

July 8, 2003

Honorable Marcia R. Morgan
Secretary
Cabinet for Health Services
275 East Main Street
Frankfort, Kentucky 40621-0001

Dear Secretary Morgan:

We have determined that your State's application for Federal Fiscal Year (FFY) 2003, under Part C of the Individuals with Disabilities Education Act (Part C), can be conditionally approved. Therefore, I am enclosing your State's Part C grant award.

The conditional approval is based on our review and acceptance of the Cabinet for Health Services (CHS) Part C application for FFY 2003, including:

1. those portions of the State's existing Part C application on file with the Secretary that remain in effect and the amendments to the application submitted on May 27, 2003;
2. the June 30, 2003 letter from CHS to the Office of Special Education Programs (OSEP), in which CHS assures that:
 - As soon as possible, but no later than June 30, 2004, the State will revise 911 KAR 2:120E; Appendix 1, Section 1(6)(a) to include the language of 34 CFR §303.343(a)(1)(ii) and 34 CFR §303.343(a)(1)(iii);
 - Kentucky will ensure compliance in the interim (throughout the FFY03 grant period) with the requirements of 34 CFR §303.343(a)(1)(ii) and 34 CFR §303.343(a)(1)(iii);
 - As soon as possible, but no later than June 30, 2004, the State will provide the Secretary with a copy of its final Administrative Regulations (approved by the legislature) to be consistent with Part C of the Individuals with Disabilities Education Act (IDEA) and its implementing regulations at 34 CFR Part 303 including 34 CFR §§303.343(a)(1)(ii) and 303.343(a)(1)(iii); and
 - The statewide system of early intervention services required by Part C of IDEA and its implementing regulations will be in effect throughout the FFY03 grant period.

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.

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 grant 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 FFY 2003 Part C grant application purposes.

Section I.C. of the FFY 2003 application for Part C funds requested updated information about each State's restricted indirect cost rate. Our records indicate that you are not charging indirect costs to the Part C program. By accepting Part C grant funds, your agency (as the lead agency designated under Part C) is agreeing not to charge indirect costs to the Part C program.

The enclosed grant award for FFY 2003 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.

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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,

/s/ Patricia J. Guard for

Stephanie S. Lee
Director
Office of Special Education Programs

Enclosure

cc: Diane Haynes
Part C Coordinator