

Use of Special Education Funds: Questions and Answers [Program Considerations]

All of the Iowa Department of Education's guidance on the use of special education funds, in this or any other document or format, is based on the following premise: special education funds are used for special education purposes, unless specifically provided otherwise. 20 U.S.C. § 1413(a)(2) (used to pay the "excess cost" of providing special education); Iowa Code § 256B.9(1) (used to pay the "excess costs of instruction of children requiring special education, *above the costs of instruction of pupils in a regular curriculum*") (emphasis added); *id.* § 256B.11(5) (used for "actual delivery" of special education instruction or services). Unless otherwise specified in this document, the principles set forth herein apply to students who are ages three to twenty-one (or for an additional time, if authorized by the Iowa Code).

This document may be accompanied by graphs, charts, and other material intended to illustrate the concepts explained in this document. To ensure the fullest understanding, please use that material in conjunction with the questions and answers in this document. This document shall also be read in conjunction with other Department documents on special education finance. The Department's authority to issue this document is its statutory authority of the Department to exercise "general supervision" over Iowa's AEAs and school districts, Iowa Code § 256.1, as well as the Department Director's authority to "interpret the school laws and rules" of the state of Iowa, *id.* § 256.9(16).

Many of the answers in this document apply with equal force to area education agencies (AEAs) and local educational agencies (LEAs). Whenever a particular question applies primarily or exclusively to either AEAs or LEAs, the relevant acronym will be listed in brackets after the question number. For example, Question 2 primarily concerns LEAs, so the question begins "2. [LEA]...."

1. What does "using special education funds for special education purposes" mean? Special education funds are to be used to provide "specially designed instruction" (special education) and support and related services to children who are identified as children with disabilities. These funds may also be used to find and evaluate children who may be children with disabilities. In essence, whether or not an activity is a "special education purpose" depends on the purpose and intended outcome of the activity. In some cases, whether an

activity is a permissible use of a special education funds will depend on what type of public agency proposes to undertake the activity. There are narrowly defined exceptions to this general rule, which are discussed below.

2. [LEA] What does it mean to provide “specially designed instruction”? Specially designed instruction, which is primarily provided by local districts, *see* Iowa Administrative Code r. 281 – 41.408(2), is defined as adapting, as appropriate to the needs of an eligible child ... the content, methodology, or delivery of instruction –

- (i) To address the unique needs of the child that result from the child’s disability; and
- (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

34 C.F.R. § 300.39(b)(3); *see also* Iowa Administrative Code r. 281 – 41.408(2). This may include:

- a.* Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
- b.* Instruction in physical education.

Iowa Admin. Code r. 281 – 41.39(1). Under Iowa law, instructional services for children with disabilities are provided by LEAs (*See* Questions 3-6). Under Iowa law, support services are also considered specially designed instruction. Support services are provided by AEAs. There may be other reasons to provide specially designed instruction (e.g., students who are English language learners); however, only specially designed instruction to address a disability is special education and a permissible use of special education funds.

3. [LEA] What are “instructional services”? “Instructional services are the specially designed instruction and accommodations provided by special education instructional personnel to eligible individuals.” Iowa Admin. Code r. 281 – 41.408(1).

4. [LEA] What are the requirements for using instructional services funds generated through the weighting plan established in Iowa Code chapter 256B? Funds generated through the weighting plan in Iowa Code section 256B.9 may only be used to support the excess cost of special education. Instructional costs are linked to the provision of specially designed instruction, tied to the specific and disability-related needs of the child, which are set forth in every special education student’s IEP. Therefore, those services listed in IEPs which are in addition to what all students are to receive, are considered instructional

costs and are allowable uses of funds generated through the weighting plan. Iowa Code section 256B.9(7) identifies one exception to this general rule: “The costs of special education instructional programs include the costs of purchase of transportation equipment to meet the special needs of children requiring special education with the approval of the director of the department of education.”

5. [LEA] May special education instructional funds be utilized to provide special education instructional services both in state and out of state? As a general rule, yes. “Special education instructional funds generated through the weighting plan may be utilized to provide special education instructional services both in state and out of state with the exception of [school-based itinerant instructional services, *see* rule 41.410(1), which are provided by AEAs].” Iowa Admin. Code r. 281 – 41.907(7).

6. [LEA] What educational program costs can be charged for non-resident special education students? An LEA or an AEA providing instruction to a nonresident eligible individual may charge the resident district “the actual costs incurred in providing that program.” Iowa Admin. Code r. 281 – 41.907(1). “The resident LEA shall be liable only for instructional costs incurred by an agency for those individuals certified as eligible.” *Id.* r. 281 – 41.907(3).

