

MEMORANDUM

To: Applicable LEAs

From: Nan Gray, State Director of Special Education

Date: 6-15-09

Re: Use of ARRA IDEA Part B Funds for Construction or Alteration of Facilities

Section 605 of the IDEA authorizes the Secretary to allow the use of IDEA funds, including IDEA Part B ARRA funds, for construction or alteration of facilities. Prior approval from the Utah State Office of Education is required if an LEA chooses to use IDEA Part B ARRA or IDEA Preschool ARRA funds for these purposes.

In order to initiate the approval process, the LEA must submit a letter to Brenda Hales, Associate Superintendent, at the Utah State Office of Education, with a copy provided to Nan Gray, State Director of Special Education. The letter must contain the following:

- A detailed description of the project, including how the special education program will be improved by allowing funds to be used for the project.
- The anticipated completion date of the project.
- An assurance that the construction or alteration of facilities will comply with Appendix A to part 36 of title 28, Code of Federal Regulations, the "Americans with Disabilities Accessibility Guidelines for Buildings and Facilities" or Appendix A of subpart 101-19.6, of title 41, Code of Federal Regulations, the "Uniform Federal Accessibility Standards." (34 CFR §300.718)
- An assurance that the construction or alteration also will comply with requirements in 34 CFR Part 76 regarding construction, including the requirements in 34 CFR §§75.600-75.617 that are incorporated by reference in 34 CFR §76.600. 34 CFR Part 76 regulations can be found at http://www.doe.state.vt.us/new/pdfdoc/pgm_finance_federal/administrative_regs/administration/34_cfr_76.pdf
- An assurance that the project will comply with specific requirements relating to the use of American iron, steel and manufactured goods used in the project (ARRA section 1605), and the wage rate provisions of ARRA section 1606, as well as the provisions of the Davis-Bacon Act (see Davis-Bacon wage determinations by state at: <http://www.gpo.gov/davisbacon/allstates.html>)

- An assurance that the project meets the following criteria:

The cost must --

- a. Be necessary and reasonable for proper and efficient performance and administration of Federal awards.
 - b. Be allocable to Federal awards under the provisions of OMB Circular A-87 (Cost principals for State, Local and Indian Tribal Governments). Circular A-87 can be found online at http://www.whitehouse.gov/omb/circulars/a087/a87_2004.html
 - c. Be authorized or not prohibited under state or local laws or regulations.
 - d. Conform to any limitations or exclusions set forth in OMB Circular A-87, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items.
 - e. Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.
 - f. Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
 - g. Except as otherwise provided for in OMB Circular A-87, be determined in accordance with generally accepted accounting principles.
 - h. Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation.
 - i. Be the net of all applicable credits.
 - j. Be adequately documented.
- An assurance that the funds will be spent in accordance with:
 1. The USOE School Construction and Inspection Resource Manual (available on line at <http://www.schools.utah.gov/finance/facilities/default.htm>) —including the USOE Pre-Construction Checklist (available at <http://www.schools.utah.gov/finance/facilities/documents/Pre-ConstructionChecklist2009.pdf>); and all tracking, reporting and occupancy certification processes; including all federal, state, local, laws, codes, Administrative Rules and regulations;
 2. All International Code Council Codes; State Fire Marshal administrative rules, regulations and codes (<http://publicsafety.utah.gov/firemarshal/>), as well as the International Fire Codes; State and Local Health Department administrative rules and regulations, including Administrative Rule R392-200 “Design, Construction and Operation, Sanitation and Safety of Schools” at (<http://www.rules.utah.gov/publicat/code/r392/r392-200.htm>); State Risk Management (<http://risk.utah.gov/>) administrative rules; as well as all Americans with Disabilities Act Accessibility Guidelines (ADAAG)(<http://www.adaag.com/>)

If you have construction or state code questions, please contact: Jenefer Youngfield at USOE: 801-538-7669 or by email at jenefer.youngfield@schools.utah.gov. If you have questions regarding ARRA provisions, please contact Brenda Hales at 801-538-7550 or by email: brenda.hales@schools.utah.gov. LEA Superintendents will be notified immediately upon project approval by Brenda Hales, Associate Superintendent, USOE.