



# Archived Information

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

DEC 21 2004

Honorable David A. Berns  
Director  
Department of Economic Security  
1717 West Jefferson Street  
P.O. Box 6123  
Phoenix, Arizona 85005

Dear Director Berns:

We have determined that your State's application for Federal Fiscal Year (FFY) 2004, 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 August 24, 2004.

The conditional approval is based on our review and acceptance of the Department of Economic Security (DES) Part C application for FFY 2004, 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 DES that the State-wide system of early intervention services required by Part C and its implementing regulations is in effect; and
3. the attached December 17, 2004 Compliance Agreement between DES and the U.S. Department of Education, in which DES has agreed to implement all activities identified in the Compliance Agreement and to provide all verification required under the Compliance Agreement, including quarterly progress reports due on March 31, June 30, September 30, and December 31, 2005 and two subsequent years 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 DES is in compliance with Part C, including specifically those Part C requirements that are the subject of the Compliance Agreement.

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 2004 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, under 34 CFR §80.25(g), all program income funds must be spent on FFY 2004 Part C grant application purposes.

Section I.C. of the FFY 2004 application for Part C funds requested updated information about each State's restricted indirect cost rate. Our records indicate that: you have a restricted indirect cost rate of 6.8% that has been approved by your cognizant agency and is effective for this Federal Fiscal Year. Part III of your State's Part C Application indicates that your agency will continue to apply the currently approved restricted indirect cost rate or cost allocation plan throughout the FFY 2004 grant year until a new rate or plan is negotiated and approved by the State's cognizant Federal agency. Please forward to us any revisions to your restricted indirect cost rate or cost allocation plan once it is approved by your cognizant agency.

We appreciate Arizona's request to undertake and implement a three-year Compliance Agreement to ensure that Arizona 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 Molly Dries and her staff in working with OSEP and our Office of the General Counsel in reaching amicably and expeditiously the terms of the enclosed Compliance Agreement.

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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.

The enclosed grant award for FFY 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.

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

Sincerely,



Stephanie Smith Lee  
Director,  
Office of Special Education Programs

Enclosure

cc: Molly Dries  
Part C Coordinator