

# GENERAL REQUIREMENTS FOR FEDERAL PROGRAMS

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Dr. Wayne G. Sanstead  
State Superintendent  
Department of Public Instruction  
600 East Boulevard Avenue #201  
Bismarck, ND 58505-0440  
<http://www.dpi.state.nd.us>

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## INTRODUCTION

This document represents a consolidation of grant administrative and financial requirements that are applicable to **all** grantees receiving federal funds from the Department of Public Instruction (DPI). **It is the grantee's responsibility to know and comply with these requirements.** Adherence to the manual is certified by the grantee at the same time the application for federal funds is made. Grantees are asked to ensure that all program and fiscal staff responsible for administering the programs know what is contained in this document. This manual can be accessed by everyone on DPI's website at <http://www.dpi.state.nd.us/grants/require.pdf>.

Grantees will continue to have program specific requirements; however, they are addressed separately through the grant application process for the individual programs.

The legal citations included in this document are:

- **USC** United States Code: the codification of laws passed by Congress (example 31 USC 1352 is Title 31 Section 1352 of the United States Code)
- **CFR** Code of Federal Regulations: the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government (example 34 CFR 76.580 is Title 34 Part 76 Section 580 of the Code of Federal Regulations)
- **NDCC** North Dakota Century Code
- **P.L.** Public Law: text of Congressional bills published in the Federal Register before they are codified in the United States Code (example Public Law 107-110 is the 107<sup>th</sup> session of Congress bill number 110)
- **OMB** Office of Management and Budget

Resources other than the sites referenced in the text of this document include:

- OMB Circular A-87 Cost Principles for State, Local, and Indian Tribal Governments (<http://www.whitehouse.gov/omb/circulars/a087/a087-all.html>)
- OMB A-102 Grants and Cooperative Agreements with State and Local Governments (<http://www.whitehouse.gov/omb/circulars/a102/a102.pdf>)
- Education Department General Administrative Regulations (EDGAR) (<http://www.ed.gov/policy/fund/reg/edgarReg/edgar.html>)
- OMB A-133 Audits of States, Local Governments, and Non-Profit Organizations (<http://www.whitehouse.gov/omb/circulars/a133/a133.html>)
- School Foodservice Administrators Manual (<http://www.dpi.state.nd.us/child/snp/nslp/index.shtm>)
- For nonprofit organizations, see OMB A-122 Cost Principles for Nonprofit Organizations (<http://www.whitehouse.gov/omb/circulars/a122/a122.html>) and OMB A-110 Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (<http://www.whitehouse.gov/omb/circulars/a110/a110.html>)
- For Higher Education institutions, see OMB Circular A-21 Cost Principles for Educational Institutions (<http://www.whitehouse.gov/omb/circulars/a021/a021.html>)

Questions or comments regarding this manual may be directed to:

Fiscal Management  
Department of Public Instruction  
701-328-2117  
[dpi@state.nd.us](mailto:dpi@state.nd.us)

## **ADMINISTRATIVE REQUIREMENTS**

### **Certifications and Assurances**

**Civil Rights.** No person shall, on grounds of race, color, national origin, sex, disability, or age, be excluded from participation in or subjected to discrimination in any program or activity funded, in whole or in part, by federal funds. Subgrantees that participate in federal programs assure that there is compliance with the following:

- Title VI of the Civil Rights Act of 1964, as amended, 45 USC 2000d et seq., which prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving Federal financial assistance;
- Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794, which prohibits discrimination on the basis of disability in programs and activities receiving Federal financial assistance;
- Title IX of the Education Amendments of 1972, as amended, 20 USC 1681 et seq., which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance;
- The Age Discrimination Act of 1975, as amended, 42 USC 6101 et seq., which prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance;
- All regulations, guidelines, and standards lawfully adopted under the above statutes by the United States Department of Education;
- The Americans with Disabilities Act, 42 USC 12101 et seq., is a civil rights law that prohibits discrimination against persons with disabilities in the areas of accessibility, employment, public services, public accommodations, transportation, and communications.

**Political Activity.** (31 USC 1352, 20 USC 3474 and 34 CFR 82)

**Lobbying.** Subgrantees receiving an amount in excess of \$100,000 in federal funds from DPI must certify that:

- No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or an employee of Congress, or an employee of a member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.
- If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence any officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- School districts and other recipients shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

**Hatch Act (5 USC 1501-1508) and Intergovernmental Personnel Act of 1970.** As amended by Title VI of Civil Service Reform Act (Public Law 95-454 Section 4728), federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federal programs.

Regulations issued under the Hatch Act (5 CFR 151.21) specifically prohibit covered personnel from:

- Using official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office.
- Coercing (or attempting to coerce), commanding or advising a state or local officer or employee to pay, lend or contribute anything of value to a political party, committee, organization, agency or person for a political purpose.
- Running for elective public office in a partisan election.

**Debarment and Suspension.** (34 CFR 85.100 – 85.510)

Executive Order 12549 provides that a person who is debarred or suspended shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities.

Subgrantees, as lower tier participants, are required to certify by submission of an assurance form that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any transaction by any federal department or agency.

Certification is completed by signing the application for federal funds, which makes reference to compliance with this manual. A sample of the certification can be found at <http://www.ed.gov/fund/grant/apply/appforms/ed80-014.doc>.

School districts and other recipients must collect a Debarment Certification from contractors whenever federal grant monies are used for procurement contracts.

**Gun Free School Act of 1994 – U.S. Department of Education only.** (20 USC 7151)

The Gun Free School Act requires that each state receiving federal funds under the NCLBA enacts a state law requiring school districts to expel a student from school for a period of not less than one year who is determined to have brought a firearm to a school or to have possessed a firearm at a school under the jurisdiction of the school district; except that the state law shall allow the chief administering officer of a school district to modify the expulsion requirement for a student on a case-by-case basis if the modification is in writing. A school district that has expelled a student from a regular school setting may provide educational services to the student in an alternative setting.

The State law regarding possession of a weapon is found in ND Century Code 15.1 – 19 – 10.

School districts requesting funds under the NCLBA shall assure to DPI that it is in compliance with State law. School districts must report any expulsions to DPI, including the name of the school concerned, the number of students expelled from the school, and the type of weapons concerned.