7. [AEA] What does it mean to provide “support services”? Support services are defined in rules. Iowa Admin. Code rr. 281 – 41.34, 41.409. Common support services include speech-language therapy, occupational therapy, school psychology services, school social work services, and physical therapy. Support services are considered special education and are typically provided by AEAs.

8. [LEA] What does it mean to provide “related services”? Related services are defined in rules. Iowa Admin. Code rr. 281 – 41.34, 41.411. Related services that are also support services are provided by AEAs. Related services that are not support services (such as transportation, *see id.* r. 281 – 41.412) are provided by LEAs. To be a proper use of special education funds, the related service must be “required to assist a child with a disability to benefit from special education.” *Id.* r. 281 – 41.34(1).

9. Are there different allowable uses for Part B funds than state/local special education funds? Typically, the answer is no. The only identified exceptions would be the use of Part B funds to support positive behavior interventions and supports (PBIS) or to provide coordinated early intervening services (CEIS). The United States Department of Education has stated the Part B

funds may be used to support school-wide and program-wide PBIS systems. State/local special education funds cannot be used to implement PBIS. (See Questions 26-27). An LEA (or AEA) may use a portion of its IDEA Part B funds to provide coordinated early intervening services for identified general education students. As a general rule, public agencies may not use state and local special education funds to provide CEIS. (See Questions 28-31).

10. [LEA] What are examples of activities under the definition of specially designed instruction? The following examples are considered to be proper uses of special education funds for the delivery of specially designed instruction:

- Instruction in the general classroom by a general educator [supported by general education funds], with consultation with a special educator [supported by special education funds].
- Instruction in the general classroom [the general classroom teacher being supported by general education funds] by a special educator.
- Instruction by a special educator outside of the general classroom.
- Professional development for special educators on delivering specially designed instruction.
- Professional development for general educators on delivering specially designed instruction.

See, e.g., Iowa Admin. Code r. 281 – 41.408(2).

11. What does professional development mean in this context?

Professional development is the training needed by education professionals that enables them to meet the needs of eligible individuals. Among other things, it could be classroom-style instruction, web-based instruction, or coaching and mentoring.

12. [LEA] Could you explain the relationship between the weighting plan in Iowa Code section 256B.9 and individual students? Special education weighted funds are provided to an LEA for the operation of its special education program. These funds are not student specific; they fund the LEA's special education program as whole. While funds generated by the weighting plan are to be used to provide special education instructional services, the weighted funds generated by a student are not required to be spent exclusively on services provided to this student and do not follow the student should they leave the LEA. Similarly, an LEA must provide a child with a free appropriate public education (FAPE) and may not limit its expenditures to the funds the child generated through the weighting plan. Additionally, public agencies must not

use the weighting assigned to a child to make the child's placement or to describe the location or setting where the child will be educated. Iowa Admin. Code r. 281 – 41.907(9); *see also* 20 U.S.C. § 1412(a)(5)(B).

13. [LEA] May an LEA use weighted funds for otherwise allowable special education expenditures when there are currently no students identified as needing such expenditures? No. LEAs may only use weighted funds for the excess costs of special education. Without a specific and disability-related student need, these expenditures would not be considered excess costs. LEAs are required to be prudent stewards of public funds. By purchasing unneeded items to avoid returning weighted funds for reallocation to other districts violates this responsibility.

14. [LEA] How are students assigned weights under purposes of the weighting plan in Iowa Code section 256B.9? Authorized AEA personnel assign weightings to each special education student. Iowa Admin. Code r. 281 – 41.402(1). According to Iowa law, “The level of service is determined based on an eligible individual’s educational need and independent of the environment in which the specially designed instruction is provided.” *Id.* r. 281 – 41.907(9). In other words, services and placement determine weighting, not the other way around.

15. Could you provide an example to illustrate the answer in Question 14? Yes. A special education student with a 3.74 weighting on her IEP may permissibly receive her education with students who were assigned a weight of 2.21 (and with special education students with other weights and with general education students). Placement decisions cannot be based on the assigned “weightedness;” they must be made based on the student’s needs. It would be impermissible to educate that student solely with students who were assigned weights of 3.74 if the placement decision was based on the “weightedness” assigned and not on the student’s needs. The specific and disability-related student needs listed on the IEP determine the weighting of the student, not the location where the student receives those special education services.

16. May special education funds be used for all children who need special or extra help? No. Special education is for children with disabilities. This is a mandatory term of state and federal law. 20 U.S.C. § 1401(3); Iowa Code § 256B.2(1)(a). Unless allowed elsewhere in the law, special education resources must not be used to provide support for children with needs not caused by a disability.

