



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

JUL - 2 2007

Honorable Michelle Lujan-Grisham
Secretary
New Mexico Department of Health
P.O. Box 26110
1190 St. Francis Drive
Santa Fe, New Mexico 87502-6110

Dear Commissioner Grisham:

This is to inform you that we have conditionally approved New Mexico's Application for Federal Fiscal Year (FFY) 2007 under Part C of the Individuals with Disabilities Education Act (IDEA). Our conditional approval is based on review of the application submitted by the Department of Health to the U.S. Department of Education, Office of Special Education Programs (OSEP), on April 26, 2007 and June 29, 2007 (revised section III), including policies, procedures, methods, descriptions, assurances, certifications, and submission statement provided in Section II, and incorporated by reference to this letter as noted in Enclosure A. In addition, the State provided the following specific assurances that it will:

1. Operate consistent with the Part C requirements in 20 U.S.C. 1431 through 1444 and applicable regulations in 34 CFR Part 303;
2. Ensure that the Statewide system of early intervention services required by Part C and its implementing regulations is in effect throughout the FFY 2007 grant period; and
3. Make such changes to, and submit, as necessary, for OSEP's approval, the State's policies, procedures, methods, and descriptions as are necessary to bring those policies, procedures, methods and descriptions into compliance with the requirements of Part C of the IDEA, as amended, as soon as possible, and not later than the earlier of the date indicated by the State in Section II of its application or June 30, 2008. Section II of the State's application identifies the IDEA statutory sections for which the State needs to amend any policies, procedures, methods and descriptions and the timelines by which the State will amend its policies, procedures, methods and descriptions in order to comply with Part C of the IDEA. Within Section II, the State has included the date by which it expects to complete necessary changes associated with any policies, procedures, methods and descriptions that are not yet in compliance with the requirements of Part C of the IDEA, as amended.

The New Mexico FFY 2007 IDEA Part C grant award is being released subject to FFY 2007 Special Conditions, as set forth in Enclosure B, that are being imposed pursuant to the Department's authority in 34 CFR §80.12. Specifically, OSEP determined that New Mexico has not ensured that: (1) all infants and toddlers referred to Part C have evaluations and assessments and an initial Individualized Family Service Plan (IFSP) meeting conducted within 45 days of referral to the early intervention program (45-day timeline), see 34 CFR §§303.321(e)(2), 303.322(e)(1), and 303.342(a); and (2) all eligible children and their families receive the early

intervention services listed on the child's IFSP as required by 34 CFR §303.342(e) (Service Provision).

New Mexico's failure to correct noncompliance related to Part C's 45-day timeline and service provision requirements resulted in the Department imposing Special Conditions on the State's FFY 2005 and 2006 Part C grant awards. Because New Mexico did not meet those Special Conditions, the Department is imposing Special Conditions on the State's FFY 2007 grant award under Part C. The reasons for doing so and the specific conditions are detailed in Enclosure B of this letter, which is incorporated into the terms of this grant letter. New Mexico must administer the award both in keeping with applicable provisions of Federal law and regulations and the Special Conditions attached to the grant award document. Acceptance by New Mexico of this grant award constitutes an agreement by the State to comply with the Special Conditions, which require a report by February 1, 2008 and a final progress report by June 1, 2008 with data demonstrating correction of these two areas of noncompliance. Failure to timely submit the required correction data under these Special Conditions will impact the Department's review of New Mexico's FFY 2006 Annual Performance Report and determination under IDEA sections 616 and 642.

Enclosed is the State's grant award for funds currently available under the Department of Education FFY 2007 Appropriations Act for the Part C program. These funds are available for obligation by States from July 1, 2007 through September 30, 2009.

The enclosed grant award for FFY 2007 is made with the continued understanding that this Office may, from time to time, require clarification of information within your application, if necessary. These inquiries are needed to allow us to appropriately carry out our administrative responsibilities related to Part C.

Please note that as part of your State's application for FFY 2007, your State has made an assurance, in 34 CFR §80.11(c), that it will comply with all applicable Federal statutes and regulations in effect with respect to the FFY 2007 grant period. Any changes made by the State to its FFY 2007 application or Part C policies or procedures that are application requirements, after issuance of this grant award, must meet the applicable public participation requirements under Part C of the IDEA in 34 CFR §§303.110 through 303.113 and if they are requirements under Section II.A must be submitted to, and approved by, OSEP prior to the State's implementation of its new or revised application, policies and procedures.

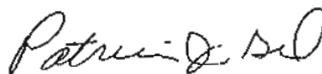
Section IV.B of the FFY 2007 application for Part C funds requested updated information about each State's restricted indirect cost rate. NMDOH indicated in Section IV.B that it has a restricted indirect cost rate of 4.9% that was effective until June 30, 2007 and that it will continue to charge the FFY 2007 Part C grant based on this expired restricted indirect cost rate until a final restricted indirect cost rate is negotiated and approved by the State lead agency's cognizant Federal agency for FFY 2007. A final restricted indirect cost rate may result in an adjustment of the final audited expenditures allowable to be charged to the Part C grant. The Department's issuance of this FFY 2007 grant award does not constitute approval of the provisional rate as the final rate for the lead agency for the FFY 2007 period. When a final restricted indirect cost rate is approved, the lead agency must submit to OSEP: (1) a copy of the "final" restricted indirect cost rate agreement; and

(2) details of adjustments made to past GAPS draw downs in light of the “final” rate.

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.” Section 606 provides that each recipient of assistance under IDEA make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under the IDEA. Therefore, by accepting this grant a State is expressly agreeing as a condition of IDEA funding to a waiver of Eleventh Amendment immunity and to ensuring that positive efforts are made to employ and advance employment of qualified individuals with disabilities in programs assisted under the IDEA.

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

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education Programs

Enclosures:

Enclosure A

Enclosure B

cc: Part C Coordinator