**Pro-Children Act of 2001.** (20 USC 7181-7184)

The Pro-Children Act of 2001 prohibits anyone from smoking within any indoor facility owned, leased, or contracted for and utilized for providing routine or regular kindergarten, elementary or secondary education or library services to children. It also prohibits anyone from smoking within any indoor facility (or portion of such facility) owned, leased, or contracted for and utilized for providing regular or routine health care, day care, or early childhood development (Head Start) services. This does not include a portion of a facility that is used for inpatient hospital treatment of individuals dependent on or addicted to

drugs or alcohol or any private residence. Since this law targets “environmental” tobacco smoke, the prohibition is intended as a 24-hour per day prohibition.

**Military Recruiter Access – U.S. Department of Education only.** (20 USC 7908)

School districts must provide directory-type information (students’ names, addresses, and telephone listings) of junior and senior high school students to military recruiters who request it. Consent is not required by the parent or eligible students. However, parents must be provided an opportunity to “opt-out” by signing a document stating that directory information may not be disclosed. See U.S. Department of Education guidance at [http://www.ed.gov/offices/OM/fpco/pdf/ht\\_100902b.pdf](http://www.ed.gov/offices/OM/fpco/pdf/ht_100902b.pdf).

**Equal Access to Public School Facilities – U.S. Department of Education only.** (20 USC 7905)

School districts receiving federal funds under the NCLBA that have a designated open forum or a limited public forum must allow equal access or a fair opportunity to meet, and may not discriminate against, any group officially affiliated with the Boy Scouts of America or any other youth group listed in Title 36 of the United States Code as a patriotic society that wishes to conduct a meeting within that designated open forum or limited public forum. School districts are not required to sponsor any group affiliated with the Boy Scouts of America or any other youth group listed in Title 36.

An elementary or secondary school has a limited public forum whenever the school grants an opportunity for one or more outside youth or community groups to meet on school premises or in school facilities before or after the hours during which attendance at the school is compulsory.

**School Prayer – U.S. Department of Education only.** (20 USC 7904)

The NCLBA requires that school districts annually certify in writing that they have no policy that prevents or otherwise denies participation in constitutionally protected prayer in public schools by October 1 of each year. DPI is required to report to the U.S. Department of Education the names of the school districts that do not submit this certification.

If a school district fails to file the required certification, or files it in bad faith, DPI will ensure compliance in accordance with established enforcement procedures based on the General Education Provisions Act (GEPA). The US Department of Education considers a school district to have filed a certification in bad faith if the school district files the certification even though it has a policy that prevents or otherwise denies participation in constitutionally protected prayer in public schools.

The relationship between religion and government in the United States is governed by the First Amendment to the Constitution, which both prevents the government from establishing religion and protects privately initiated religious expression and activities from government interference and discrimination. The First Amendment thus establishes certain limits on the conduct of public school officials as it relates to religious activity, including prayer. The US Department of Education’s guidance on school prayer certification addresses the following: prayer during non-instructional time; organized prayer groups and activities; teachers, administrators, and other school employees; moments of silence; accommodation of prayer during instructional time; religious expression and prayer in class assignments; student assemblies and extracurricular events; prayer at graduation; and baccalaureate ceremonies. Refer to [http://www.ed.gov/inits/religionandschools/prayer\\_guidance.html](http://www.ed.gov/inits/religionandschools/prayer_guidance.html) for more information on school prayer.

**General Education Provisions Act (GEPA).** (20 USC Chapter 31)

The General Education Provisions Act (GEPA) contains general requirements applicable to most programs administered by the US Department of Education.

**Family Educational Rights and Privacy Act (FERPA).** (20 USC 31 Section 1232g or 34 CFR Part 99)

The Family Educational Rights and Privacy Act (FERPA) protects the privacy of student education records. The law applies to all schools that receive funds under applicable programs of the US Department of Education.

FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Students to whom the rights have transferred are "eligible students."

- Parents or eligible students have the right to inspect and review the student's education records maintained by the school. Schools are not required to provide copies of records unless, for reasons such as great distance, it is impossible for parents or eligible students to review the records. Schools may charge a fee for copies.
- Parents or eligible students have the right to request that a school correct records that they believe to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent or eligible student has the right to place a statement with the record setting forth his or her view about the contested information.
- Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions:
  - School officials with legitimate educational interest;
  - Other schools to which a student is transferring;
  - State educational agency for audit or evaluation of federal or state-supported education programs or enforcement of or compliance with federal legal requirements relating to these programs (this information may not be disclosed to anyone other than the state educational agency and must be destroyed when it is no longer needed);
  - Appropriate parties in connection with financial aid to a student;
  - Organizations conducting certain studies for or on behalf of the school;
  - Accrediting organizations;
  - To comply with a judicial order or lawfully issued subpoena;
  - Appropriate officials in cases of health and safety emergencies; and
  - State and local authorities, within a juvenile justice system, pursuant to specific state law.

Schools may disclose, without consent, "directory" information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. However, schools must tell parents and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them. This includes access to military recruiters unless a parent has opted out of providing that information. School districts must give military recruiters, when requested, the same access to secondary school students that is provided to postsecondary institutions or to prospective employers. A sample directory information notice is available at <http://www.ed.gov/policy/gen/guid/fpc/ferpa/mndirectoryinfo.html>.

Schools must notify parents and eligible students annually of their rights under FERPA. The actual means of notification (special letter, inclusion in a PTA bulletin, student handbook, or newspaper article) is left to the discretion of each school, but the notification must include:

- The procedure to inspect and review education records;
- The procedure to request amendment of education records;
- A specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest if the agency or institution discloses or intends to disclose personally identifiable information to school officials without consent;
- A notice that the school forwards education records, including suspension and expulsion disciplinary records, to other schools in which the student seeks or intends to enroll; and
- The rights of parents to file a complaint with the Family Policy Compliance Office (FPCO) in the US Department of Education

A sample FERPA notification can be found on the US Department of Education's website at <http://www.ed.gov/policy/gen/guid/fpco/ferpa/lea-officials.html>.

See <http://www.ed.gov/policy/gen/guid/fpco/pdf/ferparegs.pdf> for the complete FERPA law and <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html> for guidance.

**Protection of Pupil Rights Amendment (PPRA).** (20 USC 31 Section 1232h or 34 CFR Part 98)

The Protection of Pupil Rights Amendment (PPRA), section 445(b) of GEPA, has been amended. Slight changes have been made to the language regarding limits on survey, analysis, or evaluations. A new section has been added that requires school districts to develop local policies regarding student privacy, parental access to information, and administration of certain physical examinations to minors and lists the areas that need to be included in these policies.