17. Is there an example to illustrate the rule in Question 16? Yes. A child who is an English language learner and who does not have a disability is not eligible for special education services. A child who is an English language learner and who also has a disability is eligible for special education services.

18. What does “child find” mean? Child find is the collection of processes by which AEAs and LEAs locate children who might need special education. These processes occur, by definition, in the general education environment and with children in general education. When a public agency suspects a child participating in child find activities might have a disability, it must seek parental consent to conduct an evaluation of the child.

19. How long may a child spend in child find activities? The time spent in a child find activity should be defined and limited by its purpose. If the public agency suspects the child may have a disability, the agency must seek parental consent for an evaluation. If the data reach a point where the public agency concludes it cannot suspect a child of having a disability, child find also must cease. The child may continue in general education interventions to the extent that these interventions are not supported by special education resources.

20. What does it mean to evaluate a child suspected of having a disability? An evaluation, which is a permissible use of special education funds, is a collection of activities, conducted with parental consent, to determine whether a child has a disability and the degree of the child’s need for special education. The evaluation must address all areas of suspected disability. Evaluations are primarily conducted by AEA staff.

21. How does all of this relate to general education interventions? General education interventions are part of the child find policies and procedures adopted by the AEAs. *See* Iowa Admin. Code r. 281 – 41.111(2)(b). General education interventions (GEI) are conducted by LEA general education staff with the support of, and in consultation with, special education personnel. *Id.* r. 281 – 41.312(2). During the course of general education interventions, if a public agency suspects a child might be a child with a disability, it must seek parental consent to evaluate for special education eligibility. GEI are a component of child find, but also serve a broader purpose than child find. A child may participate in GEI outside of child find activities; however, that child’s participation in GEI may not be supported by special education funds (unless the child is eligible for CEIS under the agency’s criteria for CEIS participation, see below, and the public agency uses CEIS funds to support GEI).

22. What does this division of general education interventions (GEI) “work” described in Question 21 look like? This will vary based on the facts of each unique case. However, general educators are primarily responsible for identifying students for GEI; selecting areas of concern; collecting data and monitoring; and making decisions based on GEI data. It is expected that special educators will provide secondary support for GEI, with particular attention to selecting and designing interventions, supporting data based decision making, and assisting in determining whether a disability is suspected.

23. I have heard that special educators can no longer participate in general education interventions. Is that true? No. Iowa Admin. Code r. 281 – 41.312(2). The expectation, however, is that general educators will take a greater lead in developing general education interventions and would be the leaders in delivering general education interventions.

24. May a public agency use special education funds to support general educators who need additional coaching or support to develop and deliver general education interventions? The additional support you describe would be an appropriate way to support child find processes and would be an appropriate use of special education funds. Iowa Admin. Code r. 281 – 41.111(2)(b). It would not be permissible to use special education resources to provide instructional coaching if the purpose and intent of the coaching was not a special education purpose, such as improving the ability to participate in child find activities.

25. I have heard that, based on the “new rules,” special educators may not participate in collaboration or co-teaching. Is that true? No. Co-teaching and collaborative teaching remain in the rules on instructional services in Iowa’s 2010 revisions to the special education rules. *See* Iowa Admin. Code r. 281 – 41.408(2). They remain permissible uses of special education funds if the special educator’s role is to provide specially designed instruction. A licensed special educator teaching a math class as part of the general education curriculum is not an allowable special education expenditure (*see* Question 44). Co-teaching arrangements must comply with the Department’s guidance on collaborative teaching.

Two examples of co-teaching illustrate this point. Co-teaching occurs in both the Blue and Red classrooms in a school. The special educators in both classrooms are supported with special education resources. In the Blue class, the special educator and general educator are partners; however, the special educator takes primary responsibility for designing and delivering specially designed instruction, assuring access to the general curriculum, and assessing

the progress of the students with IEPs. In the Red class, the special educator attends to the needs of all children and to improving core instruction. The Blue classroom is using special education funds appropriately, and the Red classroom is not.

In addition, special education teachers may participate in collaborative teaching. A child with a reading goal on her IEP is in the general education environment for reading. Her general education reading teacher delivers the specially designed instruction on her IEP, in consultation with the child's special educator. The child's special educator is not physically present in the room, but regularly consults with the general education teacher about instructional strategies and progress monitoring. This is a permissible arrangement under state and federal law and a permitted use of funds for the special educator (but not the general educator).

