

Archived Information



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

JUL - 1 2004

Honorable Patricia Montoya
Secretary
Department of Health
P.O. Box 26110
1190 St. Francis Drive
Santa Fe, NM 87502-6110

Dear Secretary Montoya:

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 approved. Therefore, I am enclosing your State's Part C grant award.

OSEP remains concerned about the status of New Mexico's correction of the Part C noncompliance issues most recently identified in OSEP's February 27, 2004 response to the State's FFY 2001 Annual Performance Report (APR) and October 2003 final Improvement Plan progress report (and originally identified in OSEP's 2000 New Mexico Part C monitoring report). OSEP will issue shortly a separate letter responding to the FFY 2002 APR (that the State submitted on April 7, 2004), which letter will require additional reporting and strategies in order for the State to demonstrate during the FFY 2004 grant year that the previously-identified longstanding noncompliance areas are corrected. Resolution of these issues should be viewed as a high priority by the State.

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.

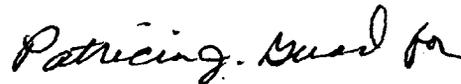
Section I.C. of the FFY 2004 application for Part C funds requested updated information about each State's restricted indirect cost rate. Our records indicate that you do not currently have an approved restricted indirect cost rate under EDGAR at 34 CFR §§76.563-76.569. Currently, NMDOH has an indirect cost rate of five percent (5%); however it is not an approved restricted indirect cost rate. Part III of your State's Part C Application indicates that your agency will continue to apply the current indirect cost rate of five percent (5%) until a restricted indirect cost rate is approved by the State's cognizant Federal agency. New Mexico must either negotiate a restricted indirect cost rate with its cognizant agency or determine that it will not charge indirect costs to the Part C Federal funds. Since you do not currently have an approved rate, please contact our indirect cost office in order to promptly negotiate a restricted rate such that your use of Part C funds is consistent with EDGAR and OMB Circular A-87.

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: Andrew Gomm
Part C Coordinator