The PPRA provides:

- That school districts make instruction materials available for inspection by parents if those materials will be used in connection with a US Department of Education-funded survey, analysis, or evaluation in which their students participate; and
- That school districts obtain prior written parental consent before minor students are required to participate in any US Department of Education-funded survey, analysis, or evaluation that reveals information concerning:
  - Political affiliations or beliefs of the student or the student's parent;
  - Mental or psychological problems of the student or the student's family;
  - Sex behavior or attitudes;
  - Illegal, anti-social, self-incriminating, or demeaning behavior;
  - Critical appraisals of other individuals with whom respondents have close family relationships;
  - Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
  - Religious practices, affiliations, or beliefs of the student or student's parent; or
  - Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

If they have not already done so, school districts are required to develop and adopt policies – in collaboration with parents – regarding the items bulleted below. School districts should review their policies and make sure that these items are covered.

- The right of parents to inspect, upon request, a survey created by a third party before the survey is administered or distributed by a school to students.
- Arrangements to protect student privacy in the event of the administration of a survey to students, including the right of parents to inspect, upon request, the survey if the survey contains one or more of the same eight items of information noted above.
- The right of parents to inspect, upon request, any instructional material used as part of the educational curriculum for students.
- The administration of physical examinations or screenings that the school may administer to students.
- The collection, disclosure, or use of personal information collected from students for the purpose of marketing or selling or otherwise providing the information to others for that purpose.
- The right of parents to inspect, upon request, any instrument used in the collection of information, as described in the bullet above.

School districts must directly notify parents of these policies at least annually at the beginning of the school year. School districts must also notify parents within a reasonable period of time if any substantive change is made to the policies. Such notification must include:

- An opportunity for parents to opt out of (remove their child) from participation in the following activities:

- Activities involving the collection, disclosure, or use of personal information collected from students for the purpose of marketing or for selling that information, or otherwise providing that information to others for that purpose.
  - The administration of any third party (non-US Department of Education funded) survey containing one or more of the above described eight items of information.
  - Any non-emergency, invasive physical examination or screening that is: 1) required as a condition of attendance; 2) administered by the school and scheduled by the school in advance; and 3) not necessary to protect the immediate health and safety of the student or of other students.
- The specific or approximate dates during the school year when these activities are scheduled.

A school district is not required to develop and adopt new policies if it has in place, on the date of enactment of the NCLBA, policies covering the requirements set forth in this law.

The requirements concerning activities involving the collection and disclosure of personal information from students for marketing purposes do not apply to the collection, disclosure, or use of personal information collected from students for the exclusive purpose of developing, evaluating, or providing educational products or services for, or to, students or educational institutions; such as the following:

- College or other postsecondary education recruitment, or military recruitment.
- Book clubs, magazines, and programs providing access to low-cost literacy products.
- Curriculum and instructional materials used by elementary schools and secondary schools.
- Tests and assessments used by elementary schools and secondary schools to provide cognitive, evaluative, diagnostic, clinical, aptitude, or achievement information about students.
- The sale by students of products or services to raise funds for school-related or education-related activities.
- Student recognition programs.

This law is not intended to preempt applicable provisions of state law that require parental notification.

This law does not apply to any physical examination or screening that is permitted or required by state law, including such examinations or screenings permitted without parental notification.

The requirements of PPRA do not apply to a survey administered to a student in accordance with the Individuals with Disabilities Education Act (IDEA).

These requirements do not supersede any of the requirements of FERPA.

The rights provided to parents under PPRA transfer from the parent to the student when the student turns 18 years old or is an emancipated minor under applicable state law. The law applies to school districts, but does not apply to postsecondary institutions. See <http://www.ed.gov/policy/gen/guid/fpco/ppra/index.html> for additional information.

A school district may use funds provided under Title V Part A of the NCLBA to enhance parental involvement in areas affecting the in-school privacy of students.

**Equity for Students, Teachers, and Other Beneficiaries.** (20 USC 31 Section 1228a)

Section 427 of GEPA requires that each applicant for federal funds include in its application a description of the steps it proposes to take to ensure equitable access to, and participation in, and to overcome barriers in its federally funded programs for students, teachers, and other program beneficiaries with special needs to meet challenging standards. See <http://www.ed.gov/policy/fund/guid/gposbul/gpos10.html?exp=0> for additional information and guidance.

### **General Assurances.** (20 USC 31 Section 1232e)

Subgrantees must assure in their applications for federal education funding that:

- They will administer each program covered by the application in accordance with all applicable statutes, regulations, program plans, and applications;
- The control of funds provided under each program, and title to property acquired with those funds, will be in a public agency and that a public agency will administer those funds and property;
- They will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, federal funds paid under each program;
- They will make reports to DPI and to the US Department of Education as may reasonably be necessary to enable them to perform their duties and that they will maintain such records, including the records required under section 1232f of GEPA, and provide access to those records as necessary to perform their duties;
- They will provide reasonable opportunities for the participation by teachers, parents, and other interested agencies, organizations, and individuals in the planning for and operation of each program;
- Any application, evaluation, periodic program plan or report relating to each program will be made readily available to parents and other members of the general public;
- In the case of any project involving construction, the project is not inconsistent with overall State plans for the construction of school facilities, and in developing places for construction, due consideration will be given to excellence of architecture and design and to compliance with standards prescribed by the US Department of Education under section 794 of Title 29 of the USC in order to ensure that facilities constructed with the use of federal funds are accessible to and usable by individuals with disabilities;
- They have adopted effective procedures for acquiring and disseminating to teachers and administrators participating in each program significant information from educational research, demonstrations, and similar projects, and for adopting, where appropriate, promising educational practices developed through such projects; and
- None of the funds expended under any applicable program will be used to acquire equipment (including computer software) in any instance in which such acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity or its employees or any affiliate of such an organization.

### **Other Assurances.**

Assurances covering other topics may be applicable and can be found at <http://www4.law.cornell.edu/uscode/20/ch31.html>.

### **Home School Educators** (20 USC 7886)

The requirements of the No Child Left Behind Act (NCLBA) do not affect home schools. However, home school educators should have the opportunity to participate in the title programs to the extent practicable.

### **Integration of Programs** (34 CFR 76.580 and 20 USC 7841 and 7845)

Subgrantees are encouraged to integrate all programs to the extent feasible to make the most efficient and effective use of the funds available to them. The NCLBA allows districts to submit a consolidated application for the federal title funds. Districts should, in their planning processes, look at their needs and the programs available to them and integrate these programs to meet their needs.

### **Nonpublic Schools** (34 CFR 76.651 – 76.677 and 7 CFR 3019)

Public school districts must provide nonpublic school(s) an opportunity for equitable participation in accordance with the authorizing statute and implementing regulations for a program. If, after consultation, the nonpublic school(s) chooses to participate in any of the programs, the public district

must include them in the planning, implementation, and evaluation of the program(s) selected. Funds must be used to benefit the students, not the schools themselves, and must be supplemental to other funds. Consultation should include the number and the needs of the nonpublic students and the benefits of the services to them.

