



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

OCT 25 2004

Honorable Rita Hocog Inos
Commissioner of Education
CNMI Public School System
P.O. Box 501370
Saipan, MP 96950

Dear Dr. Inos:

The Office of Special Education Programs (OSEP) in the U.S. Department of Education has received your request to use funds provided under Part B of the Individuals with Disabilities Education Act (Part B) to renovate Building "J" at the Marianas High School for use as special education classrooms and an Assistive Learning Center, with a bathroom, kitchen, and laundry room. According to your letter, this project is aligned with your Continuous Improvement Monitoring Program, which noted the need to improve transitional services for exiting seniors.

Although you indicate that the estimated cost of the renovation, \$226,809, "is far less than new construction and can be completed in a fraction of the time," the information you submitted with your letter is not sufficient for the Secretary to respond to your request. For approval of any costs under Part B, the expenditures must relate to the provision of special education and related services in accordance with the requirements of Part B. Further, to be allowable under Federal awards, costs must meet the general principles for determining allowable costs set forth by the Executive Office of the President, Office of Management and Budget (OMB). OMB Circular Number A-87 (Attachment A) lists the following general criteria that costs must meet in order to be allowable under Federal awards:

- a. Be necessary and reasonable for proper and efficient performance and administration of Federal awards.
- b. Be allocable to Federal awards under the provisions of this Circular.
- c. Be authorized or not prohibited under State or local laws or regulations.
- d. Conform to any limitations or exclusions set forth in these principles, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items.
- e. Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.

- f. Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- g. Except as otherwise provided for in this Circular, be determined in accordance with generally accepted accounting principles.
- h. Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation.
- i. Be the net of all applicable credits.
- j. Be adequately documented.

Under section 605 of the IDEA, the Secretary also must make an affirmative determination that a program authorized under IDEA “would be improved by permitting program funds to be used...to construct new facilities or alter existing facilities....” In addition, section 605(b) of the IDEA requires that any construction of new facilities or alteration of existing facilities “shall comply with the requirements of (1) appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the ‘Americans with Disabilities Accessibility Guidelines for Buildings and Facilities’); or (2) appendix A of part 101-19.6 of title 41, Code of Federal Regulations (commonly known as the ‘Uniform Federal Accessibility Standards’).”

Since the building is identified as a fire safety issue in the May 27, 2004 memorandum from Don D. Dolenc because of its wooden construction and size, OSEP has concerns about the safety of Building “J.” Please provide OSEP with documentation from the fire inspector, the architect, and appropriate CNMI safety officials explaining to OSEP in detail whether Building “J” will be safe for children and meet all CNMI fire codes after the renovation.

In addition, OSEP would like CNMI to provide information describing why there is a need to build classrooms and provide other resources for children with disabilities in a separate building on the high school campus, and how the proposed renovation would be consistent with the Part B requirements at 34 CFR §§ 300.340-300.350 that govern individualized education programs (IEPs) and the requirements at 34 CFR §§300.550-300.553 that govern placement in the least restrictive environment. The requirements at 34 CFR §300.550(b)(1)-(2) state that to the maximum extent appropriate, children with disabilities must be educated with children who are not disabled and that “special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” In all cases, placement decisions must be individually determined on the basis of each child’s abilities and needs, and not solely on factors such as category of disability, severity of disability, configuration of service delivery system, availability of space, or administrative convenience. Rather, each student’s IEP forms the basis for the placement decision. Appendix A to 34 CFR Part 300, question 1, published at 64 Fed. Reg. at 12471; 34 CFR §300.552(b)(2).

Section 300.552(e) also provides that a student is not removed from education in age-appropriate regular classrooms because of needed modifications in the general curriculum. Under 34 CFR §300.553, children with disabilities also must participate with nondisabled children in nonacademic and extracurricular services and activities “to the maximum extent appropriate to the needs of the child.” In the additional information that you provide, please indicate how this proposed renovation is consistent with the above requirements. Please also note that, consistent with the cost principles stated above, if the renovated building will not be used primarily for the benefit of children with disabilities who receive services under the Part B program, Part B funds cannot be used to pay the total costs of the renovation.

Please send us information that addresses each of the issues outlined above so that the Secretary may review your request. If you have questions, please contact Ms. Lucille Sleger at (202) 245-7528.

Sincerely,



Stephanie Smith Lee
Director
Office of Special Education Programs

cc: Joanne Nicholls
Director, Special Education Programs