



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

JUL 25 2005

Honorable Michelle Lujan Grisham
Secretary
Department of Health
P.O. Box 26110
1190 St. Francis Drive
Santa Fe, New Mexico 87502-6110

Dear Secretary Lujan Grisham:

This is to inform you that we have conditionally approved New Mexico's Application, including policies, procedures, methods, descriptions, assurances and certifications for Federal Fiscal Year (FFY) 2005 under Part C of the Individuals with Disabilities Education Act (IDEA) with special conditions, under the regulations governing "high risk" grantees in 34 CFR §80.12. Enclosed is an attachment detailing the special conditions and the reasons for considering the New Mexico Department of Health (NMDOH) a high-risk grantee. Our determination that you are eligible for a conditional approval is based on our receipt of the Part C Application for FFY 2005, including the policies, procedures, methods, descriptions, assurances, certifications, and submission statement submitted on May 3, 2005 and amended on June 28, 2005 by the Department of Health to the U.S. Department of Education, Office of Special Education Programs (OSEP), in which it assures that it will:

1. Operate consistent with the Part C requirements of PL 108-446 and its applicable regulations;
2. Ensure that the Statewide system of early intervention services required by Part C and its implementing regulations is in effect throughout the FFY 2005 grant period; and
3. Make such changes to, and submit for OSEP's approval, existing policies, procedures, methods, and descriptions as are necessary to bring those policies, procedures, methods and descriptions into compliance with the requirements of Part C of the IDEA, as amended, as soon as possible, and not later than the earlier of the date indicated by the State in Section II of its application or July 1, 2006. Section II of the State's application (which is incorporated by reference and enclosed with this grant letter) identifies the IDEA statutory sections for which the State needs to amend policies, procedures, methods and descriptions and the timelines by which the State will amend its policies, procedures, methods and descriptions in order to comply with Part C of the IDEA. Within Section II, the State has included the date by which it expects to complete necessary changes associated with any policies, procedures, methods and descriptions that are not yet in compliance with the requirements of Part C of the IDEA, as amended.

Under the authority of the Education Department General Administrative Regulations (EDGAR), 34 CFR §80.12, the Department has determined that NMDOH is a "high risk" grantee for purposes of Part C of IDEA for FFY 2005. OSEP is releasing New Mexico's FFY 2005 IDEA Part C grant award subject to the FFY 2005 special conditions, as set forth in Enclosure B. The special conditions are imposed to ensure that the funds are expended for the timely identification and evaluation of, and provision of early intervention services to, infants and toddlers with disabilities and their families in New Mexico.

NMDOH must administer this grant award both in keeping with applicable Federal laws and regulations and the special conditions attached to the award. New Mexico's acceptance of its award constitutes an agreement to meet the special conditions.

Please note that as part of your State's Application for FFY 2005, your State has made an assurance, under 34 CFR §80.11(c) that it will comply with all applicable Federal statutes and regulations in effect with respect to the FFY 2005 grant period. Any changes made by the State, after OSEP approval, to the State's Part C application (including policies, procedures, descriptions and methods) must meet the public participation requirements of IDEA, including those in 20 U.S.C. 1232d(b)(7).

Section IV.B of the FFY 2005 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 the Education Department General Administrative Regulations (EDGAR) at 34 CFR §§76.563-76.569 and OMB circular A-87 but that your agency has agreed in Section IV.B of its FFY 2005 application to apply throughout the FFY 2005 grant period the Department's previously imposed temporary maximum indirect cost rate of 2.5% of your State's Part C FFY 2005 grant allotment. By accepting Part C grant funds, your agency (as the lead agency designated under Part C) is agreeing that it will throughout the Part C FFY 2005 grant period either apply an indirect cost rate not to exceed 2.5% or not charge indirect cost rates to the Part C program.

In addition to the special conditions, the enclosed grant award for FFY 2005 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.

OSEP staff is ready to provide helpful technical assistance should you request it. We look forward to working with NMDOH on these matters to ensure the success of the program and appreciate your ongoing commitment to the provision of quality early intervention services to infants and toddlers with disabilities and their families.

Sincerely,



Troy R. Justesen
Acting Director
Office of Special Education
Programs

Enclosure

cc: Andrew Gomm
Part C Coordinator