Any services provided to the nonpublic schools must be secular, neutral, and non-ideological. A benchmark for this is that the equipment and materials would be appropriate for use in public schools.

To meet general record-keeping responsibilities, school districts must document that 1) representatives of nonpublic schools were informed that the services were available; 2) the needs of the nonpublic and public schools were identified as part of a district-wide needs assessment (particularly for Title II Part A of the NCLBA); 3) nonpublic schools were consulted and provided the opportunity for input into the planning of the activities; and 4) the school district designed a project that would permit equitable participation.

Public school districts must maintain administrative control over funds and property that benefit students enrolled in nonpublic schools. The nonpublic administrator must submit invoices (or other expense documentation) to the public administrator for payment. Funds may not be issued directly to the nonpublic school.

Administration costs that school districts charge to the programs for public and nonpublic students and teachers must come "off the top" of the total school district (total of public and nonpublic) allocations. The public district keeps title to any equipment purchased for the nonpublic schools, and that equipment must be included on the public district's inventory of equipment and clearly marked that it was purchased with funds from the appropriate title program. Nonconsumable supplies must also be inventoried and marked by the public district. Equipment and supplies may be placed in the nonpublic school for the time needed for the project. It is the public school district's responsibility to ensure that equipment and materials placed in the nonpublic schools are used only for proper purposes.

Public school districts may use program funds to pay for the services of an employee of a nonpublic school only if 1) the employee performs the services outside of his or her regular hours of duty; or 2) the employee performs the services under public supervision and control. Title funds cannot be used to pay any portion of a nonpublic school teacher's salary or benefits. Professional development funds may be used to pay stipends to nonpublic school teachers participating in high quality, scientifically-based professional development activities. The stipends must be reasonable and necessary. For example, if the professional development activity is conducted during after school hours or in the summer, stipends may be needed to compensate teachers for their participation outside their regular employment hours. Stipends for nonpublic school teachers must be available on the same basis as those for public school teachers and **the stipends must be paid directly to the nonpublic school teachers for their own use and NOT to the nonpublic school.**

### **Procurement System.** (34 CFR 80.36 and 7 CFR Part 3016)

**Procurement.** Procurement standards apply to the purchase of supplies, equipment, construction and other services funded in whole or in part by federal grant funds.

Subgrantees will use their own procurement procedures that reflect applicable state and local laws and regulations, provided that the procurements conform to applicable federal law and the standards identified in this section.

Subgrantees will maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the subgrantee shall participate in the selection, award, or administration of a contract supported by federal

funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the contractor is an employee, officer or agent; a member of his immediate family; a partner; or an organization that employs, or is about to employ, any of the above that has a financial or other interest in the firm selected for award.

Subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicated items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

Subgrantees are encouraged to enter into state and local inter-governmental agreements for procurement or use of common goods and services to foster greater economy and efficiency.

Subgrantees are encouraged to use federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

Subgrantees are encouraged to use value-engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

Subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

Subgrantees will maintain records sufficient to detail the significant history of procurement. These records will include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

Subgrantees will use time and material type contract only a) after a determination that no other contract is suitable, and b) if the contract includes a ceiling price that the contractor exceeds at its own risk.

Subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the subgrantee unless the matter is primarily a federal concern. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

Subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the subgrantee before pursuing protest with the federal agency. Reviews of protests by the federal agency will be limited to violations of federal law or regulations and the standards of this section (violation of state or local law will be under the jurisdiction of state or local authorities), and violations of the subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the federal agency other than those specified above will be referred to the subgrantee.

**Competition.** All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of this section. Some of the situations considered to be restrictive of competition include but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business,
- Requiring unnecessary experience and excessive bonding,
- Noncompetitive pricing practices between firms or between affiliated companies;
- Noncompetitive awards to consultants that are on retainer contracts,
- Organizational conflicts of interest,
- Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance of other relevant requirements of the procurement, and
- Any arbitrary action in the procurement process.

Subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

- Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description shall not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand that must be met by offerors shall be clearly stated; and
- Identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

Subgrantees will ensure that all prequalified lists of persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, subgrantees will not preclude potential bidders from qualifying during the solicitation period.

**Methods of Procurement.** There are four acceptable methods for purchasing supplies, equipment, and services.

- Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that does not cost more than \$100,000 for US Department of Education grants and \$25,000 for US Department of Agriculture grants. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.
- Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction.
- Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
- Proposals will be solicited from an adequate number of qualified sources;
- Subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;
- Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- Subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method where price is not used as a selection factor can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.
- Procurement by noncompetitive proposals. This method is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.
  - Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:
    - 1) The item is available only from a single source;
    - 2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
    - 3) The awarding agency authorizes noncompetitive proposals; or
    - 4) After solicitation of a number of sources, competition is determined inadequate.
  - Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.
  - Subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with requirements under the section entitled "Awarding Agency Review."

**Review of Pre-Award Procurement Documents.** Upon request of the awarding agency, subgrantees must make available technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase.

On request, subgrantees must make available to DPI and the US Departments of Education and Agriculture pre-award review procurement documents, such as request for proposals or invitation for bids, independent cost estimates, etc., when:

- A subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or
- The procurement is expected to exceed the small purchase threshold (\$25,000 US Department of Agriculture and \$100,000 US Department of Education) and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or
- The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product; or
- The proposed award is more than the small purchase threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement;
- A proposed contract modification changes the scope of a contract or increases the contract amount by more than the small purchase threshold.

A subgrantee will be exempt from the pre-award review if the awarding agency determines that its procurement system complies with the federal procurement standards. To be exempt,

- A subgrantee may request that its procurement system be reviewed by DPI to determine whether its system meets these standards in order for its system to be certified;
- A subgrantee may self-certify its procurement system; however, such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the subgrantee that it is complying with these standards. A subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

**Contracts Cost and Price.** Subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis are dependent on the facts surrounding the particular procurement situation, but as a starting point, subgrantees must make independent estimates before receiving bids or proposals.

Subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that cost incurred or cost estimates included in negotiated prices are consistent with federal cost principles. Subgrantees may reference their own cost principles that comply with the applicable federal cost principles.

