

Dated November 20, 2002

Andrew Gomm, Program Manager
Long Term Services Division
Department of Health
1190 St. Francis Drive
PO Box 26110
Santa Fe, New Mexico 87502-6110

Dear Mr. Gomm:

This is in response to your letter to Ms. Terese Lilly, in which you provide information concerning New Mexico's negotiated indirect cost rate for the Family Infant Toddler Program, Long Term Services Division of the New Mexico Department of Health. The Family Infant Toddler Program is the recipient of a Federal grant award under Part C of the Individuals with Disabilities Education Act (IDEA).

In your letter, you state that the New Mexico Family Infant Toddler Program has negotiated a 5 percent indirect cost rate with your cognizant agency as part of the agreement for the Long Term Services Division. However, the documentation you have submitted does not indicate an approval of a restricted indirect cost rate as required by the Education Department General Administrative Regulations (EDGAR). These regulations at 34 CFR §76.563 require that State and local agencies that are grantees under programs with a statutory requirement prohibiting the use of Federal funds to supplant non-Federal funds must adhere to EDGAR 34 CFR §§76.564 through 76.569. These regulations require that grantees use a restricted indirect cost rate, and they explain how to calculate that rate. Because IDEA Part C (section 637(b)(5)) prohibits the supplanting of IDEA funds by grant recipients, the EDGAR regulations require all Part C grantees to use a restricted rate in determining indirect costs for their agency.

Information about the requirement for a restricted indirect cost rate is contained in each of your grant award letters since FY 1999. The Office of Special Education (OSEP) also sent your agency a copy of OSEP Memorandum 99-2, dated December 30, 1998, which provides details about this requirement. We have enclosed another copy of that memo for your convenience. In addition, OSEP staff has discussed the need for a restricted rate by phone with your staff on many occasions, and most recently, in person on August 6, 2002, when OSEP staff provided a copy of EDGAR and specifically identified the pertinent regulatory cites.

Under 34 CFR §76.560(c) and (d), the Secretary may establish a restricted indirect cost rate for a grantee to satisfy the statutory requirements. As stated in your FY 2002 grant award letter dated July 5, 2002, the Department has established a temporary restricted indirect cost rate of 2.5 percent for the Family Infant Toddler Program Part C grant award for FY 2002. This rate will remain in effect until we receive evidence of an approved restricted indirect cost rate.

Page 2 - Mr. Andrew Gomm

If we can be of further assistance please call Terese Lilly at 202-205-0151.

Sincerely,

/s/ Patricia J. Guard for

Stephanie S. Lee
Director
Office of Special Education Programs

Enclosure

cc: Steve Holiday, LTSD/ASB
J. Alex Valdez, Secretary