



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

JUL - 1 2009

Honorable Alfredo Vigil, M.D.
Secretary
New Mexico Department of Health
1190 South St. Francis Drive
P.O. Box 26110
Santa Fe, New Mexico 87502

Dear Dr. Vigil:

This is to inform you that we have conditionally approved New Mexico's application for Federal Fiscal Year (FFY) 2009 funds under Part C of the Individuals with Disabilities Education Act (IDEA or Part C) submitted by the New Mexico Department of Health (NMDOH). This grant letter does not respond to NMDOH's draft application for State incentive grant funds under IDEA section 643(c) and the American Reinvestment and Recovery Act of 2009 (ARRA) or NMDOH's June 22, 2009 request for a public participation waiver under 34 CFR §303.110(b).

Our conditional approval of New Mexico's regular FFY 2009 IDEA Part C grant is based on our review of the application submitted by the NMDOH to the U.S. Department of Education, Office of Special Education Programs (OSEP), on May 22, and June 22, 2009, including policies, procedures, methods, descriptions, assurances, certifications, and submission statement provided in Section II, which is incorporated by reference to this letter as noted in Enclosure A. In Section II.A.8 of the application, NMDOH's submission indicated that it would provide its policies under IDEA section 635(c) after completion of public participation by June 23, 2009. However, NMDOH's June 22, 2009 correspondence confirmed that these policies would be submitted as an amendment to the State's FFY 2009 application on or after July 28, 2009.

In addition, the State provided the following specific assurances that it will:

1. Operate consistently 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.

New Mexico's FFY 2009 IDEA Part C grant award is being released subject to the FFY 2009

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Special Conditions set forth in Enclosure B, which are incorporated by this reference and which are imposed pursuant to the Department's authority in IDEA sections 616(g) and 642 and 34 CFR §80.12. These Special Conditions are imposed to ensure that: (1) all infants and toddlers referred to Part C have evaluations and assessments and an initial Individualized Family Service Plan (IFSP) meeting conducted within 45 days of the child's referral to the Part C early intervention system (45-day timeline); and (2) all eligible children and their families timely receive the early intervention services listed on the child's IFSP (Timely service provision). The 45-day timeline and timely service provision requirements were the subject of Special Conditions on NMDOH's FFY 2008 IDEA Part C grant award. Because New Mexico did not meet those Special Conditions for specific early intervention service programs, the Department is imposing the Special Conditions identified in Enclosure B. New Mexico must administer this award both in keeping with the applicable provisions of Federal law and regulations and the Special Conditions in Enclosure B. Acceptance by New Mexico of this grant award constitutes an agreement by the State to comply with these Special Conditions, which require a progress report on February 1, 2010 and a final progress report on May 14, 2010.

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 ARRA provided a one-time large increment in IDEA Part C funding. New Mexico has requested three separate distributions of ARRA funds: two awards of 50 percent each of the State's ARRA IDEA Part C grant (the date of these two awards are April 1, and September 30, 2009) as well as New Mexico's draft application for State incentive grant funds under IDEA section 643(e) and the ARRA. OSEP will respond separately to NMDOH regarding the State incentive grant funds once NMDOH submits its final application (expected in late July or early August 2009). The ARRA IDEA Part C grants are a supplemental appropriation to the regular IDEA Part C appropriation. The first 50 percent of each State's 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 (including any funds awarded under IDEA section 643(e)) constitute a State's total FFY 2009 Part C allocation. All of the ARRA IDEA Part C funds, including any funds awarded under IDEA section 643(e) and the ARRA, are subject to the

reporting requirements of the ARRA section 1512 and IDEA sections 616, 618, and 642. 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. In Section IV.B, your State indicated that NMDOH has a restricted indirect cost rate of 4.9% that expired on June 30, 2008 and that NMDOH is in the process of negotiating a new restricted indirect cost rate that will be in effect for the period from July 1, 2008 through June 30, 2009. NMDOH indicated that the restricted indirect cost rate is applied to the first \$25,000 of 30 provider contracts and not to the total Part C grand award. In Section IV.B of the Application, NMDOH indicated it will continue to bill IDEA Part C FFY 2009 grant funds based on this provisional restricted 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 due 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 restricted indirect cost rate 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 necessary. These inquiries are needed to allow us to appropriately carry out our administrative responsibilities related to Part C.

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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 black ink, appearing to read "Patricia J. Guard". The signature is written in a cursive style with a large initial "P".

Patricia J. Guard
Acting Director
Office of Special Education Programs

Enclosures

Enclosure A

Enclosure B

cc: Part C Coordinator