

September 26, 2003

Honorable Carol Olson
Executive Director
Department of Human Services
State Capitol
600 East Boulevard
Bismarck, North Dakota 58505-0440

Dear Ms. Olson:

We have determined that North Dakota's application for Federal Fiscal Year (FFY) 2002 funds, under Part C of the Individuals with Disabilities Education Act (IDEA), can be approved. Therefore, I am enclosing your State's Part C grant award.

The approval is based upon our receipt of your assurances for FFY2002. 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.

This year, 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.

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As OSEP indicated to North Dakota in the Department's FFY 2000 Part C grant letter, 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. Our records indicate that you have a cost allocation plan approved by your cognizant agency and that you have budgeted only \$25,000 (or 1.22%) of your grant for indirect costs. Part III of your State's Part C Application indicates 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 FFY 2002 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.

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

Sincerely,

/s/Patricia J. Guard for

Stephanie Smith Lee
Director,
Office of Special Education Programs

Enclosure

cc: Debra Balsdon
Part C Coordinator