The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

**Contract Provisions.** Contracts must contain the following provisions.

- For contracts other than for small purchases, administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
- For contracts in excess of \$10,000, termination for cause and for convenience by the subgrantee, including the manner by which it will be affected and the basis for settlement.
- For construction contracts in excess of \$10,000, compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60).
- For construction or repair contracts, compliance with the Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).
- For construction contracts in excess of \$2,000 when required by federal grant program legislation, compliance with the Davis-Bacon Act (40 USC 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5).
- For construction contracts awarded by subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers, compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).
- Notice of awarding agency requirements and regulations pertaining to reporting.
- Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention, which arises or is developed in the course of or under such contract.
- Awarding agency requirements and regulations pertaining to copyrights and rights in data.
- Access by the grantee, the subgrantee, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor that are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

- Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.
- For contracts, subcontracts, and subgrants in excess of \$100,000, compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 USC 1857h), section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).
- Mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub L. 94-163).

### **Professional Services Agreements**

**Contracting with Small and Minority Firms, Women’s Business Enterprises and Labor Surplus Area Firms.** The subgrantee will take all necessary affirmative steps to assure that minority firms, women’s business enterprises, and labor surplus area firms are used when possible.

Affirmative steps shall include:

- Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
- Assuring that small and minority businesses and women’s business enterprises are solicited whenever they are potential sources;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women’s business enterprises;
- Establishing delivery schedules, where the requirement permits, that encourage participation by small and minority businesses and women’s business enterprises;
- Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.

**Bonding Requirements.** For construction of facility improvement contracts or subcontracts exceeding \$100,000, the awarding agency may accept the bonding policy and requirements of the subgrantee provided the awarding agency has made a determination that the awarding agency’s interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

- A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of its bid, execute such contractual documents as may be required within the time specified.
- A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.
- A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

### **Property Management System.** (34 CFR 80.32 & 80.33 and NDCC 44-04-07)

**Equipment.** Office of Management and Budget Circular No A-87 “Cost Principles for State and Local Governments” defines equipment as an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost that equals the lesser of a) the capitalization level established by the governmental unit, or b) \$5,000. The State of North Dakota has established a capitalization level of \$5,000 per item. However, DPI will retain a capitalization level of \$750 per item. The \$5,000 level becomes relevant only during the disposition of equipment as described below.

Equipment must be used in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by federal funds. When no longer needed for the original project or program, the equipment may be used in other projects or programs currently or previously sponsored by a federal agency. If the equipment is being used less than full time in the project or program for which it was originally acquired, the equipment may be made available for use in other projects or programs currently or previously sponsored by the federal government, provided such use will not interfere with the work of the original project or program.

Subgrantees must not use equipment acquired with federal funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted by federal statute.

Minimum management requirements for equipment include:

- Inventory records must be maintained that include 1) description of equipment; 2) serial number or other identification number; 3) source of equipment; 4) who holds title; 5) acquisition date; 6) cost of equipment; 7) percent of federal participation in cost of equipment; 8) location; 9) use and condition of equipment; and 10) any disposition data including date of disposal and sale price of equipment.
- Physical inventory must be taken and results reconciled with inventory records at least once every two years.
- Control system must be developed to ensure adequate safeguards against loss, damage, or theft.
- Adequate maintenance procedures must be developed to keep the property in good condition.
- If subgrantee is authorized or required to sell equipment, proper sales procedures must be established to ensure the highest possible return.

**Disposition of Equipment.** Notify the appropriate DPI program administrator when disposing of equipment. Disposition of equipment shall be made if the equipment is no longer to be used in projects or programs currently or previously sponsored by the federal government. Equipment with a current per unit fair market value of less than \$5,000 may be retained, sold, or otherwise disposed of, with no further obligation.

Equipment with a current per unit fair market value in excess of \$5,000 may be retained or sold. However, the federal government has a right to an amount calculated by multiplying the current market value or the proceeds from the sale by the federal share of the equipment. The federal share of equipment shall be the same percentage as the federal share of the total cost under the grant.

When acquiring replacement equipment, the subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

### **Public Input** (34 CFR 76.304 and 20 USC 7846)

34 CFR 76.304 requires that subgrantees must make any application, evaluation, periodic program plan, or report related to each federal program available for public inspection. 20 USC 7846 requires school districts to receive public input on their consolidated applications for federal title funding before the applications are submitted to DPI for review and approval.

### **Publications and Copyrights** (34 CFR 75.620 – 75.622 and 80.34)

If any copyrightable material is developed with federal funds, the federal government and the Department of Public Instruction (DPI) shall have a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, 1) the copyright in any work developed under a grant, subgrant, or contract; and 2) any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

Any publications or copyrighted materials that contain project materials (copyrightable work developed with funds from federal funds) must include the following statements:

The contents of this (insert type of publication; e.g., book, report, film) were developed under a grant from the U.S. Department of Education. However, these contents do not necessarily represent the policy of the U.S. Department of Education, and you should not assume endorsement by the federal government.

When issuing statements, press releases, requests for proposals, bid solicitations, announcements of contract awards under a grant, and other documents or announcements describing a federally supported project, the subgrantee must state 1) the percentage and dollar amount of the total program or project costs financed with federal funds; and 2) the percentage and dollar amount of the total cost financed by nongovernmental sources. (P.L. 102-141, Section 623 and P.L. 102-170, Section 511)

Any materials for workshops, conferences, brochures, manuals, handouts, etc. printed and paid for by DPI must include the following on each item disseminated to the public:

Department of Public Instruction  
Dr. Wayne G. Sanstead, State Superintendent  
600 East Boulevard Avenue, Department 201  
Bismarck, North Dakota 58505-0440  
Date of document

All DPI publications and official documents must include the following non-discrimination statement:

The Department of Public Instruction does not discriminate on the basis of race, color, national origin, sex, disability, or age in its programs and activities. John Dasovick, Assistant Director, USDA Food Distribution Programs, Office of Child Nutrition, 600 East Boulevard Avenue, Bismarck, ND 58505, 701-328-2260, has been designated to handle inquiries regarding non-discrimination.

## **Records Management** (34 CFR 76.730-76.731 and 80.42)

**Keeping Records.** Subgrantees must keep records to show compliance with program requirements. They must also keep records to show the amount of funds, the use of funds, the total cost of the project, and the share of the cost provided from other sources (if any) under the subgrant. This information must be provided to DPI as may be reasonably required for fiscal audit and individual or consolidated program evaluation consistent with the responsibilities of DPI.

**Records Retention.** Subgrantees must keep all financial and programmatic records for a period of three years, the starting date of which begins on the day the final report is submitted. The retention period for equipment records starts on the date of disposition, replacement, or transfer. If any litigation, claim, negotiations, audit or other action involving the records started before the end of the retention period, the records must be retained until completion of the action and resolution of all issues or until the end of the respective retention period, whichever is later. Copies made by microfilming, photocopying or similar methods may be substituted for the original record.

