VR State plan requirements, including order of selection, apply to the services provided pursuant to the cooperative arrangement (34 CFR 361.28(a)(4)).

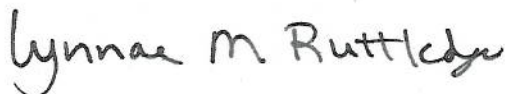
Expenditures incurred by the cooperating public agency, including the SEA and LEAs, may be counted by the State VR agency for satisfying its match and MOE requirements under the VR program provided all of the above requirements have been satisfied.

OSEP Memorandum 10-5 pertains solely to requirements governing a State's requirement to maintain State financial support under Part B of the IDEA. Nothing in that Memorandum should be construed to prescribe the Federal requirements governing those non-Federal expenditures that a State VR agency may use toward satisfying its match and MOE requirement under the VR program. While 34 CFR 80.24(b)(3) prohibits a State from counting the same non-Federal expenditures under two different programs for match purposes, that prohibition is not applicable here because the IDEA does not impose a match requirement on a State. Accordingly, a State

may count certain non-Federal expenditures that are allowable under the VR program toward satisfying its MOE requirement under the VR program, even if the State includes those same State dollars in its calculation of State financial support under Part B of the IDEA. Nevertheless, nothing in this letter lessens a State's responsibility to maintain effort at the level required by both the VR program and part B of the IDEA, and to ensure that individuals served by each program receives the appropriate services that should be provided to them under each of those programs.

We hope this information provides the clarification you requested. Please let us know if you need to discuss this further.

Sincerely,

A handwritten signature in dark ink, reading "Lynnae M. Rutledge". The signature is written in a cursive, flowing style with a large initial "L".

Lynnae M. Rutledge
Commissioner