26. May I use federal special education funds to provide positive behavioral interventions and supports (PBIS)? Part B funds may be used to support program-wide and school-wide PBIS systems. *See, e.g., Letter to Batson, 51 IDELR 283 (OSEP 2008).*

27. What is meant by PBIS? PBIS is part of a school-wide multi-tiered system of support (MTSS). Robert Horner (2010) defines PBIS as "A systems approach for establishing the social culture and behavioral supports needed for a school to be an effective learning environment for all students." PBIS systems have certain common elements (universal screening and supports, use of data to make decisions, etc.), and the absence of those common elements would call into question a public agency's allocation of resources to an activity it labeled as PBIS.

28. What are "coordinated early intervening services" (CEIS)? A public agency may use up to fifteen percent of its *federal* (IDEA Part B) special education funds to provide CEIS, which are "additional academic and behavioral" supports to general education students who need that help to succeed in the general education environment. Iowa Admin. Code r. 281 – 41.226(1). This includes direct services (specifically including scientifically based literacy instruction) and professional development. *Id.* r. 281 – 41.226(2). Public agencies must track the students who receive CEIS supported with federal special education funds for a period of two years. *Id.* r. 281 – 41.226(4). Whenever a public agency suspects a child who receives CEIS might be a child with a disability, it must seek parental consent to conduct an evaluation. *See id.* r. 281 – 41.226(3). A public agency may use its state/local general education funds to provide CEIS without the "fifteen

percent” limit. A public agency that solely uses general education funds to provide CEIS does not have a data or record-keeping requirement.

The decision to use Part B funds to provide CEIS is made by each AEA and LEA. As a general rule, that decision is discretionary, subject to an exception noted below (See question 30). The Iowa Department of Education has no authority to take fifteen percent off the top of the Part B allocation and use it to support statewide activities.

29. Which students may receive CEIS? Each public agency must establish criteria for determining whether a child in general education needs additional academic and behavioral supports to succeed in the general education environment. These students are the intended beneficiaries of CEIS. CEIS is only available to students in kindergarten through grade 12, with an emphasis on students in kindergarten through grade 3. Students who receive special education services may not also receive CEIS.

30. Is the use of federal special education funds to provide CEIS optional? For most AEAs and LEAs, it is. Iowa Admin. Code r. 281 – 41.226. The exception is a Department finding of significant disproportionality. If a district is determined to have significant disproportionality, it must use all available CEIS funds to address the identified areas of disproportionality. *Id.* r. 281 – 41.646. Those activities must “particularly, but not exclusively” address the needs of general education students who are members of the group subject to disproportionality.

31. Who may participate in federally supported, CEIS-related professional development? According to the United States Department of Education:

CEIS funds may be used to provide professional development to all personnel who are responsible for students who need additional academic and behavioral supports to succeed in a general education environment, but who have not been identified as needing special education. Under limited circumstances personnel who are solely responsible for students receiving special education services or students who do not need additional support may participate in professional development funded with CEIS funds. These personnel may participate so long as the cost of the professional development does not increase, the quality of the professional development does not decrease, and including those personnel would not exclude other personnel who are responsible for

students who need additional support but have not been identified as needing special education. [OSEP Memorandum 08-09, July 28, 2008]

32. When is it permissible for children without disabilities to benefit from special education services provided to children with disabilities? It is permissible for children without disabilities to receive benefit from special education delivered to a child with a disability. 34 C.F.R. § 300.208(a)(1). This is the “incidental benefit” rule. It is imperative that the needs of the child with a disability be considered first. It would be impermissible to plan a service to benefit nondisabled children and attach it to the IEP of an eligible individual to take advantage of the “incidental benefit” rule.

33. Aren’t all services provided to eligible individuals “special education services”? No. It is important to remember that children with disabilities are general education students, too. *See, e.g.*, 20 U.S.C. § 1414(d) (stating IEPs must address access to and participation in the general curriculum and education in the general education environment). To be a service chargeable to special education funds, the service provided must be necessary because of the child’s disability. For example, a certain child with mobility impairments may require no specially designed instruction in mathematics. That child’s mathematics instruction shall not be supported with special education resources. *See, e.g.*, Iowa Code § 256B.9(1).

34. Isn’t special education just “good general education”? No. Special education is related to the unique needs of a child with a disability. If general education instruction needs to be improved or made “good”, that is supported with general education resources.

35. May response to intervention (RTI) and instructional decision making (IDM) be supported with special education resources? RTI and IDM and other, similar approaches (regardless of the acronyms or terminology employed, such as MTSS) are general education initiatives. The proper question is not whether particular “tiers” can be supported with special education resources. Rather, the proper question is whether particular tasks or activities within each tier are proper special education expenditures: “Is the purpose and intent of the activity, regardless of the tier in which it is performed, an appropriate use of special education funds?”