The statute of limitations provides that an action to recover for diversion of money paid under a grant program or an action for conversion of property must be brought within six years after the right of action accrues.

**Personnel Activity Reports (or Time and Effort Records)** (OMB Circular A-87). Charges for employee salaries and wages must be based on payrolls documented in accordance with generally accepted practice of the governmental unit and approved by an official of that unit.

- Charges for salaries and wages for all employees who work on only one program or cost objective must be supported by semi-annual certifications signed by each employee that 100 percent of their time was spent on that program.
- Charges for salaries and wages for all employees who work on more than one program or cost objective must be supported by personnel activity reports or equivalent documentation (time and effort records) that shows the distribution of the employee's time among the programs for which the employee works. The documentation must
  - Reflect an after-the-fact distribution of the actual activity of each employee;
  - Account for the total activity for which the employee is compensated;
  - Be prepared at least monthly and coincide with one or more pay periods; and
  - Be signed by each employee.

**Monitoring and Reporting Program Performance** (34 CFR 80.40). DPI as a grantee of federal funds is responsible for monitoring grant and subgrant activities to assure compliance with applicable federal requirements and achievement of performance goals. Monitoring must include each program, function, or activity.

### **Reporting Requirements** (34 CFR 76.722 and 34 CFR 80.41)

**Reports.** Subgrantees must furnish interim and final financial and programmatic reports to DPI that it needs to carry out its responsibilities under the programs.

**Gun-Free Schools Act.** (20 USC 7151) Every school district receiving federal funds under the NCLBA must report circumstances surrounding any expulsions imposed under state law, including the following: 1) name of the school concerned; 2) number of students expelled from the school; and 3) the type of weapons concerned.

## **FISCAL REQUIREMENTS**

### **Allowable and Unallowable Costs.** (34 CFR 80.22 and OMB Circular A-87)

Subgrantees assume responsibility for ensuring that federal program funds have been expended and accounted for consistent with applicable OMB cost principles, agency program regulations, and the terms of subgrant agreements to determine the reasonableness, allowability, and allocability of costs.

OMB Circular No. A-87 "Cost Principles for State and Local Governments" establishes principles and standards for determining costs applicable to grants, contracts, and other agreements with state and local governments and Indian Tribal governments. Costs are allowable for federal reimbursement only to the extent of benefits received by federal programs, and costs must meet the basic guidelines of allowability, reasonableness, and allocability.

**Allowability.** To be allowable under a federal award, costs must meet the following general criteria:

- Be necessary and reasonable for proper and efficient performance and administration of federal awards and be allocable thereto under these principles.
- Be authorized or not prohibited under state or local laws or regulations.
- Conform to any limitations or exclusions set forth in these principles, federal laws or other governing limitations as to types or amounts of cost items.

- Be consistent with policies, regulations, and procedures that apply uniformly to both federal awards and other activities of the subgrantee.
- Be accorded consistent treatment. Consequently, a cost may not be assigned to a federal award as direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to a federal award as an indirect cost.
- Be determined in accordance with generally accepted accounting principles appropriate to the circumstances.
- Not be included as a cost or used to meet cost sharing or matching requirements of any other federal activity in either the current or a prior period.
- Be net of all applicable credits.
- Be adequately documented.

**Reasonableness.** A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. In determining reasonableness of a given cost, consideration shall be given to:

- Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the federal award.
- The restraints or requirements imposed by such factors as sound business practices, arms length bargaining, federal, state and other laws and regulations, and terms and conditions of the federal awards.
- Market prices for comparable goods or services.
- Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the subgrantee, its employees, the public at large and the federal government.
- Significant deviations from the established practices of the subgrantee that may unjustifiably increase the federal awards cost.

**Unallowable Costs.** Subgrantees are responsible for ensuring that unallowable expenditures are not charged to a federal program. The following represents unallowable costs identified in OMB Circular No. A-87.

- Advertising costs associated with disposal of surplus materials
- Alcoholic beverages
- Bad debts (Any losses arising from uncollectible accounts and other claims, and related costs.)
- Contingencies (Contributions to a contingency reserve or any similar provision for unforeseen events.) An exception is that school foodservice funds may be placed into contingency accounts for use in future major purchases or capital improvements.
- Contributions, donations, and volunteer services
- Defense and prosecution costs of criminal and civil proceedings and claims
- Entertainment (Costs of amusements, diversion, social activities, and any costs relating thereto, such as tickets to shows or sports events, meals, beverages, lodging, rentals, transportation, and gratuities.)
- Fines and penalties (Costs resulting from violations of, or failure to comply with federal, state or local laws and regulations.)
- Fund raising and investment management costs (except costs associated with investment covering pension, self-insurance are allowable)
- Interest (Interest on borrowed capital or use of subgrantee's own funds, however representing.)
- Legislative expenses (Salaries and other expenses of the State legislature or similar local governmental bodies such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction, are unallowable.)
- Lobbying (Costs of influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans and membership in organizations substantially engaged in lobbying.)
- Promotional items and memorabilia
- Real property or construction (Unless specifically permitted by the authorizing statute.)

- Religious worship, instruction, or proselytization (Includes equipment or supplies; construction, remodeling, repair, operation, or maintenance of religious facility; activity of a school or department of divinity.)
- Underrecovery of costs under federal agreements (Any excess costs over the federal contribution under one grant agreement is unallowable under other grant agreements.)

### **Audit Requirements.** (34 CFR 80.26 and OMB Circular A-133)

Federal audit requirements that subgrantees that expend \$500,000 or more in federal funds annually are responsible for obtaining audits in accordance with the Single Audit Act Amendments of 1996 and the revised OMB Circular A-133 Audits of States, Local Governments, and Non-Profit Organizations. Federal assistance includes federal reimbursement payments and the value of donated commodities. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits. If subgrantees expend less than \$500,000 annually, they still must maintain records of federal financial assistance or provide access to such records by state or federal agencies.

North Dakota state laws and regulations require school districts to have an audit at least once every two years (NDCC 54-10-14). The State Auditor may in lieu of conducting an audit every two years require annual reports from school districts with less than 100 students enrolled. The reports must contain the financial information required by the State Auditor.

### **Budget Revisions.** (34 CFR 80.30)

Subgrantees are permitted to revise budgets to meet unanticipated requirements and may make limited program changes to the approved project. If a grant award is less than \$100,000, no prior approval is required to make cumulative transfers among budget object codes. If a grant award is \$100,000 or more, no prior approval is required to make cumulative transfers among budget object codes that are less than 10 percent of the total grant award amount. If more than 10 percent transfer is anticipated, prior approval is required and a Budget Revision form must be submitted to DPI.

