



STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
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STEVE CLARK
ATTORNEY GENERAL

OPINION NO. 85-99

April 8, 1985

Mr. Tommy Venters
Director
Dept. of Education
Little Rock, AR 72201

Dear Mr. Venters:

This is in response to your opinion request wherein you posed the following inquiry:

May Chapter 2 Funds be used by local school districts in Arkansas to meet standards for accreditation promulgated pursuant to Act 445 of 1983?

For the following reasons, the answer to your question is no.

Section 585 (b), Chapter 2, Education Consolidation and Improvement Act of 1981 is depositive of your inquiry and provides as follows:

(b) A State or local educational agency may use and allocate funds received under this chapter only so as to supplement and to the extent practical, increase the level of funds that would, in the absence of Federal funds made available under this chapter, be made available from non-Federal sources, and in no case may such funds be used so as to supplant funds from non-Federal sources.

Rules and regulations promulgated by the Department of Education further provide as follows:

An SEA or LEA that receives Chapter 2 funds--

(a) May use and allocate those funds only to supplement and, to the extent practical, increase the level of funds that would, in the absence of Federal funds made available under Chapter 2, be made available from non-Federal sources; and

(b) May not use Chapter 2 funds to supplant funds from non-Federal sources.

34 CFR Part 298 Fed. Reg. Vol. 47, No. 224 (Nov.19, 1982).

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Of further import are the non-regulatory guidelines of the Department of Education on Chapter 2 funds which observe that:

By enacting the supplement, not supplant provision contained in Section 585(b) of Chapter 2 (Appendix A at 9), Congress intended that Chapter 2 funds be used only to supplement the educational programs generally offered with State and local funds. To be in compliance with this requirement, therefore, an SEA or LEA may not divert State and local funds from an activity merely because Chapter 2 funds are available. In other words, the use of Chapter 2 funds may not result in a decrease in State and local funds for a particular activity which, in the absence of the Chapter 2 funds, would have been available to conduct the activity. A specific example of such a circumstance is any program that an SEA or LEA is required by law to provide. Because the SEA or LEA would have to use State and local funds to provide particular statutorily-required services in the absence of Chapter 2 funds, the SEA or LEA may not use Chapter 2 funds to replace the State and local funds it would otherwise be required by law to use.

With the above limitations in mind, attention must be turned to Arkansas Act 445 of 1983. Act 445, otherwise known as the Quality Education Act of 1983, directed the State Board of Education to develop comprehensive "regulations, criteria, and minimum standards to be used by the State Board of Education and the State Department of Education in the accreditation of school programs in elementary and secondary public schools in this State." (Section 4)

Although the standards developed by the Board of Education must not be met by a particular school district until June 1, 1987, Section 2(a) subsection (c) of Section 4 provides as follows:

(c) The final action of the Board in adopting regulations, criteria, and minimum standards, after holding said hearings, shall be taken on or before March 1, 1984, and copies thereof shall be furnished the chairman of the school board and superintendent of each school district in this State, and such other persons as the Board shall deem appropriate. Copies thereof shall also be filed with the Secretary of State and with the County clerk of each county as provided by laws applicable to filing Administrative Rules and Regulations by State agencies in this State.

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The referenced standards were adopted and promulgated by the March 1, 1984 deadline. School districts have until June 1, 1987 to meet these minimum standards. Whether or not the standards became effective on March 1, 1984 or, at minimum, mandatory on June 1, 1987, it is the opinion of this office that the use of Chapter 2 funds to meet these standards is prohibited by Section 585 (b) of the Education Consolidation and Improvement Act of 1981.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General, C. Randy McNair.

Sincerely,


STEVE CLARK
Attorney General

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