36. What is the difference between RTI and PBIS? They are similar concepts but have different funding restrictions. Why is this so? Although

RTI/IDM and PBIS are similar concepts, and both are examples of an MTSS framework, the United States Department of Education has drawn a distinction between the two, at least for funding purposes.

37. What about Iowa Core Curriculum implementation or “Universal Tier” instruction? Again, it depends on purpose and intent. The Iowa Core Curriculum and the universal tier in an MTSS system apply to all students. Such implementation is to be supported with general education resources. According to the United States Department of Education, instruction that is not specially designed in the general curriculum is a general education responsibility. This is consistent with Iowa law. *See, e.g.,* Iowa Code § 256B.9(1). Special education resources may be used to develop strategies, etc., for students with disabilities to have access to and participate in the Iowa Core Curriculum and in the universal tier. Absent such a nexus to the needs of students with disabilities, special education funds may not be used to support the Core or the universal tier.

38. I don’t understand the answer in Question 37. Improving the curriculum for all children will benefit children with disabilities. Why isn’t that an appropriate use of special education funds? It is a question of purpose and intended outcome. If the purpose and intent is to improve outcomes for all children, then that is the function of general education resources. Improving outcomes for all children is (whether it is referred to “Core implementation” or “universal tier instruction”), by definition, not “special education.”

39. What about “screening”? Is screening a permissible use of special education funds? Again, it depends on the purpose and intent of the screening activity. If screening furthers a special education purpose, it may be supported by special education funds. Screening is a very broad concept. For example, screening for instructional strategies in general education is a general education activity. In contrast, screening as a part of child find is a special education activity and is a permissible use of special education funds. Special education personnel may engage in screening for general education purposes only if that screening is occasional and incidental (*See* Questions 54-55).

40. Could you explain the answer in Question 39? I thought screening was allowed by the IDEA. The provision of the law to which you refer states that screening is not an evaluation, and does not require parental consent. *See* 34 C.F.R. § 300.302. That provision does not address how screening activities are supported. For screening to be supported with special education funds, it must be for a special education purpose, as explained in this document.

41. What about school improvement activities? Does a similar analysis apply? Yes. General school improvement activities are to be supported with general education resources. School improvement activities specifically directed at improving the services to and performance of the “students with disabilities” subgroup are an appropriate use of special education funds.

42. [AEA] What about content area consultants? Can they be supported with special education resources? If content area consultants (reading consultants, mathematics consultants, etc.) provide support to all students, then they must be supported with general education funding. If content area consultants exclusively and specifically provide support to improving specially designed instruction, then special education resources may be used for their support. If a consultant’s time is divided between providing special education consultation and general education consultation, the consultant’s compensation sources must also be divided to the same degree the consultant’s time is divided.

43. [AEA] I have questions about speech-language professionals who are supported with special education resources. What activities may they perform with general education students? Speech-language professionals supported with special education resources, as all other special education support services providers, may engage in “child find” activities, such as screening activities and assisting with the development of general education interventions. Many common speech difficulties may be addressed with short-term interventions delivered by general educators or parents. To the extent that these interventions are capable of implementation by general educators, they are the responsibility of general education to implement.

44. I have a special education professional credential. May I be paid with special education resources? It depends. Are you delivering special education services? A special education credential is necessary to provide special education services, *see* Iowa Admin. Code r. 281 – 41.156, but it alone is not sufficient to justify support with special education resources. For example, a social sciences teacher who is also a licensed special educator, but who does not function as a special educator, may not be supported with special education resources to teach social sciences. The same analysis would apply to AEA employees. A school psychologist employed by an AEA, but who is responsible for Iowa Core Curriculum implementation, may not be supported with special education funds. Likewise, a school psychologist whose devotes her school psychology practice to the needs of general education students and to

performing general education tasks may not be supported with special education funds.

45. May special education personnel participate in building assistance teams? It is a question of purpose and intent, not the name of the activity. If staff participation is part of “child find” (the process of locating children who might need special education), is part of gathering information to determine a child’s eligibility after consent is signed, or is part of improving services or outcomes to a child with an IEP, that participation would be permissible. Attending all building assistance teams, solely for the purpose of attendance and without a demonstrated connection to activities permissibly supported with special education funds, would not be an activity that special education resources could support.

46. May special education resources be used to support administrator expenditures? It depends on which public agency employs the administrator. For local school districts, which receive support from the state for general program expenditures (the “1.0 money”), general and special education administrator expenditures (salary, clerical support, supplies, etc.) are considered a “cost of doing business” and must be paid from general program funds, absent approval from the School Budget Review Committee.

