



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

JUL - 2 2007

Honorable Rick Melmer  
Secretary of Education  
South Dakota Department of Education  
700 Governors Drive  
Pierre, South Dakota 57501-2291

Dear Secretary Melmer:

This is to inform you that we have conditionally approved South Dakota's Application for Federal Fiscal Year (FFY) 2007 under Part C of the Individuals with Disabilities Education Act (IDEA). Our conditional approval is based on review of your application submitted by the South Dakota Department of Education to the U.S. Department of Education, Office of Special Education Programs (OSEP), on April 17, 2007, including policies, procedures, methods, descriptions, assurances, certifications, and submission statement provided in Section II, and incorporated by reference to this letter as noted in Enclosure A. In addition, the State provided the following specific assurances that it will:

1. Operate consistent with the Part C requirements in 20 U.S.C. 1431 through 1444 and applicable regulations in 34 CFR Part 303;
2. Ensure that the Statewide system of early intervention services required by Part C and its implementing regulations is in effect throughout the FFY 2007 grant period; and
3. Make such changes to, and submit, as necessary, for OSEP's approval, the State's 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 June 30, 2008. Section II of the State's application identifies the IDEA statutory sections for which the State needs to amend any 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.

South Dakota's FFY 2006 Part C grant award was approved based on specific assurances made by the State that by June 30, 2007 it would:

- 1) Make all changes necessary to its definition of assistive technology device in its April 2005 interagency agreement and any Part C policies and procedures as specified in OSEP's June 2, 2005 Memorandum to the State to comply with IDEA Section 602(1)(B) and submit the revised application to OSEP; and
- 2) Revise its due process and mediation procedures to be consistent with Sections 632, 639(a)(8), and 615 of IDEA.

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As addressed in the attachment to OSEP's June 15, 2007 Annual Performance Report Determination letter to the State, South Dakota revised its State Performance Plan (SPP) to be consistent with the issues raised by OSEP regarding the State's description of its mediation and due process hearing procedures. In addition, in its FFY 2007 grant application, Section II, Assurance 14, the State indicated that it would revise its procedural safeguards by June 30, 2008 to reflect the 2004 IDEA amendments. Also, the State submitted with its FFY 2007 grant application, a revised definition of assistive technology device (South Dakota Administrative Rules, 24:05:27:18). OSEP approves that definition.

Enclosed is the State's grant award for funds currently available under the Department of Education FFY 2007 Appropriations Act for the Part C program. These funds are available for obligation by States from July 1, 2007 through September 30, 2009.

The enclosed grant award for FFY 2007 is made with the continued understanding that this Office may, from time to time, require clarification of information within your application, if necessary. These inquiries are needed to allow us to appropriately carry out our administrative responsibilities related to Part C.

Please note that as part of your State's application for FFY 2007, your State has made an assurance, in 34 CFR §80.11(c), that it will comply with all applicable Federal statutes and regulations in effect with respect to the FFY 2007 grant period. Any changes made by the State to its FFY 2007 application or Part C policies or procedures that are application requirements, after issuance of this grant award, must meet the applicable public participation requirements under Part C of the IDEA in 34 CFR §§303.110 through 303.113 and if they are requirements under Section II.A must be submitted to, and approved by, OSEP prior to the State's implementation of its new or revised application, policies and procedures.

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." Section 606 provides that each recipient of assistance under IDEA make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under the IDEA. Therefore, by accepting this grant a State is expressly agreeing as a condition of IDEA funding to a waiver of Eleventh Amendment immunity and to ensuring that positive efforts are made to employ and advance employment of qualified individuals with disabilities in programs assisted under the IDEA.

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We appreciate your ongoing commitment to the provision of quality early intervention services to infants and toddlers with disabilities and their families.

Sincerely,

A handwritten signature in cursive script that reads "Patricia J. Guard".

Patricia J. Guard  
Acting Director  
Office of Special Education Programs

Enclosures

Enclosure A

cc: Part C Coordinator