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MEMORANDUM

TO: Superintendents and Special Education Directors/Contacts

FROM: Ms. Misty Kimbrough, Assistant State Superintendent,
Special Education Services

DATE: October 19, 2007

SUBJECT: Frequently Asked Questions Regarding Early Intervening Services

The Oklahoma State Department of Education (OSDE), Special Education Services (SES), is providing the following information intended to offer technical assistance to local educational agencies (LEA) regarding frequently asked questions concerning Early Intervening Services (EIS).

Q: Is the use of funds for EIS required or permitted?

A: Generally, the use of funds a local educational agency (LEA) receives under Part B of the Individuals with Disabilities Education Act (IDEA) for EIS is discretionary on the part of the LEA, except when an LEA has significant disproportionality based on race and ethnicity. Under 34 CFR §300.226, an LEA may not use more than 15 percent of the amount the LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the LEA pursuant to 34 CFR §300.205, if any, in combination with other amounts to develop and implement coordinated EIS. If a State identifies an LEA as having significant disproportionality based on race and ethnicity with respect to the identification of children with disabilities, the placement of children with disabilities in particular educational settings, or the incidence, duration, and type of disciplinary actions taken against children with disabilities, including suspensions and expulsions, the state educational agency (SEA) must require the LEA to reserve the maximum amount of funds available to the LEA to provide EIS to children in the LEA, particularly, but not exclusively, to children in those groups that were significantly over identified.

Q: What does it mean to “reserve” funds for EIS?

A: The OSDE-SES interprets “reserve” to mean that these funds must be reserved and spent. The EIS funds can only be spent on EIS. The statute does not authorize LEAs to use the funds they must “reserve” for EIS for any other purpose.

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Q: Must the maximum amount of special education funds allowed for EIS be reserved only if significant disproportionality is the result of inappropriate identification?

A: No. The reservation of funds must occur whether or not the significant disproportionality was the result of inappropriate identification. In addition to identification, funds also would have to be reserved if significant disproportionality was found with respect to discipline or placement in particular educational settings.

Q: If the State has identified significant disproportionality in an LEA, can the IDEA funds that the LEA must use to address the issue be used to provide services to students who have already been found eligible for special education and related services?

A: No. Section 300.226 (a) states that EIS is "...for students in kindergarten through grade 12 (with particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment."

Q: What process would an LEA follow if the LEA did not agree with the State's determination that they were significantly disproportionate?

A: There is no appeal process.

Q: Why does early intervening services not apply to 3-5 year olds?

A: Section 300.226 (a) tracks the statutory language in section 613(f)(1) of the Act, which states that early intervening services are for children in kindergarten through grade 12, with a particular emphasis on children in kindergarten through grade 3. Thus, LEAs may not use Part B funds to provide EIS to nondisabled preschool children.

Q: What services can be defined as EIS, and should services supported with EIS funds be scientifically based?

A: The *No Child Left Behind Act* and IDEA call on educational practitioners to use scientifically based research to guide their decisions about which interventions to implement. IDEA states that in implementing coordinated EIS an LEA may carry out activities that include: (1) professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and (2) educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

Q: How might EIS funds be used to address the needs of students who need additional academic and behavioral support to succeed in the general education environment through a response to intervention (RTI) model?

A: The core characteristics that underpin all RTI models are: (1) students receive high quality research-based instruction in their general education setting; (2) continuous monitoring of student performance; (3) all students are screened for academic and behavioral problems; and (4) multiple levels (tiers) of instruction that are progressively more intense, based on the students response to instruction.

For example, an RTI model with a three-tier continuum of schoolwide support might include the following tiers and levels of support: (1) Tier one (Primary Intervention), for all students using high quality scientific research-based instruction in their general education setting. It **would not** be appropriate to use EIS funds for these activities since these students do not need additional academic and behavioral support to succeed in a general education environment. (2) Tier two (Secondary Intervention), for specialized small group instruction of students determined to be at risk for academic and behavioral problems. It **would** be appropriate to use EIS funds to support these activities. (3) Tier three (Tertiary Intervention) for specialized individualized instructional/behavioral support for students with intensive needs. EIS funds **could be** used if these students were not currently identified as needing special education or related services.

Q: What is the relationship between EIS funds and maintenance of effort (MOE) funds?

A: LEAs that seek to reduce their local maintenance of effort in accordance with 34 CFR §300.205 (d) and use some of the Part B funds for EIS under 34 CFR §300.226 must do so with caution because the local maintenance of effort reduction provision and the authority to use Part B funds for early intervening services are interconnected. The decisions that an LEA makes about the amount of funds it uses for one purpose affect the amount that it may use for the other.

Q: What will have to be reported to the SEA when an LEA uses EIS funds?

A: Each LEA, that develops and maintains coordinated EIS, must annually report to the SEA on: (1) the number of children who received early intervening services; and (2) the number of children who received EIS and subsequently receive special education and related services under Part B of the Act during the preceding two-year period.

Should you have additional questions regarding early intervening services, please contact Ms. Gail Priddy, Associate State Director, OSDE-SES, at (405) 522-1464.

MK/gp

cc: IDEA-B Advisory Panel
Regional Accreditation Officers