AEAs, which do not receive “1.0 money” and which must pay all expenditures from three funding streams (special education support services, instructional services, and media services), may pay agency-wide administration expenditures from the three funding streams, based on the ratio that each funding stream bears to the whole. Iowa Code § 273.3(2). For example, if an AEA’s state support is sixty percent special education support services funds, sixty percent of the AEA’s general administration expenditures may be paid using special education support services funds.

47. What about persons who are paid with split funding streams? If a teacher, service provider, administrator, or other employee is paid with multiple federal funding sources or partially with state and partially with federal funds, then the employer and employee are bound by the requirements of OMB Circular A-87, *see* 2 C.F.R. pt. 225 (2005). To the extent that a person’s salary is supported with state special education funds, the employing public agency must maintain adequate documentation that the proportion of the person’s time spent providing or supporting special education services is related to the proportion of the person’s salary supported by state special education resources.

48. For state special education funds, why is this so? Unless otherwise specifically excepted, all state special education funds must be expended on the “actual delivery” of special education. Iowa Code § 256B.11(5).

49. [AEA] How do AEA's determine allowable funding sources for administrator salaries and benefits and other staff salaries and benefits? This is an elaboration of Question 46 for AEA's. The answer depends on the purpose of, and function served by, the administrator or other staff member. If the purpose of the administrator or other staff member is to support the overall operation of the AEA, then the AEA may pay those expenditures from general operations dollars, composed of the three state funding units, in the ratio each bears to the whole, as referred to in Question 46. Examples of these “general operation” expenditures include but are not limited to the chief administrator’s compensation (salary and benefits), custodial staff compensation, business office compensation, human resources director compensation, support for the AEA board, and utilities.

In contrast, when the purpose of the administrator or other staff member is directed toward, in whole or in part, a particular program or service to students or schools, then the work performed should bear a close relationship to the degree to which that person is compensated by that particular program’s funding source. The AEA should be prepared to document that relationship.

50. [AEA] Could you provide some examples of AEA administrators who perform work directed to a particular program? Yes. If Administrator X serves as AEA987’s business manager and as director of special education and devotes half of her time to managing AEA987’s business and half of her time directing its special education program, one-half of her compensation will come from general operations funds and one-half from special education funds. AEA987 should be prepared to document that one-half of Administrator X’s time is devoted to the “actual delivery” of special education. If a portion of her compensation is also supported by federal IDEA funds, AEA987 is to comply with the requirements of Circular A-87 (*see* Question 47).

Administrator Y serves AEA123 as a “regional collaboration coordinator (RCC),” providing assistance to schools in a certain locality. AEA123 uses RCCs to provide school improvement support, to roll out the Iowa Core Curriculum, to provide superintendent evaluations to local boards, to provide as-needed assistance to local special education directors, and to supervise AEA123’s special education support and related services staff members practicing in certain localities. To the extent that Administrator Y’s compensation is supported by special education funds, his time should be devoted to and connected to the

“actual delivery” of special education and AEA123 should be able to so demonstrate. If seventy percent of his compensation is supported by special education resources, the expectation is that seventy percent of his time would be devoted to and connected to the actual delivery of special education. In contrast, if a small percentage of his time is devoted to special education tasks, then AEA123 is to adjust Administrator Y’s compensation source, his work tasks, or both.

51. What would be considered adequate documentation of time spent providing special education services? Timesheets, employee affirmations, and time studies would be acceptable. Measures that are disconnected from “actual delivery” would not be considered acceptable. For example, paying an AEA employee salary with seventy-five percent state special education funds because seventy-five percent of the employee’s subordinates are special education providers, where there is no indication about the amount of time that person spent in supervision activities or any other special education activity, is not sufficiently connected to demonstrating “actual delivery” of special education instruction and services.

52. May job descriptions serve as adequate documentation of “actual delivery” of special education? It depends on the amount of detail in the job description and the degree to which it accurately reflects work performed. Merely listing a special education duty in a job description, without more substantiation, is an insufficient basis to charge all (or even any) of the person’s salary to special education resources.

53. Isn’t there more flexibility in spending state special education resources than federal special education resources? This mistaken belief has no basis in either state or federal law. First, both laws serve the same children: children with disabilities. Second, both laws require the same end: the provision of special education and support and related services to children with disabilities. Third, both laws impose restrictions on the use of funds. Fourth, federal law ties federal special education assistance to state and local special education spending on the “education of children with disabilities.” *See, e.g.,* 34 C.F.R. §§ 300.202-.203. Any use of state and local special education funds to provide services to general education students, unless otherwise permitted, calls into question the amount of federal special education assistance a public agency is eligible to receive.

