

Archived Information



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

JUL - 1 2004

Honorable Susan A. Gendron
Commissioner of Education
Maine Department of Education
23 State House Station
Augusta, ME 04333-0023

Dear Commissioner Gendron:

We have determined that your State's application for Federal Fiscal Year (FFY) 2004, under Part C of the Individuals with Disabilities Education Act (IDEA), can be conditionally approved.¹ Therefore, I am enclosing your State's Part C grant award.

The conditional approval is based on our review and acceptance of the Maine Department of Education (MDOE) 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 MDOE that the statewide system of early intervention services required by Part C and its implementing regulations is in effect; and
3. The May 26, 2004 letter from MDOE to the Office of Special Education Programs (OSEP), in which MDOE assures that it will take steps necessary to complete revisions to its application to conform it to the requirements of Part C, specifically to:
 - a. No later than May 31, 2005, submit documentation to OSEP that it has amended Maine's Statute MRSA 20-A, Part 4, chapter 303, Subchapter 1, §7206 to ensure that §7206(4) is not used to deny or otherwise limit a party's right to initiate a hearing under 34 CFR §300.507(a)(1) because the party raised the same issue in a State complaint or declined to appeal within a particular time period the State's decision on the complaint;

¹ As set forth in OSEP's February 19, 2004 letter reporting on the Office of Special Education Programs (OSEP's), October verification visit to the State, OSEP found that Maine's Statute MRSA 20-A, Part 4, chapter 303, Subchapter 1, §7206 is inconsistent with the IDEA, and specified that it must be revised to ensure that Maine's Statute MRSA 20-A, Part 4, chapter 303, Subchapter 1, §7206(4) is not used to deny or otherwise limit a party's right to initiate a hearing under 34 CFR §300.507(a)(1) (as incorporated under 34 CFR §303.420) because the party raised the same issue in a State complaint or declined to appeal within a particular time period the State's decision on the complaint.

- b. Ensure compliance in the interim (throughout the FFY 2004 year) with the Part C regulations, including 34 CFR §300.507(a)(1) as incorporated by 34 CFR §303.420(a); and
- c. Provide OSEP with a copy of a memorandum notifying all public agencies and early intervention providers of changes that impact their provision of early intervention services required by OSEP as a result of its review of the State's Part C Application.

OSEP remains concerned about the status of Maine's correction of the Part C noncompliance issues most recently identified in OSEP's December 30, 2003 response to the State's June 26, 2003 Improvement Plan submission and February 19, 2004 letter regarding the October 2003 verification visit (and originally identified in Maine's 2002 Self-Assessment). OSEP will issue shortly a separate letter responding to the State's FFY 2002 Part C APR (that the State submitted on April 15, 2004), which letter will require additional interim and final progress reports and strategies in order for the State to demonstrate that the State has corrected the previously-identified longstanding noncompliance areas. Resolution of these issues (including meeting the interim and final progress report deadlines) should be viewed as a high priority by the State during the FFY 2004 grant year.

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.

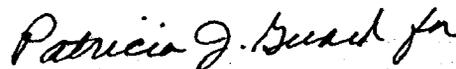
Your State has on file with the Secretary a system of payments under 34 CFR §303.521(a). As noted above, fees for services charged and received by your State's Part C program are "program income" under 34 CFR §80.25. This letter authorizes your State to add "program income" to its Part C FFY 2003 grant 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.

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: Ms. Laurie Bertulli
Part C Coordinator