



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

JUL - 1 2009

Honorable Richard F. Daines  
Commissioner of Health  
New York State Department of Health  
Corning Tower, Empire State Plaza, 14<sup>th</sup> Floor  
Albany, New York 12237

Dear Commissioner Daines:

This is to inform you that we have conditionally approved New York'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 New York Department of Health (NYDOH) to the U.S. Department of Education, Office of Special Education Programs (OSEP), on April 24, and July 1, 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 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.

The conditional approval for New York's FFY 2009 Part C grant is also based on the State's assurance, dated June 30, 2009 from NYDOH, in which it specifically assured that the State shall:

1. Make all changes necessary to the State's policies and procedures, and complete actions as specified in OSEP's April 20, 2009 memorandum, including submitting to OSEP the State's revised opt-out policy, to comply with the Part C requirements in 20 U.S.C 1437(a)(9)(A)(ii)(I), 34 CFR §303.148(b)(1) and OSEP's 2004 *Letter to Elder*, and submit to OSEP the new and/or revised policies and procedures as soon as they are finalized but no later than December 31, 2009;

2. Ensure that, throughout the period that the State uses its Federal fiscal year 2009 grant funds under Part C of IDEA, all early intervention services (EIS) programs and EIS providers in the State will comply with all requirements of Part C of IDEA, including 20 U.S.C. 1437(a)(9)(A)(ii)(I), 34 CFR §303.148(b)(1) and OSEP's 2004 *Letter to Elder*;
3. Provide OSEP with a copy of the memorandum notifying all parents, EIS programs and EIS providers, and other stakeholders that are part of the State's Part C early intervention system notifying them of any changes that affect the provision of early intervention services under Part C, including 20 U.S.C. 1437(a)(9)(A)(ii)(I), 34 CFR §303.148(b)(1) and OSEP's 2004 *Letter to Elder*; and
4. Ensure that the statewide system of early intervention required by Part C of IDEA in 20 U.S.C. 1431-1444 and applicable regulations in 34 CFR Part 303 will be in effect throughout the FFY 2009 grant period.

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. In section IV.B, your State indicated that NYDOH has a restricted indirect cost rate that expired on March 31, 2009 and that the agency is in the process of negotiating a new restricted indirect cost rate that will be in effect for the period from April 1,

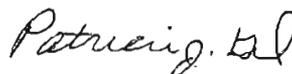
2009 through March 31, 2010. In Section IV.B of the Application, NYDOH indicated it will continue to bill IDEA Part C FFY 2009 grant funds based on this previously approved restricted indirect cost rate until a final restricted indirect cost rate is approved for FFY 2009, which may result in an adjustment 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 rate 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.

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