Prior approval is required for grant awards of any amount for the following:

- Any revision that would result in the need for additional funding;
- Transfer of funds allotted for training allowances
- Any transfer from a non-construction expense to a construction expense (for those projects that have both construction and non-construction activities);
- Any revision of the scope or objectives of the project
- Need to extend the period of availability of funds

School districts must submit requests for budget revisions **before** the revision is made to DPI using SFN 9035 located at <http://www.dpi.state.nd.us/forms/sfn9035.pdf>

### **Consortium Responsibilities.**

Some federal programs may encourage subgrantees to pool resources and form consortia to provide educational services. It is important to remember that once a project is submitted as a consortium, there is no longer a monetary entitlement to each member of the consortium. Therefore, the actual financial and educational benefit received by a member of a consortium may differ from the amount of funds it would have received had it applied for funds separately.

The fiscal agent of a consortium is responsible for the overall financial management of the program in accordance with the requirements described in the various sections of this manual and includes:

- Processing all financial transactions, including the request for and deposit of grant revenue; payment of all allowable expenditures; and preparation of journal vouchers.

- Maintaining all source documentation (invoices, bills, payroll records, etc.) to substantiate expenditures.
- Preparing and submitting Request for Funds to DPI.
- Preparing and distributing to member units a final financial report allocating total program costs to each of the member units.

In no case should a fiscal agent merely send funds to a member unit based on the original entitlement and then have the member unit expend the funds at its level. This type of accounting defeats the purpose of the use of consortia.

The following represents specific instructions established by DPI's School Finance and Reorganization for consortium accounting related to school districts:

The school district that is the fiscal agent for the grant or program should account for all activity of the consortium using Fund Group 7 trust and agency/consortium fund. At the end of the year, the fiscal agent will provide a report to consortium members showing each member's share of revenue and expenditures. The member districts will use this report as the basis for recording their share of the consortium activity.

An alternative method is to account for transactions through the general fund. Revenue account 5500 *Services Provided for Another LEA* and expenditure account 000-3600 *Services Provided for Another LEA* are used for other member's share of transactions (the fiscal agent's district accounts for their share as educational expenditures). Regardless of the method used, a report showing each member's share of revenue and expenditures should be prepared for the consortium members.

### **Cost Sharing (Matching) Programs. (34 CFR 80.24)**

Some federal programs require that grant funds be matched proportionately with non-federal funds or that the subgrantee participate to some extent in the cost of the project.

Sources of costs used for cost sharing may be from allowable non-federal costs incurred by the subgrantee and/or the value of third-party in-kind contributions. Neither of these sources may be used to meet matching requirements unless they can be verified by the subgrantee records.

**No school districts may count tuition and fees collected from students toward meeting matching, cost sharing, or maintenance of effort requirements of a program.**

Third-Party In-Kind Contributions. Third party in-kind contributions must be necessary to accomplish program activities and allowable if the subgrantee was required to pay for them. A third-party in-kind contribution of entertainment, for example, would not count because entertainment is not an allowable cost.

The most common problem with third-party in-kind contributions is lack of documentation. Subgrantees should ensure that all in-kind contributions are documented through records that show how the valuation is determined. The quantity and allocability of volunteer services must be supported, to the extent feasible, by the same methods that the subgrantee uses for its own employees. For instance, if employees use a time clock, volunteers should do the same. Attendance at meetings by volunteers should be documented by signature records that substantiate the date and nature of the meeting and the amount of time spent at the meeting.

The rule for valuation of third-party contributions is "what it would have cost if the subgrantee had paid for the time or service itself." Several rules apply to the various types of services:

- **Volunteer Services.** Services provided to a subgrantee by volunteers are valued at rates consistent with those paid to employees performing similar work. If the subgrantee does not have employees performing similar work, the applicable rates are those paid by other employers for similar work in the labor market. In either case, a reasonable amount of fringe benefits may be included in the valuation.
- **Employees of Other Organizations.** When an employer other than the subgrantee furnishes at no cost the services of an employee, these services are valued at the employee's regular rate of pay,

provided they are in the same line of work for which the employee normally is paid. The employer's overhead costs cannot be made a part of the valuation. Donated services are valued at the rate for "similar work." Therefore, if a doctor volunteers to drive a bus on a weekend, the services are valued at the rate of a bus driver, not a doctor.

- **Donated Supplies, Equipment, Space.** If a third party donates supplies, the contribution is valued at the market value of the supplies at the time of the donation. Use of equipment or building space is also valued at the fair market rental value of equipment or space.

### **Financial Management Standards.** (34 CFR 80.20)

Subgrantees of federal funds must establish accounting procedures and records that are sufficient to permit preparation of required reports and permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

The Cash Management Improvement Act of 1990 (CMIA) provides for the timely transfer of funds between federal agencies and states. Subgrantees must also conform to these CMIA standards. DPI is required to have procedures in place to minimize the time elapsed between the transfer of funds from the U.S. Treasury and the disbursement of funds to subgrantees. These procedures must ensure the receipt of reports on cash balances and cash disbursements in sufficient time to enable complete and accurate cash transactions reports. DPI must make drawdowns as close as possible to the time of making disbursements and must monitor cash drawdowns by subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to DPI. A guideline that has been established to minimize the time elapsed between the transfer and disbursement of funds is three (3) days.

The financial management systems must meet the following standards:

- **Financial reporting.** Accurate, current and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the subgrantee.
- **Accounting records.** Subgrantees must maintain records that adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.
- **Internal control.** Effective control and accountability must be maintained for all subgrant cash, real and personal property, and other assets. Subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.
- **Budget control.** Actual expenditures must be compared with budgeted amounts. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.
- **Source documentation.** Accounting records must be supported by source documentation, such as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

### **Fiscal Closeout.** (34 CFR 80.50-80.51)

Federal programs are closed out after all applicable programmatic and financial work has been completed. All financial, performance, and other required reports must be submitted within 90 days after the expiration of the grant. Closeout of a grant does not affect the federal agency's right to disallow costs and recover funds on the basis of a later audit or other review; the subgrantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions; records retention; property management requirements; or audit requirements.

