



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

SEP 17 2004

Honorable Carol K. Olson  
Executive Director  
Department of Human Services  
State Capitol, Judicial Wing  
600 East Boulevard Avenue, Dept. 325  
Bismarck, N.D. 58505-0520

Dear Director Olson:

We have determined that your State's application for Federal Fiscal Years (FFY) 2003 and 2004 funds, under Part C of the Individuals with Disabilities Education Act (Part C), can be approved. Therefore, I am enclosing your State's Part C grant award for FFY 2003 in the amount of \$1,400,000 (which is the amount the State requested and excludes the \$727,667 North Dakota has elected not to receive for FFY 2003) and the full grant award for FFY 2004.

The approval is based upon our receipt of your assurances for FFYs 2003 and 2004. This includes the assurance from the Department of Human Services that the statewide system of early intervention services required by Part C and its implementing regulations is in effect throughout both grant award periods.

In the past two years, a number of States have either established systems of payments or are considering establishing or revising their systems of payments. Under 34 CFR §303.173(a), each State's Part C application must include the State's policies and procedures that identify: (1) how it will pay for early intervention services (under 34 CFR §303.520(a)); (2) any system of payments that the State chooses to establish (under 34 CFR §303.521(a)); and (3) all funding sources (under 34 CFR §303.522). Although a State is not required under Part C to access public and private insurance available to a family, if a State requires parents under Part C to access their public and/or private insurance, the State must include this information in its Part C application as well as an assurance, under 34 CFR §303.520(b)(3)(ii), that the inability of a parent to pay will not result in the denial of any service under Part C.

States must ensure that all of the functions and early intervention services under 34 CFR §303.521(b) are carried out at public expense (i.e., no cost to the family). Additionally, under 34 CFR §303.521(c), States that provide children with disabilities under age 3 with a free appropriate public education (FAPE) under State law (i.e., birth-mandate States) must ensure that no fees are charged for the FAPE services provided to these children and their families. If a State has a system of payments under 34 CFR §303.521(a), any parent

fees collected (for co-payments or other fees for services charged and received by the State's Part C program) are "program income" under 34 CFR §80.25. Program income is not included as part of total "State and local expenditures" for purposes of a State's meeting the non-supplanting requirements under Part C at 20 U.S.C. §1437(b)(5)(B) and 34 CFR §303.124.

Your State has on file with the Secretary a system of payments under 34 CFR §303.521(a). As noted above, fees for services charged and received by your State's Part C program are "program income" under 34 CFR §80.25. This letter authorizes your State to add "program income" to its Part C FFY 2003 and FFY 2004 grants such that the amount of program income received by your State does not need to be deducted from the net allowable costs that can be charged to the Part C grant (as would ordinarily be required under 34 CFR §80.25(g)(1)). When the State adds program income to the net allowable costs charged to the Federal Part C grant, then, under 34 CFR §80.25(g), all program income funds must be spent on the respective FFY Part C grant application purposes.

Approval of the Part C application does not include approval of the indirect cost rate or allocation plan required to be used in administering Part C. The Education Department General Administrative Regulations (EDGAR) at 34 CFR Part 76 require Part C recipients to use a restricted indirect cost rate or cost allocation plan that charges only to Part C those expenses that are allowed under a restricted rate. The FFYs 2003 and 2004 applications for Part C funds requested updated information about each State's restricted indirect cost rate. Our records indicate that you have a cost allocation plan approved by your cognizant agency and that you have budgeted only \$25,000 of your grant allotment for indirect costs. Part III of your State's Part C FFYs 2003 and 2004 applications indicated that your agency "will continue to apply the current restricted indirect cost rate ... until a new rate or plan is negotiated and approved by the State's cognizant Federal agency." Please forward to us any restricted indirect cost rate or cost allocation plan once it is approved by your cognizant agency.

The enclosed grant award for FFYs 2003 and 2004 is made with the continued understanding that this Office may, from time to time, require clarification of information within your application and appendices, if necessary. These inquiries are needed to allow us to appropriately carry out our administrative responsibilities related to Part C.

Section 604 of the IDEA provides that "[a] State shall not be immune under the eleventh amendment to the Constitution of the United States from suit in Federal court for a violation of this Act." Therefore, by accepting this grant a State is expressly agreeing to a waiver of Eleventh Amendment immunity as a condition of IDEA funding.

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We appreciate your ongoing commitment to the provision of quality early intervention services to infants and toddlers with disabilities and their families.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephanie S. Lee".

Stephanie S. Lee  
Director  
Office of Special Education Programs

Enclosure

cc: Debra Balsdon  
Part C Coordinator