

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

**SUMMARY:** Under section 459 of the General Education Provisions Act (GEPA), 20 U.S.C. 1234h, the Secretary of Education (Secretary) intends to repay to the Black Hills Special Services Cooperative (Black Hills), both directly and through the South Dakota Department of Education and Cultural Affairs (DECA), under a grantback arrangement, an amount which represents nearly 75 percent of the amount of funds recovered by the Department of Education (Department) as a result of final audit determinations for findings covering fiscal years 1996–1999. This notice describes Black Hills' plan for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. This notice invites comments on the proposed grantback.

**DATES:** We must receive your comments on or before April 11, 2002.**ADDRESSES:** Address all comments about the proposed grantback to Cheryl Hannah, U.S. Department of Education, 400 Maryland Avenue SW., room 4W211, Washington, DC, 20202–4300. If you prefer to send your comments through the internet, use the following address: [Cheryl.Hannah@ed.gov](mailto:Cheryl.Hannah@ed.gov)**FOR FURTHER INFORMATION CONTACT:** Cheryl Hannah. Telephone: (202) 401–1816.

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**SUPPLEMENTARY INFORMATION:****A. Background**

The Department has recovered \$106,088 from Black Hills as a result of the resolution of audit findings reached in an April 18, 2000, Agreement (the Agreement) between Black Hills and the Department covering federal fiscal years ending September 30, 1996, 1997, 1998 and 1999 (Audit Control Numbers 08–96–78277, 08–97–88143, 08–98–98122, 08–99–08185). Staff from the Department, Black Hills, the South

Dakota Department of Legislative Audit, the South Dakota Department of Education and Cultural Affairs, and the South Dakota Department of Human Services engaged in the cooperative audit resolution of the findings contained in the audits referenced above under the Department's Cooperative Audit Resolution and Oversight Initiative (CAROI) in an effort to address the root causes of the problems and to avoid recurrence of these findings in the future. Cited in the audit reports and relevant to this grantback request are grants awarded under the Technology Innovation Challenge Grant Program (CFDA 84.303), the Assistive Technology Act—State Grants for Assistive Technology Program (CFDA 84.224), and the State Systems for Transition Services for Youth with Disabilities Program (CFDA 84.158A).

*Technology Innovation Challenge Grant*

Claims against Black Hills included in the Agreement involved the “Technology in Education Challenge Grant for Rural Education” (TECRAM) (CFDA 84.303), a program to integrate technology with the curriculum in six community-based systemic reform efforts across the State of South Dakota. The claims involved rental costs under related party leases that exceeded the amounts allowed per OMB Circular A–87, and associated indirect costs.

*Assistive Technology Act—State Grants for Assistive Technology Program*

Included within the Agreement are claims against Black Hills under the Assistive Technology Act—State Grants for Assistive Technology Program (CFDA 84.224), which is designed to address issues raised by States, individuals, Protection and Advocacy providers, and other relevant organizations; collect data that will provide information about assistive technology devices and services that can be used for determining policy; and provide information on increased access to assistive technology devices, assistive technology services and other disability-related resources. The claims involved disallowed rental costs and associated indirect costs. Specifically, rental costs were charged to grants based on fair market value, which exceeded the amounts allowed due to limitations for less-than-arms-length transactions, and rental costs under related party leases exceeded the amounts allowed per Office of Management and Budget (OMB) Circular A–87.

*State Systems for Transition Services for Youth With Disabilities*

Also included within the Agreement were claims against Black Hills for a State Systems for Transition Services for Youth with Disabilities Grant (CFDA 84.158A), which is designed to develop, implement, and improve systems to provide transition services for youth with disabilities from ages 14 through the age they exit school. The claims involved unsupported general management costs that were charged as direct costs to a Federal grant.

Based on the Agreement, Black Hills submitted a payment of \$106,088 to the Department in September 2000 in full settlement of the Department's claims reached in the Agreement.

On January 8, 2000, Black Hills requested a grantback of \$79,318, which represents nearly 75 percent of these recovered funds.