54. What is meant by “occasional and incidental” assistance of special education personnel in the general education environment? Iowa’s rules of special education limit the use of special education funds to providing special education services. Iowa Admin. Code rr. 281 – 41.200-41.213, 41.900-41.908. Those services are (1) instruction and support services to eligible individuals in and out of the general education environment, (2) evaluation of children for special education eligibility, (3) “child find” activities, (4) support for staff engaging in those activities, and (5) CEIS supported by Part B funds.

Iowa’s rules also provide that high quality general education instruction is the responsibility of general education, including assistance to students who need additional support. Iowa Admin. Code r. 281 – 41.111(2).

Iowa’s rules recognize that special education personnel may have strategies, techniques, insights, and lesson plans that might be of assistance to general educators. That is the basis for the rule allowing special education personnel to provide “occasional and incidental” assistance to general educators or their students. Iowa Admin. Code r. 281 – 41.111(2). This rule recognizes that district and AEA professionals are communities of scholar-practitioners, and professionals should be able to freely share knowledge and provide support to each other. The rule is a “safe harbor,” allowing brief periods of assistance and collaboration based on the needs of the moment. The rule does not allow for continuous or in-depth involvement of special educators in general education outside of one of the activities described in the law and illustrated in this document.

Furthermore, “incidental” involvement occurs when the needs of the special educator’s students with disabilities are being met. In other words, the assistance is incidental to the special educator’s role as an educator of students with disabilities. It would be impermissible for a special educator to provide services under the “occasional and incidental” safe harbor if the needs of that special educator’s special education students simultaneously go unmet.

It goes without saying that general educators should be able to (and should be expected to) share strategies with their special educator peers, as the special education students served by those peers are general education students, too.

55. Could you provide examples of occasional and incidental assistance? Yes. A general educator asks a special educator for strategies on teaching division of fractions. The special educator provides those strategies or briefly assists in instructing the general educator’s class, or both. This would be within the “occasional and incidental” safe harbor. In contrast, a general educator asks a special educator to assist in pre-teaching new math concepts

every Friday. This is neither occasional nor incidental, and is outside of the safe harbor.

For another example, a speech professional may provide brief assistance to a student who makes single-sound errors and provide strategies to the student's teacher under the "occasional and incidental" safe harbor. It would be neither occasional nor incidental for the speech professional to meet continuously with that student (e.g., "ten weeks for thirty minutes each week"). However, there may be other ways in which this involvement may be a permissible use of special education resources (i.e., as part of child find).

56. May I use the occasional and incidental rule to purchase supplies, pay for professional development opportunities for general educators, or schedule a special education teacher to provide assistance in a general education classroom outside of the special education activities listed in Question 54? No. As to the first part, the "occasional and incidental" safe harbor refers only to assistance from special education personnel, not supplies. As to the second part, a planned activity such as professional development is neither occasional nor incidental. Similarly, as to the third part, an assignment of a special educator to the general education environment to do tasks that are not related to special education is an impermissible use of special education funds, as it is neither occasional nor incidental.

57. How does differentiated instruction relate to other concepts in this document? Differentiated instruction is an integral part of general education and refers to ongoing adjustments to instruction that teachers provide to meet the needs of individuals or groups of students. Differentiation may be brief and temporary, or it may be a longer term. Use of special education resources to support differentiated instruction is permissible only if it relates to a permissible use of special education funds. Special education would be needed only if specially designed instruction would require more differentiation than is available in the general curriculum.

58. May my agency use either state or federal special education funds for the construction or repair of school facilities? No. The Iowa rules of special education do not authorize the use of either state or federal special education funds for this purpose.

59. How can an LEA or AEA use the funds it receives after submitting claims to Medicaid for health related services listed on a special education student's IEP? The funds received by LEAs and AEAs for providing Medicaid

related services are not considered separate funding streams to be used, but a reimbursement for services already performed. For that reason, the funds received by an AEA or LEA must be allocated to the health related IEP services performed before the claims are filed with Medicaid.

60. May I use special education funds to provide services to students who are eligible under Section 504? No, as a general rule. Students who are solely eligible under Section 504 may not receive services funded by special education resources, unless those services are also permissible uses of special education resources. For example, if a student solely covered by Section 504 receives services under a “504 plan” that are also part of the student’s evaluation for special education, those services may be supported by special education resources, as they are a permissible use of special education funds.

61. Do the principles in this document apply to paraeducators? Yes. To the extent paraeducators, paraprofessionals, teacher associates, assistants, etc., are supported by special education resources, they must be performing special education functions.

62. May special education resources support participation in “Four Plus” programs for secondary students with disabilities? If a child’s IEP calls for participation in a program sponsored at a postsecondary institution for purposes of providing a FAPE and the child has not graduated from high school, then that placement is a part of the child’s FAPE and special education resources may support the child’s participation in that program. If the child has graduated from high school with a regular diploma, however, the obligation to provide a FAPE is over and special education funds may not be used to support postsecondary programming.

