



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

JUL - 1 2009

Honorable Terri Delgadillo
Director
Department of Developmental Services
California Health and Human Services Agency
1600 9th Street, Room 240
Sacramento, CA 95814

Dear Director Delgadillo:

This is to inform you that we have conditionally approved California's application for Federal Fiscal Year (FFY) 2009 funds under Part C of the Individuals with Disabilities Education Act (IDEA or Part C). Our conditional approval is based on our review of the application submitted by the Department of Developmental Services in the California Health and Human Services Agency (CHHS or DDS) to the U.S. Department of Education, Office of Special Education Programs (OSEP), on May 18, 2009 and revised on June 26, 2009, including policies, procedures, methods, descriptions, assurances, certifications, and submission statement provided in Section II, which is incorporated by reference to this letter as 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 2009 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, and applicable regulations, 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, 2010. Section II of the State's application identifies the IDEA requirements 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 and applicable regulations. Within Section II, the State has included for each requirement that it cannot meet at this time, 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 and applicable regulations.

The conditional approval for California's FFY 2009 Part C grant is also based on the State's assurance, dated April 14, 2009, from the Department of Developmental Service in the California Health and Human Services Agency in which it specifically assured that the State shall:

1. Throughout the period of the State's Federal Fiscal Year (FFY) 2009 Part C grant award, implement the requirements of:
 - (a) 34 CFR §303.510 and resolve as a State complaint any complaint that alleges any violation of a Part C requirement (including complaints regarding Part C eligibility or services); and
 - (b) IDEA Sections 639(a)(8) and 615 (e)(1), which require that mediation be made available to parties at any time (and not just when a due process hearing request is filed) to resolve disputes involving any matters related to Part C;
2. By July 1, 2009, revise its notice of procedural safeguards pursuant to 34 CFR §303.403(b)(3) and (4), to make it consistent with the requirements of 34 CFR §303.510 and sections 639(a)(8) and 615 (e)(1) of the IDEA as described above;
3. By June 30, 2009, provide to OSEP a memorandum that informs all Lead Agency Part C staff, parents, early intervention service (EIS) programs and EIS providers of the requirements of OSEP's March 25, 2009 memorandum to DDS;
4. By June 30, 2010, submit to OSEP documentation that it has completed any needed changes to State statutes, regulations, and other written policies and procedures to make them consistent with the requirements outlined in OSEP's March 25, 2009 memorandum to DDS; and
5. Ensure that the statewide system of early intervention required by Part C of IDEA in 20 U.S.C. 1431 through 1444 (including IDEA section 639(a)(8)) and applicable regulations in 34 CFR Part 303 (including 34 CFR §303.510) will be in effect throughout the FFY 2009 grant period.

On June 23, 2009, the State submitted to OSEP documentation to address the requirements in items 2 and 3 from the April 14, 2009 assurance. OSEP will respond to those documents under separate cover.

Please note that as part of your State's application for FFY 2009, your State has made an assurance, pursuant to 34 CFR §80.11(c), that it will comply with all applicable Federal statutes and regulations in effect with respect to the FFY 2009 grant period. Any changes made by the State to its FFY 2009 application or Part C policies or procedures that are application requirements, after OSEP approval, must meet the applicable public participation requirements under Part C in 34 CFR §§303.110 through 303.113 and, if they are requirements under Section II.A, must also be submitted to, and approved by, OSEP prior to the State's implementation of its new or revised application, policies and procedures.

Enclosed is the State's regular grant award for funds currently available under the Omnibus Appropriations Act, 2009 for the Part C program. These funds are for use primarily in 2009-

2010 and are available for obligation by States from July 1, 2009 through September 30, 2011 in accordance with 34 CFR §76.709.

In addition to these regular FFY 2009 Part C funds, the American Recovery and Reinvestment Act of 2009 (ARRA) provided a one-time large increment in IDEA Part C funding. The ARRA IDEA Part C grants are a supplemental appropriation to the regular IDEA Part C appropriation. The first 50 percent of the ARRA IDEA Part C funds were awarded to States on April 1, 2009 and the second 50 percent will be available to States by September 30, 2009. Please note that each State will be required to submit additional information that addresses how the State will meet the accountability and reporting requirements in section 1512 of the ARRA before it will be considered eligible to receive the second 50 percent of the ARRA funds. Together, a State's regular FFY 2009 IDEA funds and a State's ARRA IDEA Part C funds constitute a State's total FFY 2009 Part C allocation. Given the increased IDEA Part C FFY 2009 allocation to each State, States may wish to review carefully the guidance on the ARRA IDEA Part C grant awards, available at <http://www.ed.gov/fund/data/award/idea/arra/index.html>.

Section IV.B of the FFY 2009 application for Part C funds requested updated information about each State's restricted indirect cost rate. Your State indicated that CHHS has a restricted indirect cost rate of 25.7% that expired on June 30, 2009 and the agency is in the process of negotiating a new restricted indirect cost rate that will be in effect for the period July 1, 2009 to June 30, 2010. In Section IV.B of the Application, DDS indicated it will continue to bill IDEA Part C FFY 2009 grant funds based on this provisional or previously approved indirect cost rate until a final restricted indirect cost rate is approved for FFY 2009, which may result in an adjustment of the final audited expenditures allowed to the Part C FFY 2009 grant funds. As noted in the Department's guidance to States, applying the proposed restricted indirect cost rate to the increased FFY 2009 Part C funds to the ARRA (which may not have been considered in the rate proposal) could result in an over-recovery of indirect costs in the current period. Please carefully review the responses to questions B-1 and B-2 in the guidance available at <http://www.ed.gov/fund/data/award/idea/arra/index.html> and direct questions regarding any adjustments to your cognizant agency or our Indirect Cost Unit. When a final rate agreement is approved for FFY 2009, please forward to our Indirect Cost Unit and to your OSEP State Contact: (1) a copy of the final restricted rate agreement; and (2) details of adjustments made to GAPS liquidations from the provisional or prior billing rate after approval of the final rate.

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.

The enclosed grant award for FFY 2009 is made with the continued understanding that this Office may, from time to time, require clarification of information within your application, if

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necessary. These inquiries are needed to allow us to appropriately carry out our administrative responsibilities related to Part C.

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

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education Programs

Enclosures

Enclosure A

cc: Part C Coordinator