



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUL - 1 2004

Honorable Patricia Nolan
Commissioner, Department of Health
Division of Family Health
3 Capitol Hill
Room 303-Canon Building
Providence, Rhode Island 02908

Dear Commissioner Nolan:

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

The approval is based upon our receipt of required assurances for FFY 2004. This includes the assurance from the Department of Health that the Statewide system of early intervention services required by Part C and its implementing regulations is in effect.

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 you do not currently have an approved restricted indirect cost rate under 34 CFR §§76.563-76.569. By accepting Part C grant funds, your agency (as the Lead Agency designated under Part C) is agreeing either to use a

restricted indirect cost rate or cost allocation plan as required under the Education Department General Administrative Regulations (EDGAR) and OMB Circular A-87 or to not charge indirect cost rates to the Part C program. Since you do not have an approved rate, the Department has determined that it is necessary to impose a temporary restricted indirect cost rate until such time as you have obtained an approved restricted rate from your cognizant Federal agency, and provide documentation to that effect. Therefore, for the FFY 2004 Part C grant, you may use a temporary indirect cost rate not to exceed 7.4%. This rate is a 50% reduction from your current approved indirect cost rate of 14.8%; the Department has calculated this percentage reduction as the average reduction for Part C lead agencies that have gone from an unrestricted rate to a restricted rate. This rate will remain in effect throughout the FFY 2004 grant year until we receive evidence of an approved restricted indirect cost rate. Please forward to OSEP your restricted indirect cost rate as soon as 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: Deborah Garneau
Part C Coordinator