63. May special education funds be used to support evaluations or assessments for accommodations on college entrance or placement examinations (e.g., the ACT Assessment) or for accommodations provided by postsecondary institutions? Public agencies are not required by the IDEA to provide testing or assessment solely for the purpose of establishing eligibility for accommodations on college entrance examinations. *Letter to Moffett*, 54 IDELR 130 (OSEP 2009). If a public agency does provide an assessment solely to establish eligibility for accommodations related to postsecondary institutions, it may not fund it with special education resources. Likewise, a public agency is not required by the IDEA to provide testing or assessments solely to demonstrate

disability to a postsecondary institution. If a public agency does provide such an assessment, it may not fund it with special education resources.

64. Could you explain how these “use of funds” principles relate to early childhood special education? The use of funds to provide early childhood special education (ECSE) should be guided by the explanations contained in this document.

According to Iowa’s rules, ECSE funding “shall be based on individual needs as determined by the IEP team.” Iowa Admin. Code r. 281 – 41.907(8). Further, special education instructional services funds may be “used to pay tuition, transportation, and other necessary special education costs, but shall not be used to provide child care.” *Id.* Children receiving ECSE instructional services shall be designated as full-time or part-time students. *Id.*

65. [NEW IN 2014] May an LEA or AEA use special education funds to hire a person with a teaching endorsement (e.g., reading endorsement), but not a special education endorsement, to provide professional development and content support/coaching to LEA or AEA staff? Question 42 answers this question. Again, it depends on purpose and intent. To the extent that the PD and coaching is for all teachers to teach all students, the answer is “no.” To the extent that the PD and coaching is to assist general educators and special educators in performing special education tasks, then the answer is “yes.”

66. [NEW IN 2014] Can special educators be used to deliver interventions in the universal tier of an MTSS system or deliver general education interventions? Questions 21, 22, 28, 35, 37, and 38 answer this question. It depends on purpose and intent. If the special educator’s involvement relates to a special education purpose (child find, CEIS, etc.), then “yes.” Otherwise, “no.”

67. [NEW IN 2014] I have been told that if a child has an IEP goal in reading, that child must receive her special education in reading from a special education teacher in a special education room, according to the October 2010 version of this “use of funds” document. Is that correct? No! First, general education and special education have the shared responsibility for educating children with disabilities. Iowa Admin. Code r. 281 – 41.400(2). Second, general educators are involved in delivering IEP services to children with disabilities (See Questions 10 & 25). Third, the general education environment is the default placement for children with disabilities, unless their IEPs require otherwise. Iowa Admin. Code r. 281 – 41.114-.116. Fourth, it would be illegal to make

placement decisions based on funding or finance mechanisms. *Id.* r. 281 – 41.114(3). A child with a disability must be educated in the general classroom if the general classroom is that child’s “least restrictive environment.” A special educator’s involvement in supporting an eligible individual’s education in the general education environment is a permissible use of special education funds. A general education teacher is not supported with special education funds merely because that teacher has eligible individuals on that teacher’s roster.

68. [NEW IN 2014] To what extent may AEA or LEA employed “external coaches” be supported with special education funds? As always, the answer depends on the purpose and intent of the external coaches’ work. External coaches or others involved in scaling and implementation of large-scale initiatives or projects, such as statewide scaling and implementation of MTSS, may be supported with special education funds to the extent that external coaching supports the participation of eligible individuals in that initiative or project.

For example, a portion of an external coach’s time involves providing guidance and support on using data from a statewide data system on universal screening and progress monitoring for all elementary school children to make decisions about which children to consider referring to special education and about improving specially designed instruction for eligible individuals. These activities are supportable with special education funds. The remainder of the external coach’s time involves providing instruction and trouble-shooting for all teachers in a district using that data system to improve instruction for all children. This is an “all children” activity, and is not supportable with special education funds.

69. [NEW IN 2014] If an AEA or LEA employee is supported with multiple funding streams, some of which are not special education funds, do the principles in this document apply to an employee’s time not supported by special education? No. Please be aware of the need to maintain required documentation and adequate proof concerning the employee with split funding (see Questions 47, 51, and 52), as well as the need to comply with any restriction imposed by that non-special education funding stream.

70. Will this document be updated? Yes.

For more information, contact the Bureau of Learner Strategies and Supports at 515-281-3176, the Bureau of Finance, Facilities, Operation and Transportation Services at 515-281-5293, or visit web page at www.educateiowa.gov.