

DEPARTMENT OF EDUCATION**Intent to Repay to the Maine Department of Education Funds Recovered as a Result of a Final Audit Determination****AGENCY:** Department of Education.**ACTION:** Notice of intent to award grantback funds.

SUMMARY: Notice is given that under section 459 of the General Education Provisions Act (GEPA), 20 U.S.C. 1234h, the U.S. Secretary of Education (Secretary) intends to repay to the Maine Department of Education, the State Educational Agency (SEA), an amount not more than 75 percent of the funds recovered by the U.S. Department of Education (Department) as a result of final audit determinations. This notice describes the SEA's plan for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATES: All comments must be received on or before May 2, 1996.

ADDRESSES: Comments concerning the grantback should be addressed to William D. Tyrrell, Sr., U.S. Department of Education, 600 Independence Avenue, S.W., Room 3609, Switzer Building, Washington, D.C. 20202-6132.

FOR FURTHER INFORMATION CONTACT: William D. Tyrrell, Sr., U.S. Department of Education, 600 Independence Avenue, S.W., Room 3609, Switzer Building, Washington, D.C. 20202-6132, telephone: (202) 205-8825. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. Internet: William_Tyrrell@ed.gov

SUPPLEMENTARY INFORMATION:**A. Background**

This notice is based on the Department's recovery of funds as the result of three separate audits of Maine's Department of Education (SEA) for the periods beginning with the SEA's fiscal years July 1, 1986 and ending in June 30, 1989. The audits are identified for the specified periods of time as follows:

ACN No. and time period	Amount repaid	Amount re-quested
ACN 01-93025 (7/1/86-6/30/87)	\$22,800	\$17,100
ACN 01-93245 (7/1/87-6/30/88)	68,872	51,654

ACN No. and time period	Amount repaid	Amount re-quested
ACN 01-13035 (7/1/88-6/30/89)	82,564	61,923

The Federal programs repaid included the amounts of \$159,636 Part B of the Education of Handicapped Act¹ Part B funds, \$8,800 of Chapter 1 of Title I of the Elementary and Secondary Education Act, Grants to Local Educational Agencies (Chapter 1 LEA) funds, and \$5,800 of Chapter 1 Migrant funds. The SEA repaid a total \$174,236 to the U.S. Department of Education.

The Department's audits questioned the SEA's use of Part B-Handicapped funds and Chapter 1 Migrant and Chapter 1 LEA grants funds for legal fees without the use of a cost allocation plan or the maintenance of adequate supporting documentation; and the charging of SEA employees' salaries to Federal programs without records of time distribution for each of the employees chargeable to more than one grant program or cost objective. These charges were not supported by time distribution records as required by Federal regulations. The audits also found that the SEA had exceeded the maximum allowable amount for administrative costs in the Part B program.

B. Authority for Awarding a Grantback

Section 459(a) of GEPA, 20 U.S.C. 1234h(a), provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay, to the SEA affected by the determination, an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this grantback arrangement if the Secretary determines that the—

(a) Practices and procedures of the SEA that resulted in the violation have been corrected, and the SEA is, in all other respects, in compliance with the requirements of the applicable program;

(b) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the recovery of funds; and

¹ In 1990, the name of this Act was changed by Congress to Part B of the Individuals with Disabilities Education Act. See Pub. L. 101-476.

(c) Use of funds to be awarded under the grantback arrangement, if used in accordance with the SEA's plan, would serve to achieve the purpose of the programs under which the funds were originally granted.

C. Plan For Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 459(a)(2) of GEPA, the SEA has applied for a grantback totaling \$130,677, which is 75 percent of the principal amount of the recovered funds, and has submitted a plan for use of the grantback funds to meet the special education needs of children with disabilities, and the needs of disadvantage and migrant children in areas affected by the audits. Under section 459(a) of GEPA, 20 U.S.C. 1234h(c), these funds are available until three fiscal years following the fiscal year in which final agency action is taken. With respect to the funds covered by this notice, the final agency action was the execution of two settlements agreements, December 2, 1991 for ACN: 01-93025 and November 8, 1994 for ACN: 01-93245 and ACN: 01-13035. The funds recovered under ACN: 01-13025 are available for expenditure until September 30, 1996 and the funds recovered under ACN: 01-93245 and ACN: 01-13035 are available for expenditure until September 20, 1998. The plan, which has been submitted by the SEA, is to use the Chapter 1 LEA and Migrant grantback funds to pay salaries of teachers for the programs in the Blueberry Harvest and Broccoli Harvest Schools. The funds from the Part B grantback will be used to improve the process of identification of the document the educational progress of special education students; enable more effective planning for these students at both the State and local levels, and provide information to local educational agencies in a manner that will enhance program planning and enhance the State's ability to analyze results for policy development and program planning. These changes will help address the current weaknesses in the Maine Educational Assessment as it relates to special education students and move in the direction of including these students in the State's effort to set standards for all students.

D. The Secretary's Determinations

The Secretary has reviewed the plan submitted by the SEA. Based upon that review, the Secretary has determined that the conditions under section 459 of GEPA have been met.

All determinations are based upon the best information available to the Secretary at the present time. If this

information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action. In finding that the conditions of section 459 of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

E. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 459(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the Federal Register a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 459(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to Maine under a grantback arrangement. The grantback award would total \$130,677, which is 75 percent—the maximum percentage authorized by statute—of the principal

amount recovered as a result of the audits.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The SEA agrees to comply with the following terms and conditions under which payments under a grantback arrangement would be made:

(a) The funds awarded under the grantback must be spent in accordance with—

(1) All applicable statutory and regulatory requirements;

(2) The plan that the SEA submitted and any amendments to the plan that are approved in advance by the Secretary; and

(3) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(b) All funds received under the grantback arrangement must be obligated by September 30, 1996 for funds recovered through ACN: 01-93025, and by September 30, 1998 for funds recovered through ACN: 01-

93245 and ACN: 01-13035 in accordance with section 459(c) of GEPA.

(c) The SEA will, not later than January 1, 1999, submit a report to the Secretary that—

(1) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved; and

(2) Describes the results and effectiveness of the project for which the funds were spent.

(d) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(e) Before funds will be repaid pursuant to this notice, the SEA must repay to the Department any debts that become overdue, or enter into a repayment agreement for those debts.

(Catalog of Federal Domestic Assistance Number 84.027, Handicapped State Grants, 84.012, Educationally Deprived Children, and 84.011 Chapter I—Migrant Education)

Dated: March 27, 1996.

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