**B. Authority for Awarding a Grantback**

Section 459(a) of GEPA, 20 U.S.C. 1234h(a), provides that, whenever the Secretary has recovered funds under an applicable program because the recipient made an expenditure of funds that was not allowable, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the grantee affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this grantback requested by Black Hills if the Secretary determines that—

(a) The practices and procedures of Black Hills that resulted in the findings have been corrected, and Black Hills is in compliance with the requirements of the applicable programs;

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

(c) Use of funds to be awarded under the grantback arrangement in accordance with Black Hills' plan would serve to achieve the purposes of the program under which the funds were originally granted.

**C. Plan for Use of Funds Awarded Under a Grantback Arrangement**

Pursuant to section 459(a)(2) of GEPA, Black Hills has applied for a grantback totaling \$79,318, which is nearly 75 percent of the principal amount of the recovered funds and has submitted a

plan outlining the activities that will be supported by the grantback funds.

Specifically, Black Hills plans to utilize the grantback of funds recovered under the Technology Innovation Challenge Grant to pay costs associated with continued support to local district partners and the collaborative development team. These efforts were intended to assist in capturing the results and discoveries of project activities, the effects of technology integration on teaching and learning, and the creation of formats useful for replication. In addition, staff time was utilized to organize and facilitate the dissemination and training event. Although the project period for this grant has ended, a grantback award is appropriate because one underlying purpose of grants under this program is to support sustainable activities related to the innovative use of technology in education. The funds will be expended within six months of receipt.

Under the Assistive Technology Act—State Grants for Assistive Technology Program, Black Hills plans to use the grantback funds to pay costs related to expanded direct services to consumers, families, employers, and schools primarily in the northeast part of South Dakota. Additional personnel were assigned to the northeast part of the State for a six-month period to resolve a backlog of consumer referrals and requests for technical assistance and training. The funds will be expended within six months of receipt.

Under the State Systems for Transition Services for Youth with Disabilities Grant, Black Hills will use the grantback, which it will receive through DECA, to pay costs related to providing technical assistance and support in the development and implementation of transition services funds for students with disabilities aged 16 to 21 years served by local school districts in the Black Hills area. The funds will be expended within six months of receipt.

#### D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by Black Hills. Based upon that review, the Secretary has determined that the conditions under section 459(a) of GEPA have been met.

This determination is based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative

action. In finding that the conditions of section 459(a) of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

The Secretary also concludes that this grantback award will support the provision of services to the intended beneficiaries of the programs under which these grant awards were originally made. These beneficiaries may not have received the full benefit of the services intended by these programs due to the problems that gave rise to the audit recovery described in Section A of this notice. Thus, this grantback award will advance and support the policy goals of the statutory provisions that authorized the initial grant awards.

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

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

In accordance with section 459(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Black Hills Special Services Cooperative, directly and through DECA, under a grantback arrangement. The grantback award will be in the amount of \$79,318, which is nearly 75 percent—the maximum percentage authorized by statute—of the principal amount recovered as a result of the Agreement.

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

Black Hills agrees to comply with the following terms and conditions under which payments under a grantback arrangement will be made:

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

(1) All applicable statutory and regulatory requirements;

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

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

(b) All funds received under the grantback arrangement must be

obligated by September 30, 2003, in accordance with section 459(c) of GEPA.

(c) Black Hills must, no later than December 31, 2003, submit a report to the Secretary that—

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

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

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

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

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**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>

(Catalog of Federal Domestic Assistance Numbers: 84.303, Technology Innovation Challenge Grant; 84.224, Assistive Technology Act Technical Assistance Program; 84.158A, State Systems for Transition Services for Youth with Disabilities.)

Dated: March 6, 2002.

**Mark Carney,**

*Deputy Chief Financial Officer.*

**Grover J. Whitehurst,**

*Assistant Secretary, Office of Educational Research and Improvement.*

**Loretta L. Petty,**

*Acting Assistant Secretary for Special Education and Rehabilitative Services.*

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