### **High Risk Subgrantees.** (OMB Circular A-102)

A subgrantee may be considered “high risk” if DPI determines that the subgrantee:

- Has a history of unsatisfactory performance, or
- Is not financially stable, or
- Has a management system that does not meet the management standards set forth in this part, or
- Has not conformed to terms and conditions of previous awards, or
- Is otherwise not responsible and if DPI determines that an award will be made, special conditions and/or restrictions shall correspond to the high-risk condition and shall be included in the award. Special conditions or restrictions may include 1) payment on a reimbursement basis; 2) withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period; 3) requiring additional, more detailed financial reports; 4) additional project monitoring; 5) requiring the subgrantee to obtain technical or management assistance; or 6) establishing additional prior approvals.
- If DPI decides to impose such conditions, it will notify the subgrantee as early as possible in writing of 1) the nature of the special conditions/restrictions; 2) the reason(s) for imposing them; 3) the corrective actions that must be taken before they will be removed and the time allowed for completing the corrective actions; and 4) the method of requesting reconsideration of the conditions/restrictions imposed.

### **Maintenance of Effort.** (20 USC 7901, 20 USC 9251 and 20 USC 1413)

The No Child Left Behind Act and the Work Force Investment Act require that school districts must maintain either the combined fiscal effort per student or the aggregate expenditures of the agency and the state with respect to the provision of free public education by the agency for the preceding fiscal year at least at 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year. If this 90 percent effort is not maintained, the federal allocation amounts must be reduced in the exact proportion of the failure to maintain effort. For example, if a school district maintains only 85 percent effort, the federal title allocations must be reduced by 5 percent (90%-85%).

DPI annually calculates this maintenance of effort based on the financial information that school districts submit to DPI on the North Dakota School District Financial Report and notifies school districts that have not met this 90 percent maintenance of effort requirement.

IDEA Part B requires that the total amount or average per capita amount of state and local school funds budgeted by the special education units for expenditures in the current fiscal year for the education of children with disabilities must be at least equal to the total amount of state and local school funds actually expended for the education of children with disabilities in the most recent preceding fiscal year for which the information is available.

### **NCLB Transferability/REAP.** (20 USC 7305 and 20 USC 7341)

The No Child Left Behind Act authorizes two funding flexibility options for eligible school districts—Transferability and Rural Education Achievement Program (REAP) Alternate Uses of Funds. When a school district participates in either of these options, the applicable funds are combined into one budget, not several budgets even though funds may be actually coming from several programs. Revenue codes from the North Dakota School District Financial Accounting and Reporting Manual (NDSFARM) are used to record title allocation amounts to be received, and expenditure codes from NDSFARM are used to record title expenditure amounts in REAP or Transferability. See page 19 for revenue codes and page 22 for expenditure codes of the NDSFARM for federal title revenue and expenditure codes located at <http://www.dpi.state.nd.us/resource/ndsfarm.pdf>. A separate Request for Funds form (SFN 52148) located at <http://www.dpi.state.nd.us/forms/sfn52148.pdf> has been developed for school districts to request funds under Transferability or REAP. Since this is one budget, only one Request for Funds form is required.

**Object Codes.** (North Dakota School District Financial Accounting & Reporting Manual)

The most common object codes and corresponding descriptions that are used on budgets include the following:

- 110 Professional salaries—salaries paid to certificated individuals; i.e. certified teachers
- 120 Non-professional salaries—salaries paid to other staff that are not certificated; i.e. paraprofessionals, secretaries, teachers’ aides, bus drivers
- 200 Employee benefits—payments made on behalf of employees that are not part of gross salary; i.e. insurance, Social Security, retirement, unemployment compensation, Workers Compensation, annual leave, sick leave
- 300 Purchased professional and technical service—services performed by those with specialized skills and knowledge; i.e. school management support activities, data processing, management consultants, auditors, accountants, lawyers
- 430 Maintenance—repair of equipment
- 580 Travel—Expenditures for staff travel, including mileage, airline tickets, taxi fares, meals, lodging
- 600 Materials/Supplies—Expendable items that are consumed, worn out, or deteriorated in use; includes equipment that costs less than \$750, freight, books, school supplies,
- 730 Equipment that costs more than \$750 and is added to the school’s equipment inventory list
- 800 Other—dues, memberships, registration fees
- 900 Indirect costs—Costs that cannot be directly attributed to a program but are essential in operating a school; indirect cost is a percentage of total operating costs for object codes 110 through 800 (excluding 730); percentage is determined on an individual basis but is no larger than 10%

**Obligation of Funds.** (34 CFR 76.707 – 76.710)

When subgrantees may begin to obligate federal funds depends upon the authorizing statute and limitations placed on DPI by the Cash Management Improvement Act (CMIA) of 1990. Subgrantees may not obligate funds until the later of a) the date that the subgrantee submits its program application in substantially approvable form; or b) the date that DPI may begin to obligate funds.

DPI will not provide fund advances or reimbursement for expenditures until the application is approved.

When obligations are made

If the obligation is for:	The obligation is made:
1. Equipment or supplies	On the date the subgrantee makes a binding written commitment to acquire the equipment or supplies
2. Personal services by an employee of a subgrantee	When the services are performed
3. Personal services by a contractor who is not an employee of the subgrantee or performance of work other than personal services	On the date the subgrantee makes a binding written commitment to obtain the services
4. Public utility services	When the subgrantee receives the services
5. Travel	When the travel is taken
6. Rental of building or equipment	When the subgrantee uses the building or equipment

Subgrantees may not obligate funds (order materials, supplies, or equipment) for the following school year prior to the date the funds become available to them, which is July 1, unless the subgrantee has carryover funds available from the previous year. If materials, supplies, or equipment are ordered before July 1, the items must be received and paid for before July 1.

Obligations in Carryover Period. Subgrantees that do not obligate all of its funds by the end of the fiscal year may obligate remaining funds during a carryover period of one additional fiscal year. The subgrantee may be required to submit an application or plan for the carryover period. The federal statutes and regulations that apply to the program are in effect for the carryover period.

### **Schoolwide Co-mingling.**

(20 USC 6314)

The No Child Left Behind Act allows eligible school districts to combine federal title funding into one schoolwide program and budget. Federal funds combined in a schoolwide program lose their specific program identity and may be used for any costs of the schoolwide program as long as the intent and purposes of the federal programs are met. Districts do not have to track how each program's funds are spent. All funds used to support the schoolwide plan should be put into one account; however, federal funds should not go into the general fund account because schools still need to submit financial reports that track the federal funds as a whole. No time distribution logs or periodic certifications are required unless there are employees working in a schoolwide program funded by programs that have not been combined.

Districts that are schoolwide and co-mingle all federal title funds apply for funding on the Consolidated Application for Federal Title Programs and request funds on SFN 52148 located at <http://www.dpi.state.nd.us/forms/sfn52148.pdf>.