

September 11, 2003

Honorable Earl Hunter
Commissioner
Department of Health and Environmental Control
260 Bull Street
Columbia, South Carolina 29201

Dear Commissioner Hunter:

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 effective date of your grant award is July 7, 2003, the date we received your signed, completed application.

The conditional approval is based on our review and acceptance of the Department of Health and Environmental Control's 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;
2. the assurance from the Department of Health and Environmental Control that the statewide system of early intervention services required by Part C and its implementing regulations is in effect; and
3. the September 9, 2003 Compliance Agreement between the Department of Health and Environmental Control (DHEC) and the U.S. Department of Education, in which the DHEC has agreed to achieve all goals and implement all activities identified in the Compliance Agreement and to provide all verification of these goals and activities, including quarterly updates due on March 31, June 30, September 30, and December 31, of each year during which the Compliance Agreement is in effect, to the Office of Special Education Programs (OSEP) as required by the Agreement and to demonstrate that within three years of the date of the Agreement that DHEC is in full compliance with Part C, including specifically those Part C requirements which were the subject of OSEPs' January 6, 2003 monitoring report.

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 FFY2003 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 show that you have a restricted indirect cost rate proposal of 5.0% that has been approved by your cognizant agency and is effective until it is amended. Part III of your State's Part C Application indicates that your agency "will continue to apply the current cost application plan until a new 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.

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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.

We appreciate South Carolina's request to undertake and implement a three-year Compliance Agreement to ensure that South Carolina maintains and implements a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services to ensure that all infants and toddlers with disabilities and their families receive the early intervention services critical to their development. We want to acknowledge the hard work of David Steele and his legal and other staff in working with OSEP and our Office of the General Counsel in reaching amicably and expeditiously the terms of the enclosed Compliance Agreement. We greatly appreciate your ongoing commitment to the provision of quality early intervention services to infants and toddlers with disabilities and their families and look forward to our continuing work with you on this important endeavor.

Sincerely,

/s/Stephanie Smith Lee

Stephanie Smith Lee
Director,
Office of Special Education Programs

Enclosure

cc: David Steele
Part C Coordinator