

# Archived Information



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

OCT 25 2004

Honorable Johnny V. Rullan,  
Secretary  
Commonwealth of Puerto Rico Department of Health  
P.O. Box 70184  
San Juan, Puerto Rico 00936-8184

Dear Secretary Rullan:

We have determined that the Commonwealth of Puerto Rico's application for Federal Fiscal Year (FFY) 2004, under Part C of the Individuals with Disabilities Education Act (IDEA), can be conditionally approved. Therefore, I am enclosing your Commonwealth's Part C grant award. The effective date of the FFY 2004 Part C grant is September 14, 2004.

The conditional approval is based upon our review and acceptance of the following:

1. The Commonwealth of Puerto Rico's Part C FFY 2004 Part C application submitted by Commonwealth of Puerto Rico Department of Health (PRDOH) on April 16, 2004.
2. The assurance from PRDOH that the statewide system of early intervention services required by Part C and its implementing regulations is in effect.
3. The October 11, 2004 letter (sent by fax on October 15, 2004) from PRDOH to the Office of Special Education Programs (OSEP), in which PRDOH assures that it will:
  - a. No later than May 31, 2005, submit documentation to OSEP that it has made the changes to its application as set forth in OSEP's July 1, 2004 memorandum to ensure consistency with Part C regulations including specifically: 34 CFR §§303.12(b); 303.12(c)(8); 303.12(c)(9)(i); 303.12(c)(9)(iii); 303.12(c)(12)(iv); 303.13(c)(2); 303.16; 303.140(b); 303.321(c)(1); 303.322(b)(1); 303.322(d)(1); 303.460(b); 303.520(b) and (d); and 303.600 through 303.654 and submit the revised documentation to OSEP no later than May 30, 2005;
  - b. Ensure compliance in the interim throughout the FFY 2004 year with the requirements of Part C of the IDEA and its implementing regulations at 34 CFR 303 (including 34 CFR §§303.12(b); 303.12(c)(8); 303.12(c)(9)(i); 303.12(c)(9)(iii); 303.12(c)(12)(iv); 303.13(c)(2); 303.16; 303.140(b); 303.321(c)(1); 303.322(b)(1); 303.322(d)(1); 303.460(b); 303.520(b) and (d); and 303.600 through 303.654) (including sending a memorandum to all

agencies and providers that are part of the State's Part C early intervention system to inform them of the changes that impact on the provision of early intervention services in the State with respect to the above-identified Part C requirements);

- c. Make all changes necessary by May 30, 2005 to the State's Interagency Agreements under Part C (Appendix M of the Application) that will be identified by OSEP by December 31, 2005; and
- d. No later than May 30, 2005, 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 Commonwealth's Part C Application.

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.

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 PRDOH has a restricted indirect cost rate agreement of five percent (5%) that has been approved by PRDOH's cognizant agency, the U.S. Department of Health and Human Services, and is effective until amended. Part III of your State's Part C Application indicates that your agency will continue to apply the currently approved restricted indirect cost rate throughout the FFY 2004 grant period until a new restricted

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indirect cost rate is negotiated and approved by PRDOH's cognizant Federal agency. Please forward to us any revisions to your restricted indirect cost rate once it is approved by your cognizant agency.

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: Naydamar Perez Otero, M.D.  
Part C Coordinator