



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

DEC 17, 2002

Ms. Marilyn M. Scott
Indian Policy Advisory Committee Chair
Department of Social and Health Services
State of Washington
Olympia, Washington 98504-5000

Dear Ms. Scott:

This is in response to your letter dated June 11, 2002 to Assistant Secretary Robert H. Pasternack, requesting that the U.S. Department of Education "bring the Office of Special Education Programs (OSEP) and the federal IDEA [Individuals with Disabilities Education Act], Part C, 619 and Part B statutes and regulations into a working framework for Tribal Governments." You further requested that OSEP facilitate a gathering of Tribes in order for Tribes "to educate OSEP and other federal agencies, on how individual Tribal governments function, and how they can be best coordinated to serve children and their families."

Under Part C of IDEA, the State is responsible for providing early intervention services to all infants and toddlers with disabilities in the State and their families, including Native American infants and toddlers with disabilities residing on reservations geographically located in the State. 20 U.S.C. 1434(1). Under Part B of IDEA, the State is responsible for making a free appropriate public education (FAPE) available to all three through five year old Native American children with disabilities residing on reservations, with a few exceptions where certain preschool-aged children remain the responsibility of the Bureau of Indian Affairs (BIA). 20 U.S.C. 1411(i)(1) (B) and (C). Under Part B of IDEA, the BIA is responsible for providing FAPE to children with disabilities aged five to twenty-one enrolled in elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior. The State is responsible for ensuring that FAPE is provided to all other children on reservations. 20 U.S.C. 1411(i)(1).

Under Part B of IDEA, funds are provided to the Secretary of Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortia of the above to provide for the coordination of assistance for special education and related services for children with disabilities aged three through five on reservations served by elementary and secondary schools for Native American children operated or funded by the Department of Interior. 20 U.S.C. 1411(i)(3)(A). Under Part C of IDEA, funds are provided to the Secretary of Interior to be distributed to tribes and tribal organizations for the coordination of assistance in the provision of early intervention services by States to infants and toddlers with disabilities and their families on reservations served by elementary and secondary schools for Native American children operated or funded by the Department of Interior. 20 U.S.C. 1443(b)(1). The funds received by the tribes and tribal organizations must be used to

assist States in child find, screening, and other procedures for the early identification of Native American infants and toddlers and preschool children with disabilities and parent training. The statute permits tribes to use funds for early intervention services and special education and related services, but tribes are discouraged from using these funds for direct services when other entities exist to provide direct services. 20 U.S.C. 1411(i)(3)(D) and 20 U.S.C. 1443(b)(4). See also House Report 102-198, September 11, 1991 (pages 6 and 22). Tribes and tribal organizations may carry out these activities directly or through contracts or cooperative agreements with the BIA, local educational agencies (LEAs), and other public or private non-profit organizations. Referrals should be made, as appropriate, to local, State, or Federal entities for the provision of services or further diagnosis. 20 U.S.C. 1411(i)(3)(D) and 20 U.S.C. 1443(b)(4).

As noted above, current law gives the State and the BIA responsibility for ensuring that Native American children with disabilities on reservations receive the early intervention and special education and related services to which they are entitled under IDEA. Tribes and tribal organizations are encouraged to use the funds received under IDEA to work together collaboratively with States to ensure that all infants and toddlers and their families and preschool children with disabilities residing on reservations are identified, located, evaluated and provided appropriate services under the IDEA. We understand from our contacts in the States that these relationships are more successful in some States than others.

Given the current statutory scheme, we would suggest that you may wish to contact the Department of Interior and/or individual State education agencies to discuss methods of improving services to Native American children and their families. Also, as you probably know, the Department and Congress are preparing for the reauthorization of IDEA. Given the many issues raised in your letter, you may wish to provide comments for consideration during the IDEA reauthorization process. Please feel free to send them to Thomas.Irvin@ed.gov.

If you have concerns regarding the delivery of Part C services to eligible Native American infants and toddlers, please contact Sandy Loerch Morris, the Part C Coordinator at the Washington State Early Intervention program at (360) 902-8488. And if you have further questions regarding OSEP's implementation of IDEA as it relates to tribal entities, please contact JoLeta Reynolds at (202) 205-5507 (press 3) or Judith Gregorian at (202) 205-9092.

Sincerely,



Stephanie S. Lee
Director
Office of Special Education Programs

cc: Sandy Loerch Morris