



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JAN 20 2004

Mr. Keith Neves
Special Education Director
Bureau of Indian Affairs
Office of Indian Education Programs
Center for School Improvement
500 Gold Avenue, SW, Room 7202
Albuquerque, New Mexico 87103-1088

Dear Mr. Neves:

I am writing regarding a conference call on September 24, 2003 that Ms. Gloria Yepa, who was, at that time, Special Education Director for the Bureau of Indian Affairs (BIA), and Ms. Sharon Wells, Chief of the BIA Center of School Improvement, participated in with members of my staff concerning BIA's request to allocate \$2.7 million of Federal fiscal year (FFY) 2001 funds under Part B of the Individuals with Disabilities Education Act (IDEA) that were going to expire on September 30, 2003 to the Navajo Nation for its preschool program. We denied that request for the reasons explained below.

The Secretary reserves 1.226% of funds allocated under section 611 of IDEA to provide assistance to the Secretary of the Interior. 20 U.S.C. §1411 (c). In FFY 2002 and 2003, the amount allocated to the Secretary of the Interior was set in appropriations language at the prior year's funding level plus inflation. Eighty percent of these funds are allocated to the Secretary of Interior to provide special education and related services to children with disabilities on reservations aged 5 through 21 enrolled in elementary and secondary schools for Indian children operated or funded by the Secretary of Interior. 20 U.S.C. §1411(i)(1)(A). Twenty percent of these funds are allocated to the Secretary of Interior to be distributed based on a statutory formula to tribes and tribal organization to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of Interior. 20 U.S.C. §1411(i)(3)(A). Every fiscal year, the grant award letter to the BIA specifies these amounts.

Initially, Ms. Wells requested that the \$2.7 million of FFY 2001 funds that were about to lapse be transferred to the Navajo Nation's infant and toddler program. The funds allocated to the BIA under section 611 (c) of IDEA must be used in accordance with section 611(i) of IDEA, which does not authorize use of funds for infants and toddlers with disabilities. When we explained this, Ms. Wells clarified that BIA was requesting that the funds be transferred to the Navajo Nation's preschool program. However, BIA was unable to assure OSEP that this transfer of funds would not result in more than 20% of the BIA's FFY 2001 funds being distributed to the tribes to coordinate with the States

in the provision of special education and related services for preschool aged children with disabilities. As noted above, tribes and tribal organizations are only eligible for the 20% of each fiscal year's grant allocated for the coordination of services to preschool children. Based on the information provided during the conference call, we were unable to approve the transfer of funds.

During the course of the conference call, Ms. Yepa and Ms. Wells explained that the BIA is always a year behind in disbursing its funds. For instance, it disburses its FFY 2001 Part B funds (which became available on July 1, 2001) in the summer of 2002. Ms. Yepa and Ms. Wells indicated that \$2.7 million of FFY 2001 Part B funds that were about to lapse on September 30, 2003 were left unexpended. So that these funds would not lapse, BIA wanted to transfer this \$2.7M to the Navajo Nation's preschool program, subtracting the equivalent amount from what the Navajo Nation would otherwise receive for this year. It is our understanding that during the conversation Ms. Yepa and Ms. Wells indicated that all the IDEA monies went into the same "pot" and that the BIA was unable to track what year's money they were using and had no way of determining what constitutes "80% money" and "20% money." Because of that BIA was unable to confirm that the \$2.7 million of FFY 2001 funds were from the 80% amount or the 20% amount.

We are writing to clarify that in order to comply with the requirements of section 611(i) of IDEA, the BIA must be able to demonstrate that for each FFY as specified in its grant award letter, 80% of its section 611(c) funds are used to provide special education and related services to children with disabilities aged 5 through 21 enrolled in BIA operated or funded schools and 20% of its section 611 (c) funds are distributed to the tribes or tribal organizations for the coordination of services for children with disabilities aged 3 through 5. Within 60 days of receipt of this letter, the BIA must send OSEP its procedures for distributing the funds that it receives under section 611(c) of IDEA and the methods it uses to ensure those procedures have been properly implemented. OSEP will review those procedures to ensure that the funds the BIA receives under section 611(c) are distributed in accordance with the requirements in section 611(i) of IDEA.

Sincerely,



Stephanie Smith Lee
Director
Office of Special
Education Programs